

**CONGRESSIONAL RECORD MAY 20, 1977**

**Legislative History**

Congressional Record May 20, 1977

Following is the May 20, 1977 Congressional Record. The text below is compiled from the Office of Surface Mining's COALEX data base, not an original printed document, and the reader is advised that coding or typographical errors could be present.

**123 CONG.REC. S8083**

**May 20, 1977**

May 20, 1977

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 7, which the clerk will state by title.

S8083 The assistant legislative clerk read as follows:

S8083 A 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.

S8083 The Senate resumed the consideration of the bill.

S8083 The ACTING PRESIDENT pro tempore. The pending amendment is the Hart substitute for the Johnston amendment No. 275, as modified.

S8083 The Senator from New Mexico.

S8083 Mr. SCHMITT. Mr. President, I ask unanimous consent that Dick Burdette and Jim Hinish, of my staff, be granted privilege of the floor.

S8083 The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

S8083 Mr. SCHMITT. Mr. President, as we seem to not have debate on the pending business ready to start, I wonder if the distinguished Senator from Wyoming would be willing to answer a couple of questions pertaining to S. 7.

S8083 Mr. HANSEN. I observe to my friend from New Mexico that Senator HART is in the Chamber, Senator MELCHER is here, and Senator METCALF is also here. So I imagine we would follow right on.

S8083 Mr. SCHMITT. I think the Senator.

S8083 AMENDMENT NO. 282, AS MODIFIED

S8083 Mr. HART. Mr. President, a parliamentary inquiry.

S8083 The ACTING PRESIDENT pro tempore. The Senator will state it.

S8083 Mr. HART. What is the pending business?

S8083 The ACTING PRESIDENT pro tempore. The clerk will state the pending business.

S8083 The assistant legislative clerk read as follows:

S8083 Amendment No. 282, as modified, the Hart substitute for the Johnson amendment No. 275, as modified.

S8083 The amendment (No. 282, as modified) is as follows:

S8083 In lieu of the language proposed to be inserted by the Senator from Louisiana, insert the following.

S8083 "(5) the proposed surface coal mining operation if located west of the one hundredth meridian west longitude, would -

S8083 "(A) not be located within an alluvial valley floors, or

S8083 "(B) not materially damage the quantity or quality or water in surface or underground water systems that supply these valley floors referred to in (A) of subsection (B) (5):

{S8084} 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."

{S8084} Mr. HART. Mr. President, the amendment I am proposing today with my colleague from South Dakota (Mr. ABOUREZK) as a substitute for the Johnston amendment regarding the subject of strip mining on alluvial valley floors is identical to the language contained in the House version of this bill, H.R. 2, which was passed on April 29, 1977, and which would strengthen the bill's provisions dealing with surface mining on alluvial valley floors.

S8084 This amendment is strongly supported by the administration, and a copy of a letter from the Secretary of the Interior, Cecil Andrus, strongly affirming the administration's position, had been placed on each Senator's desk.

S8084 In addition, this amendment is supported by a wide range of agricultural and environmental and conservation organizations.

S8084 Mr. President, alluvial valley floors are critical to the arid and semiarid Western States, especially in periods of drought such as the one we are now experiencing. These valley floors contain unconsolidated aquifers and streambeds, and are important for natural irrigation and subirrigation of crops and grazing lands in periods of low rainfall.

S8084 Mr. President. I ask for the yeas and nays on this substitute amendment.

S8084 The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

S8084 The yeas and nays were ordered.

S8084 Mr. HART. I thank the Chair.

S8084 Mr. President, the reason for my concern with surface mining in these areas is that, to date, there is little information to show that these areas can be reclaimed adequately to protect the underground water table.

S8084 My amendment would change the committee language by prohibiting new surface mining operations from taking place in these important areas, including underdeveloped range lands.

S8084 Mr. President, while I commend the members of the Energy Committee for the attention they have given this subject, I believe the committee language is too weak in a number of areas.

S8084 First, by "grandfathering" those surface mining operations where "substantial legal and financial commitments" have been made, the committee has opened up the possibility of endless litigation and a legal nightmare for the State and Federal enforcement agencies as they attempt to define just what this language means.

S8084 Second, and more importantly, the committee's exemption of undeveloped rangelands from the surface mining prohibition ignores the complex nature of the underground hydrologic network. Surface mining of these areas could conceivably result in the permanent disruption of this hydrologic network and the permanent loss of productive lands in an area far larger than just the

minesite itself. According to a National Academy of Sciences report, the offsite consequences of surface mining on alluvial valley floors could be far greater than the effects on the mined lands.

S8084 My amendment would, therefore, include these undeveloped rangelands in the bill's prohibition against new surface mining in alluvial valley floors, and it would also provide the authority to make case-by-case determinations on whether proposed surface mining on lands adjacent to alluvial valley floors could substantially harm the quantity or quality of the alluvial valley water aquifer.

S8084 Mr. President, many of my colleagues may be concerned that my amendment to tighten the ban on alluvial valley floor strip mining might effectively keep much of the coal in Western States from being developed. I want to reassure them that this is simply not so. Recent studies indicate that only 2 1/2 to 3 percent of the coal in the West is found in these areas.

S8084 At issue, Mr. President, is a critical and unique water supply which we cannot afford to endanger. The Western States do not have much water in good years, and this year the problem is nearing disaster. What the West does have is an abundance of coal, which is found in many areas less critical than these alluvial valleys. What my amendment would do is lock up a small amount of the West's huge coal reserves so that important agricultural activities can continue unthreatened by the increased salinity or loss of water that strip mining could cause. As we begin to develop information on how to reclaim these areas adequately and safely, we in Congress can always reverse our decision on this subject. But until then, Mr. President, I think we can and should produce our coal elsewhere.

S8084 In closing, I should like to read briefly from Secretary Andrus' letter to me on this amendment:

S8084 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.

S8084 Your amendment will be this and I urge the Senate to adopt it.

S8084 Mr. HANSEN. Mr. President, I appreciate the Concern of the Senator from Colorado.

S8084 This certainly is an issue that has been discussed many, many times. It is my considered judgment that the language contained in the bill as reported by the Energy and Natural Resources Committee strikes the most reasonable balance and makes the best sense.

S8084 Obviously, no one wants to take an action which would be damaging and irreversible. I think the language contained in the bill provides those assurances and insures that we can proceed in a manner conforming with the language in the bill and achieve the goals that the Senator from Colorado has in mind.

S8084 I shall read what those provisions are:

S8084 The proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not have a substantial adverse effect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of irrigated, flood irrigated, or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations if such operations are significant and economically feasible: Provided, That this subparagraph (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 or for which substantial financial and legal commitments, as determined by the Secretary, had been made prior to January 1, 1977.

S8084 Mr. President, later, I shall offer an amendment for consideration by the Senate which I think does address one possible shortcoming in this section.

S8084 However, my point is that we labored long and hard, trying to understand, first, what the concerns are of all persons interested in these lands; second, to try to come up with a solution which would deal fairly with everyone, first insuring that there would not be permanent damage to alluvial valley floors. I think that with the language that has been gone over a number of times, and to which

attention has been given by all the experts we could call upon, we have come up with a pretty good answer.

S8084 I hope the Senate will reject the amendment proposed by the Senator from Colorado.

S8084 Mr. HART. Mr. President, I should like to respond briefly to the Senator from Wyoming.

S8084 First, with respect to the provisions contained in the committee bill. I note that the National Farmers Union, the Grange, the National Farmers Organization, the Rocky Mountain Farmers Union, and a variety of other agricultural interests are strongly in support of the substitute amendment I have offered, which I think indicates the breadth and depth of the concern on the part of those engaged in agriculture, particularly in the Western part of this country, about the damage which the committee language would do to their operations and to the water upon which they are dependent, if the bill is enacted.

S8084 I think the same concern was evidenced by the House in its adoption of the language which I am proposing. This language, if it were adopted, would conform the Senate bill to the provisions passed by the House.

S8084 I also note, Mr. President, in response to the suggestion - not made by the Senator from Wyoming but by others - that this would do substantial harm to our efforts to mine more coal, particularly in the Western States, that not only is Secretary Andrus strongly in favor of this language, but also, I am informed, the President's energy adviser, Dr. Schlesinger, supported the same language as offered by REPRESENTATIVE BAUCUS in the House and supports the language contained in my amendment as a substitute.

{S8085} With regard to the committee provisions, although I am sure the Senator from Wyoming is correct in his suggestion that the committee made every effort to reach a balance and to take into consideration all the interests, the language in the bill as it now stands grandfathers in those operations having made substantial legal and financial commitments to mining. Secretary Andrus says the following with respect to this provision in his letter of May 19 to me, a copy of which is on the desk of each Senator:

S8085 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 open-ended 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."

S8085 Obviously, this language would leave open the possibility of those who have been speculating in coal lands in the past to make a real killing here, on the ground that, last year or in some prior years, they had made a "substantial financial and legal commitment."

S8085 In addition, with regard to the committee language, by allowing mining on undeveloped rangelands and areas not significant to farming or ranching operations at the present time, the committee provision opens a loophole that could be extremely far-reaching in effect.

S8085 Secretary Andrus complains in the same letter to which I have referred that it would be extremely difficult to determine administratively what "undeveloped rangeland" or "significant" farming and ranching are.

S8085 More important, this language neglects the extremely intricate interrelationship of the various surface and subsurface water networks in the arid and semiarid West. As with the grandfather clause on which I have commented, this language leaves open a real administrative and legal nightmare for the people who have the obligation of administering this law.

S8085 Also, the committee language does not recognize the potentially damaging effects of mining adjacent to alluvial valley floors which may have the same effect as the actual mining operation on the valley floor itself.

S8085 So I think that in a number of very important respects, which Secretary Andrus has outlined in his letter, the committee language is deficient.

S8085 For some of the reasons I already have indicated and some which I will indicate later, I think the amendment offered by the Senator from Louisiana (Mr. JOHNSON), to which my amendment is offered as a substitute, does not cure defects in the committee bill but, rather, exacerbates a number of them.

S8085 It is extremely important, in connection with these interests, to tighten up this bill and to

provide some more particular definition of what we are talking about here than the bill which the committee has offered to the Senate or the amendment of the Senator from Louisiana.

S8085 Mr. MELCHER. I thank the Senator for yielding.

S8085 On February 4, in a rather detailed letter to the committee. Secretary Andrus addressed this very particular and critical point of alluvial valley floor treatment in the bill. He advocated the language we developed last year, which was in H.R. 13950, and now the Senator tells us that Secretary Andrus is very much enthused and enthralled with the language he is presenting today.

S8085 Does he elaborate; were there public hearings held by the Department of the Interior that led to this change of position? Was there clear exposure to all of the people, public bodies, that are involved? How about all of the environmental groups that have had an opportunity in this bill, all of the companies that might be involved in mining? What is the background of the proposed amendment?

S8085 Mr. HART. Well, the Senator's questions, I think, would better be directed to the administration and Secretary Andrus himself because I am not privy to any reasoning that may have gone on. The Secretary, on behalf of the President and the administration, would have to explain to the Senator from Montana whether his support for my amendment reflects any yielding to pressure from any organizations. That I do not know and I cannot account for. But I do know the Secretary in his letter to me, and for distribution to the Senate, has indicated very strongly present approval and support on behalf of the administration for the language which we have proposed here as a substitute.

S8085 Mr. SCHMITT. Mr. President, will the Senator yield for a question?

S8085 Mr. HART. I yield.

S8085 Mr. SCHMITT. The Senator from Colorado has put his finger on a very important problem, and I also must compliment the committee for having struggled with this and reached some form of compromise. I think the debate will determine just how adequate that compromise has been.

S8085 Would the Senator from Colorado define for me and our colleagues what he conceives an

alluvial valley floor to consist of, and what other kinds of materials might be included in that and other kinds of services?

S8085 Mr. HART. Well, the best approach I can make is an attempt as a layman's - and I underline layman's - definition of what this geological phenomenon is.

S8085 These floors consist of unconsolidated deposits of gravel and porous rock and silt, and they consist of either surface or underground aquifers under them, depending on the topography of the area and the time of year.

S8085 They are usually, in our part of the country, as the Senator from New Mexico knows lowland areas, where crops or hay are grown.

S8085 In the bill itself there is the definition. I think, on page 290 where alluvial valley floors are defined as meaning the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities. That is the committee's definition the formation we are talking about.

S8085 Mr. SCHMITT. Well, the definition on page 290 is somewhat imprecise.

S8085 I would ask the Senator would he conceive of the alluvial land, very often lying between a mountain range and a flood plain of a stream, as being included in this definition of alluvial valley floors? The Senator is aware of what I am speaking in these very broad unconsolidated gravels and sands that come out of the mouths of streams that issue from mountain ranges at the edges of agriculturally productive valleys.

S8085 One can conceive of alluvial plains, and in some cases they are plains where agricultural water may be dumped from these same deep aquifers that are fed from the valley itself.

S8085 Would the Senator include those as part of his definition?

S8085 Mr. HART. Well, I think to the degree they conform with the other narrow aspects as outlined by the committee, the answer is, yes.

S8085 I do note that in the letter which Secretary Andrus wrote, the letter of May 19, directed to me by him that he is of the belief, I think in the last paragraph of that letter, that alluvial valleys can be defined geologically and are critical to water systems.

S8085 The other observation I would make is that any deficiencies in the definition of the areas we are talking about, alluvial valley floors, would probably be best addressed to the committee and to the bill language itself, and I would be more than willing to cooperate with the Senator from New Mexico, who has a great deal more expertise in geological areas than I and, perhaps, anyone on the committee, with the purpose of clarifying that definition and perhaps, even broadening it.

S8085 But, specifically on the areas which the Senator has mentioned, to the degree they conform to all of the aspects of the definition which I have suggested, particularly consisting of surface waters or ground waters, aquifer formations where agricultural activities are taking place or could take place, I think the answer to this question is probably yes.

S8085 Mr. SCHMITT. So the Senator would see the possibility in a test of this particular definition in the courts, in the absence of a geological definition in law, that we might see a very broad application of the general definition of alluvial valley floor as on page 290. That is, it could conceivably be extended to include all materials between mountain ranges, any area where a gravel or unconsolidated material overlays coal with water availability coming from aquifers associated with an alluvial valley or the main flood plain itself.

S8085 Mr. HART. I think to a degree the Senator has identified the problem. The problem is whether this body accepts the bill as the committee proposes, accepts the Johnston amendment, accepts my substitute amendment or accepts any other attempt to outline what strip mining will be permitted in an alluvial valley floor, that is to say, if there is a problem with respect to specificity of definition, it prevails in all the approaches to that problem. I would be more than willing to have the representatives of the committee, majority or minority, address themselves to whether the definition is specific enough or is too vague.

{S8086} All I am saying is that to the degree the Senator from New Mexico has identified the problem, the problem pervades all these discussions.

S8086 Mr. SCHMITT. I concur with the Senator that it is a problem in both cases.

S8086 The Senator's amendment, however, would exacerbate the problem; that is, it would certainly tighten up the overall area of the mining of alluvial valleys. Therefore, a very precise

definition of what we mean by alluvial valley floor is even more critical if the Senator's amendment were to be accepted by the committee.

S8086 I also wonder if members of the committee would like to enter into this colloquy and to discuss whether the definition of alluvial valley floor is precise enough.

S8086 Mr. METCALF. Whoever has the floor, will he yield to me?

S8086 Mr. SCHMITT. The Senator from Colorado has the floor.

S8086 Mr. HART. I yield to the distinguished floor manager of the bill.

S8086 Mr. METCALF. The Senator from Wyoming has already expressed the opinion of the committee. This matter was thoroughly discussed. The technical amendments that were proposed, that are being proposed by the Senator from Colorado, and the rather technical definitions, were considered in the committee.

S8086 Counsel for the committee and members of the committee felt that such things as substantial, legal problems would give greater flexibility to the Secretary in making his orders with respect to the alluvial valley floors.

S8086 In the course of my discussion with the Senator from Louisiana yesterday, I expressed some of my views and I think I expressed the committee's views on this bill. I join with the Senator from Wyoming in urging that we adopt the view, the language, and the concept that is in the committee bill, so that we do have some not too precise, not too specific suggestions, but something that the Secretary can write some regulations around and that will give some guidance to the court in interpretation of the law.

S8086 The language of the Senator's amendment is in the House bill, and inevitably no matter what we agree to we are going to have to go to the House of Representatives and again thrash this proposition out. I am not for the Johnston amendment. I am supporting the committee bill. I think that we are sufficiently precise, that the Secretary can write the necessary regulations. I think we are sufficiently precise that a competent court can interpret it in the event of an appeal. I would hope that, unless there is a special thing that the Senators want to bring up, we do not try to take away from the Secretary of the Interior the flexibility that we tried to give him on the committee.

S8086 Mr. SCHMITT. Mr. President, will the Senator yield?

S8086 Mr. HART. I yield, but I shall first make this observation:

S8086 I appreciate the remarks of the distinguished floor manager, but the Secretary of the Interior indicated he does not want the kind of authority that the committee is trying to force on him. He has already indicated to us that he thinks the committee provision is much too broad to write the kind of regulations necessary to implement this act. He has indicated to us that he hopes we will take away that vagueness and take away that potential for arbitrariness and give him a specific law that he can implement. So I think the best argument against the committee position here is the Secretary's own words that he does not want the authority which the committee is trying to give him.

S8086 Mr. METCALF. The Secretary of the Interior probably does not want a whole lot of obligations that sometimes we delegate to him by an act of Congress, but I have great confidence in the Secretary of the Interior. If he gets this delegation I am sure he will do a good job of it.

S8086 Mr. HART. I yield to the Senator from New Mexico.

S8086 Mr. SCHMITT. I hope that the distinguished floor manager of this bill understands that my question about the definition of "alluvial valley floor" is not to indicate that I prefer the Hart amendment over the committee language. I am not completely happy with the committee language, but I must say I prefer it over any tightening of that language. My concern about definition is simply to illustrate that without a more precise definition we will, in fact, potentially remove even more coal from available production, particularly coal on private lands, by the adoption of the Hart amendment.

S8086 I am almost as equally concerned about the language that the committee proposes for the same reason. There is considerable impreciseness in that definition which the Senator, I believe, sees as an advantage but I see as a disadvantage because of how far and how sweeping the interpretation that they be made either by the Department of the Interior, the Secretary of the Interior or by the courts.

S8086 And as a matter of fact, this is another question that I was going to ask the Senator from Colorado. Does he have any views concerning the amount of federally and privately owned coal in alluvial valleys defined either very precisely as only the flood plain or imprecisely as the entire area,

say, between mountain ranges and in basins that are underlain by consolidated gravel?

S8086 Mr. HART. Let me respond again. I think it is a very important point. My amendment does not make this language any more vague. My amendment does not tamper with the committee's definition of what alluvial valley floor is at all. If anything, my amendment would prevent the kind of latitude which the Senator is concerned about in that it tightens up what activities can and cannot be carried out in these areas and removes from the Administrator's discretion what kinds of commitments qualify for an exemption from the act.

S8086 So if the Senator is concerned about arbitrariness or vagueness, he would be well advised, I think, to support an amendment which more narrowly and carefully defines the activities, if not the areas concerned, to prevent an administrator or bureaucrat, or someone, from getting into a hornet's nest from which they cannot get themselves extracted.

S8086 I shall simply try to specifically respond on the question of how much coal we are talking about, citing the following information. It is my understanding there have been three studies which address themselves to the question of the alluvial valley floors and their relation to the strip mining of coal. And the following information is taken from those studies, one by Mr. Malde and Mr. Boyles, in 1976, who mapped alluvial valley floors and strippable coal in a number of counties in Montana for the U.S. Geological Survey. They found that, of the surface area within the study area underlain by strippable coal, only 2.67 percent of the land surface studied overlay surface minable coal which falls within the figure which I have already indicated in my opening remarks of some 2.5 or 3 percent of strip minable coal which is in the area which we are talking about here.

S8086 Also, an EPA study in 1977 on the same subject found that, of land presently leased for coal mining in eight Western States, meeting the alluvial valley floor criteria contained in this bill, 2.88 percent of the area of the leased lands was in alluvial valley floors.

S8086 Then I noticed the third study is attributed to Jack Schmitt, 1977, EPA from Denver, Colo.

S8086 Mr. SCHMITT. If the Senator will yield. I do not believe he is any kin of mine.

S8086 Mr. HART. I hope we can clarify that for the record.

S8086 Of the alluvial valley floor areas studied in east central Montana, including all coal deposits in that area, 2.8 percent of the strippable reserves in that area was in what are defined as alluvial valley floors. So we are talking, I think, under the three studies and the literature that we have, about 2.5 to 3 percent of all of the known deposits of coal available.

S8086 Mr. MELCHER. Mr. President, will the Senator yield?

S8086 Mr. HART. I yield to the Senator from Montana.

S8086 Mr. MELCHER. I think it should be borne in mind that this is an old issue and that the studies that the Senator from Colorado referred to were in the concept of what was intended to be excluded as alluvial valley floors. It was not intended to just go on the definition that is contained here on page 290 and which has been mentioned earlier today, which is a very limited definition. It does not say anything about farming. It really does not get into the question of whether the irrigation water that is available either surface or subsurface is adequate for farming.

{S8087} So what we have presented now is a different situation because the Senator from Colorado, Senator HART, is presenting an amendment that says there will not be any coal mining on any of the areas that are unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

S8087 Mr. HART. Except for the grandfather provision.

S8087 Mr. MELCHER. There is no question but that definition, if that is all that is going to guide the courts, will probably invite litigation on every mining plan that is proposed in the West.

S8087 We have gone over the ground so often; what are we trying to project in alluvial valley floors?

S8087 Mr. HART. Again let me say if the Senator is unhappy with the definition, I will be more than happy to work with him and the committee in improving it.

S8087 I did not arrive at this definition; it is one the committee itself came up with after months and years of deliberation. If it is faulty, and it may be, I do not think that should be laid at the doorstep of the amendment I am offering.

S8087 I think a strong argument can be made, and has been made, that in fact my amendment

will produce less litigation than the committee's bill, which suggests that if you make any what they call substantial legal or financial commitment, you are entitled to an exception, which invites speculators to attempt to qualify under that vague definition, which gives the Secretary a discretion he does not even want.

S8087 My amendment tightens up the language of the committee bill, but I do not want to assume responsibility for any vagueness of geological definitions contained in the bill.

S8087 Mr. BURDICK and Mr. SCHMITT addressed the Chair.

S8087 Mr. HART. I yield first to the Senator from North Dakota.

S8087 Mr. BURDICK. Mr. President, does this amendment apply to private as well as public lands?

S8087 Mr. HART. It applies to all the lands the bill affects.

S8087 Mr. BURDICK. The alluvial valley floor provisions apply equally to both under the Senator's amendment?

S8087 Mr. HART. And in the bill itself, yes.

S8087 Mr. BURDICK. To what extent does it take care of rights already vested?

S8087 Mr. HART. There are two provisions in my amendment pertaining to so-called grandfather provisions. For areas where a State permit was granted prior to January 4, 1977, or where they were producing in commercial quantities in 1976, those two types of operations would be permitted to continue.

S8087 Mr. BURDICK. Suppose I am in the position of a valid leaseholder from a private party, and I have not gotten a mining permit, but I have had a lease for several years. I will not be able to use that lease, will I?

S8087 Mr. HART. Not if you were not producing prior to 1976. But I think you will also have the same problem with the committee bill.

S8087 Mr. BURDICK. I am talking about both measures.

S8087 Mr. HART. Yes.

S8087 Mr. BURDICK. What provision does the Senator have to take care of that vested right? Does he just lose it?

S8087 Mr. HART. Well, first of all, he would be given -

S8087 Mr. BURDICK. He has paid money for this mineral lease, you understand.

S8087 Mr. HART. I think that the Senator from New Mexico and the Senator from North Dakota are identifying a problem that will prevail whether my amendment passes or not, in that the same difficulties will apply to a person if the committee bill passes.

S8087 Mr. BURDICK. I would like to have the difficulty removed. What are we going to do about that? Is there not a constitutional question involved?

S8087 Mr. HART. I think the floor manager may be in the best position to address himself to that. The committee, as I understand, considered constitutional issues.

S8087 Mr. BURDICK. May I have the attention of the manager? What did the committee do about this vested right question?

S8087 Mr. METCALF. As the Senator from North Dakota knows, there was one of the problems extensively debated in last year's bill. When the bill was introduced in the Senate, we had substantially the language that was in last year's bill. As I understand it, my colleague from Montana is supporting substantially that same language.

S8087 In the course of the debate this year, we changed the language somewhat, as has been pointed out by the Senator from Colorado.

S8087 I wish to say to the Senator from New Mexico and the Senator from Colorado that if I were writing the bill all by myself, sitting down and doing it, we might have different legislation. A committee wrote this bill, a committee that was knowledgeable and concerned about the various mining operations on alluvial debate we had last year, aware of Secretary Andrus' letter, and aware of what happened in the House of Representatives.

S8087 I think that we have a definition which has some flexibility. As my colleague from Montana suggests, we might have some lawsuits about this, but we are within the confines of constitutional zoning and constitutional prohibitions, and I believe that we can defend this position before the Secretary and before the courts.

S8087 Mr. BURDICK. All right; let me ask the question again. I have no problem with the

prospective application of the amendment or the bill itself, but where I have acquired, as a lease, a right either by lease or by a mineral interest that existed prior to January 1 -

S8087 Mr. METCALF. We put a grandfather clause in.

S8087 Mr. BURDICK. Well, the grandfather clause begins, as I understand, under the Hart amendment, on January 1, 1977.

S8087 Mr. METCALF. And the committee bill as well.

S8087 Mr. BURDICK. Yes. So I have a valid lease or a valid interest in that land.

S8087 Mr. METCALF. How much of a valid lease? I do not know, and neither does the Senator.

S8087 Mr. BURDICK. Well, somebody has given me the lease.

S8087 Mr. METCALF. The Senator says a valid lease, and I will accept that. Let us go on from there.

S8087 Mr. BURDICK. All right. Mr. A, the owner of the land, has given me the lease 5 years ago, and I own it. I do not have a permit from the State. Now the Senator is saying I cannot use that any more?

S8087 Mr. METCALF. That is correct.

S8087 Mr. BURDICK. And that is not taking property without compensation?

S8087 Mr. METCALF. No, it is not. The Senator, who is an extremely able lawyer, is well aware of the various zoning provisions that we have in the statutes, the various public interest provisions that we have in the statutes.

S8087 The whole concept of this bill, I will say to the Senator from North Dakota, is based on the proposition that certain areas cannot be mined. Certain areas can only be mined where they can be reclaimed; other areas that cannot be reclaimed because of either aquifers, historic sites, or something, no matter how much coal you own under that land you cannot mine it.

S8087 Mr. BURDICK. My good friend from Montana knows that under the zoning ordinances you are limited in your use of property, but if you have a lease to mine coal, you have no other use for it.

S8087 Mr. METCALF. You can mine it underground.

S8087 Mr. BURDICK. That disturbs the surface, too, does it not, in some degree?

S8087 Mr. METCALF. No, this is a surface mining, strip-mining bill, intended to protect the surface of the land of the United States.

S8087 We are not saying you cannot mine coal by any other method. In some areas perhaps you cannot find any other way. That is part of the risk of the lease.

S8087 Mr. BURDICK. Do we not have a provision in this bill that takes care of, in some way, somehow, rights that are are vested in this minner?

S8087 Mr. METCALF. If a person has gone to the State and secured a permit, made an environmental impact statement, and invested in the various exploratory activities required by this legislation, expended substantial sums - and that is relative; a sum invested by Exxon Oil Co. would be negligible, as compared to a sum invested by a small coalminer - if he has done those various things, he can go forward and mine. But if he has not done those various things, and he has, as the Senator said in his hypothetical example, purchased leasable coal as a subsurface right, and comes under the provisions of this bill, he cannot mine that coal except by underground methods.

{S} 8088 Mr. BURDICK. And does the Senator think that has met the test of the Constitution?

S Mr. METCALF. I certainly do. If that does not meet the provisions of the Constitution, then the whole concept upon which this bill is baesd, which says we can protect the surface of the land of the United States of America, is not constitutional.

S Mr. BURDICK.I do not quarrel with the Senator's objectives.

S Mr. METCALF. I understand that.

S Mr. BURDICK. I am asking legal questions about what we may face in the future. That is all.

S Mr. METCALF. There is the concept we have had for years and years and years, that we do have the right to protect our land from exploitation and depravation that are unnecessary, and to preserve the public interest in that land.

S Mr. BURDICK. And the man who has the vested right loses without recourse to anybody?

S Mr. METCALF. Yes. People lose vested rights all the time without recourse to anybody, if it is in the public interest.

S Mr. BURDICK. I thank the Senator.

S Mr. HART. It is my understanding that Secretary Andrus, the Secretary of the Interior, has been interested in some possibility of land exchanges or leasing sites, something of that sort.

S Mr. BURDICK. If this could be exchanged for land of equal value, I think the constitutional test might be met. My friend from Montana is an excellent lawyer, but I still have doubts.

S Mr. HART. Voting against my amendment would not solve those doubts, because the committee bill still has that problems.

S Mr. SCHMITT. If the Senator will yield, the problem of the constitutionality is a problem which will continue relative to the bill, particularly since one of the purposes of the bill as stated on page 151 is:

S Wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.

S If we are really looking to exercise the full reach, we must consider whether we have reached too far in some cases.

S At this moment, I want to be certain that my concern about the Hart amendment is clear. Given a very loose definition of an alluvial valley floor, the Hart amendment, if adopted, would have a great potential of withdrawing all lands in the western United States which are underlain by unconsolidated gravel and which could be irrigated using water associated with a particular floodplain area.

S I believe we not only must look to add some precision to the definition of alluvial valley floors, but we must recognize that if we enact the Hart amendment we will be eliminating, or potentially eliminating, from coal production at areas of the West, in my State of New Mexico as well as almost all other Western States.

S Mr. HART. I take issue with what the Senator has said based upon the studies I have already cited. Again, my amendment should not be confused with any vagueness the Senator feels about the

definition of the language.

S Mr. SCHMITT. I do not attribute the vagueness of the definition to the Senator's amendment.

S Mr. HART. My amendment would not remove vast amounts of land otherwise available. The studies I cited are the best evidence we have, and they say 2.5 to 3 percent.

S Mr. SCHMITT. But with the looseness in the definition of alluvial valley floor, that could be extended to include all those materials I have just described, areas of coal overlain by unconsolidated gravel.

S Mr. HART. Not according to the experts who conducted the study, who assumed the definition contained in the bill.

S Mr. SCHMITT. But that definition is very imprecise. They may have just included the flood plains which are relatively level and are presently available for agricultural use. As the Senator well knows, vast parts of this State as well as mine are underlain by unconsolidated gravel at the edges of the flood plain and they could conceivably, and very possibly would, fall under this definition of alluvial valley floor.

S Mr. METCALF. Will the Senator from Colorado yield?

S Mr. HART. I yield.

S Mr. METCALF. I feel compelled to insist that the estimate of the amount of land affected by these alluvial valley floor proposals, whether it is Senator JOHNSTON'S amendment, the Senator's amendment, the committee proposition, or the amendment which may be offered by my colleague from Montana, is not more than 3 percent of the land. Every study we have had made, utilizing the definitions we have in this bill, under the definitions we have under the Senator's amendment, and other definitions, say that the alluvial valley floor impact of this type of legislation is 2.5 to 3 or maybe a little more than 3 percent, but not over 3.5 percent.

S Mr. SCHMITT. If the Senator will yield, as a geologist, I do not know how I would draw a line on a map defining alluvial valley floor according to the definition in the committee print. That is what I am concerned about.

S Mr. METCALF. People have done mapping for us in the Soil Conservation Service and in the special service organizations that have made these studies.

S Mr. SCHMITT. Then they have done it with a definition that is much more narrow than what could come from the interpretation of the committee's definition of alluvial valley floor. I would hope that maybe we could find out how these studies defined the line within which they included only 2 to 3 percent of the available coal lands. That is an extremely small number. It does not relate at all to the amount of area in the western United States underlain by unconsolidated gravel that would come under this definition. That is my concern.

S If the committee staff would be willing to work with my staff to try to find out just how that line was defined, maybe at a later time today or tomorrow we can come to grips with that definition.

S Mr. METCALF. I would be delighted to have the committee staff work with the Senator, his staff, or anyone else. As I understand it, the Senator from Colorado is going to ask unanimous consent to put this vote off until 11:15. I hope the debate on this amendment will not run until 11:15 because there are other matters under consideration to be taken care of. In the interval I would be delighted to have anybody on my staff discuss this matter with the Senator.

S Mr. SCHMITT. If the Senator from Montana will yield further, I am concerned about the definition of alluvial valley floor with respect to the committee print as well. I am particularly concerned about it with respect to the amendment of the Senator from Colorado.

S Mr. METCALF. The Senator from Montana has no illusions about the concern of the Senator from New Mexico under the committee amendment or the amendment of the Senator from Colorado.

S Mr. SCHMITT. The point is that the impact of that looseness of definition is much more severe in the Hart amendment than in the committee amendment. I will in fact, support the committee in opposing the Hart amendment for that reason.

S Mr. HART. Mr. President, I do not intend to carry the discussion of this amendment too much further since there are a large number of amendments and the leadership does want to try to get this bill passed today. I am more than happy to answer any questions. Questions of definition can be worked out. They are technical in nature. Those are concerns between the Senator from New Mexico and the floor manager.

S I ask unanimous consent, Mr. President, that a vote on this amendment in the nature of a substitute occur at 11:15, with the understanding that the Senator from Montana may be heard further on the amendment, and that other amendments may be taken up and debated in the meantime.

S Mr. HANSE. Reserving the right to object, and I shall not object. I quite agree with the Senator from Colorado that it would be helpful to Senators to be able to leave here for other important engagements armed with the assurance there shall be no votes occurring until then. I gather this is what the Senator is saying, his being the first amendment to be voted upon, and the unanimous-consent request being that the vote would not occur earlier than 11:15.

S Mr. HART. That is my request.

S Mr. HANSEN. I do not object.

S Mr. ALLEN. And that will be the first vote.

S Mr. HANSEN. That is correct.

S The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

S The Senator from Montana is recognized.

S Mr. CULVER. Will the Senator yield for a unanimous-consent request?

S Mr. MELCHER. Who has recognition, Mr. President?

S The ACTING PRESIDENT pro tempore. The Senator from Montana.

S Mr. MELCHER. I yield.

{S} 8089 Mr. CULVER. Mr. President, I ask unanimous consent that George Gilbert, of my staff, be granted the privilege of the floor throughout the debate and votes on the pending legislation.

S The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

S Mr. MELCHER. Mr. President, the concern that has been expressed by the Senator from New Mexico as to what is an unconsolidated stream-laid deposit holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities is a concern that will involve almost every mining plan submitted to a State regulatory authority or to the Secretary of the Interior for approval before strip mining can be done. If we are just to look at those four lines in the bill and

say that the mining plan had to conform to that, without any interpretation of another section of the bill, I think there is a question of how much strip mining would be done in the West.

S I would ask Secretary Andrus and all the other backers of this amendment if they want to prohibit strip mining on some dry creeks.

S Who has made a survey of the dry creeks in Montana or Wyoming to find out whether or not they have unconsolidated stream laid deposit holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities? Certainly not the studies that have been referred to, because they have looked at the concept of what the committee and what Congress intended in those bills by "alluvial valley floors". They did not look at all of the geology that might be involved on these dry gulches, on these dry streams that may flow some years when there is snow to be melted off, or heavy rains of sufficient quantity to let them run. They have not looked at it from the concept of all of those dry streams and, surely, the committees that have worked on this bill, in this Congress as well as in previous Congresses, was not referring to all the dry streams or all the dry gulches in West.

S What we sought to do was protect such valleys as the Yellowstone Valley, where there is irrigation, where there is farming. We sought to protect the integrity of that valley and the Tongue River Valley, the Powder River Valley, the Rosebud Creek Valley, and many others, where there was farming - that was being farmed because of either surface irrigation or subsurface irrigation. That is what we were trying to do, because those thin ribbons of irrigated land, surface or subirrigated, are extremely important to the miles upon miles and millions and millions of acres of western land that flow out from either side of those narrow stream beds.

S So we had the question of this definition of alluvial valley floors. There has always been some question in my mind whether we should seek to use that definition. We were really talking about valley floors where you can farm, and where there is irrigation water, either on the surface or subsurface, that helps that farming. That is what we are talking about. Yet we keep having to rely on this geologic definition of what we are talking about.

S Well, I have not quarreled with striking the geologic definition. What I have quarreled about is what we are trying to protect in saying to the Secretary of the Interior or to the regulatory authority

of each State, "When are you going to say no to strip mining if it involves farmland where it is irrigated or subirrigated?"

S So we get to this other section of the bill, which is on page 207 of S. 7.

S I am not really fond of, and I join with the Senator from Colorado in not really liking that section of the bill. I join with the Senator from New Mexico in saying, just what is this referring to? How loose is this? I think it is pretty loose in the bill. I think it is pretty loose.

S I think when we are talking about laying on this added definition on line 4, page 207, "have a substantial adverse effect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced" - now we put in another element. We start out with a definition on page 290 of what an alluvial valley floor is. Then we get to this key section where we are going to ban strip mining on those alluvial valley floors.

S Then we lay on this language, which seems to me to compound ambiguity.

S Perhaps, if we were pushed far enough and we had a Secretary of the Interior who wanted to mine on the valley floors, or a regulatory authority in a State such as Montana or Wyoming that wanted to mine on the valley floors, we might make an endangered species out of the Yellowstone Valley, the Tongue River Valley, or the Powder River or the Rosebud, if there were loose construction of this section, coupled with the definition.

S The Senator from Colorado tried to get around that. I think what his definition does is just about ban strip mining in the West if somebody wants to press the issue on what are all the areas where there are unconsolidated stream laid deposits because, where there is a question, what about "where water availability is sufficient for subirrigation or flood irrigation agricultural activities?"

S Is that to mean every time a dry stream runs some water, after a good snowfall in the winter or a good snow pack or a heavy rain in the spring, which could be captured and used for irrigation, even though that irrigation would be for a farming operation that is as intermittent as just starting up now, with the idea that this was to prevent strip mining in that area? I do not know. I do not think the Secretary of the Interior, Mr. Andrus, knows.

S On February 4, he wrote a very detailed letter saying to the committee that the alluvial valley

floor section was most important in the bill and that those fragile lands - talking, I think, about the Yellowstone Valley and the Tongue River Valley and the Powder River and Rosebud Creek - where there was farming dependent upon irrigation, should be protected. Then he opted for and recommended the specific language, word for word, that we had agreed upon last summer.

S What has happened between February 4 and now? Have there been any hearings on this language? No; neither committee has held hearings on this particular language.

S Has the Secretary gone out and held hearings on this particular language? No; he has not.

S What has been the origin of this amendment? He does not advise us. His letter to Senator HART, dated, I think, May 19, does not explain why he changed his view, what input he had to guide him to change his mind from February 4. No; he just says, let us have this amendment.

S I think it goes too far. I do want to protect these stream beds where there is farming. I do want to do that. But we have, long ago, decided that we are not trying to ban strip mining on the dry creeks where there is not any farming. We use such words as "undeveloped rangeland" so there will not be any doubt, by a Secretary or a regulatory authority of a State or by the courts.

S (At this point, Mr. CULVER assumed the Chair.)

S Mr. MELCHER. We said in the section of the bill dealing with this that it had to be farm. The had to depend on irrigation water, either on the surface or subirrigated, and that those were the areas we were trying to protect.

S Now, I have a printed amendment, it is No. 292.

S The situation we are in right now is that Senator HART's amendment is a substitute for Senator JOHNSTON's amendment. The vote will occur first on the substitute, Senator HART's amendment. I think his amendment goes too far, with all due consideration to the Secretary of the Interior, and to his leadership of a department I think is going to be more dynamic than it has been in the past.

S It does seem odd that on February 4, he can take a very explicit, a very definite view, go word for word over language we have developed over a year ago that has had a hundred or perhaps a

thousand attorneys examine it, involved in the Department of the Interior, coal company attorneys, attorneys from various States, the States where mining would be done and practiced in the area we are talking about, in that area, and then come up on the floor of the House a week or two ago with a recommended amendment that is accepted on the floor, then approach Senator HART and say, "Let's have the same amendment in the Senate."

S Mr. HART. Will the Senator yield?

S Mr. MELCHER. And then he should give us an explanation of why this has been.

S I am delighted to yield.

S Mr. HART. First of all, I do not, as I indicated before, presume to speak for the Secretary of the Interior. Those questions are best addressed to him.

S I would only note that February 4 was some 2 weeks after the President of the United States took office. I think that is not a very long period of time to take a position on an issue of this sort.

S The other thing that has transpired since then is the passage of the House bill and the passage of a great deal of time.

S As the Senator from Montana well knows, the Secretary of the Interior took a position on certain water projects at one point and has since, together with the President of the United States, changed his position on that somewhat.

{S8090} So I think any administration coming into authority, particularly within the first few days, may tend to take positions it later wants to change.

S8090 The Secretary of the Interior can, of course, explain why he did that. I suspect a lot had to do with the debate and discussion of this bill and these provisions in the House and Senate committees and in the House of Representatives and the ferment that accompanied this discussion.

S8090 Mr. MELCHER. I think those observations by my friend from Colorado are nice observations, but Secretary Andrus was the Governor of Idaho. We have been discussing the strip mining bill here in the Congress I think for the past 5 years.

S8090 The Governor of Idaho, like other Western Governors, has examined the strip mine bill over all that time. While he was only the Secretary of the Interior for a few weeks on February 4, I

can assure the Senator that Secretary Andrus was well exposed to the issue involved here.

S8090 But the parliamentary situation we are in now is to vote first on Senator HART'S amendment, which I think goes much too far, and I hope it is defeated. Then I hope that the amendment of the Senator from Louisiana (Mr. JOHNSTON) is also defeated because it does not improve what is in the committee bill.

S8090 If the votes take place and both amendments are defeated, I hope to offer amendment No. 292 at an appropriate time because it is a middle ground on this issue for the valley floor protections.

S8090 If we had the Hart amendment adopted, the Senate would go to conference with the House locked into a position on this most sensitive issue.

S8090 If it is defeated, we then, of course, have the option of accepting the Johnston amendment or my amendment or other amendments.

S8090 Mr. METCALF. If the Senator will yield, or the committee bill.

S8090 Mr. MELCHER. Or the committee bill, and, of course, the committee section as it now exists in the bill.

S8090 Mr. METCALF.Yes.

S8090 Mr MELCHER. I will not seek to prolong this discussion this morning, but I think that we really want to narrow the scope of understanding of what the Congress is trying to do in protection of alluvial valley floors.

S8090 We could do very well with accepting the language we worked out last year and now is before us at the appropriate time in amendment No. 292, which I will offer.

S8090 Mr. SCHMITT. Will the Senator yield?

S8090 Mr. MELCHER. I am delighted to.

S8090 Mr. SCHMITT. Is it the Senator's feeling, and I direct this also to the manager of the bill, that the legislative intent that alluvial valley floors apply to types of similar examples such as the Senator described so eloquently, Yellowstone, Rosebud, and so on. Is that the intent of the language of the bill?

S8090 Mr. MELCHER.Is the Senator asking me?

S8090 Mr. SCHMITT. I will ask the Senator if he believes that is the intent and then I would ask the committee if they concur.

S8090 Mr. MELCHER. I believe the intent of the previous bills, and I think the intent of the committee bill that we have before us, is to limit strip mining on valley floors where there is farming done, either by surface irrigation or sub-irrigation, and that, indeed, if that is a limitation and the effect of this bill is carried out as intended, that it would be about 2.5 percent of the area in the West.

S8090 Now, I think the Hart amendment would extend that considerably, depending upon the interpretation of the regulatory authorities and the courts.

S8090 Mr. SCHMITT. I concur with the Senator from Montana.

S8090 I think he has stated the intent and the intent which I can support. I suspect that is the generalized definition of alluvial valley floors that was used to get, say, 3 percent, the number 3 percent of the area affected.

S8090 I ask the committee, should that be the legislative history, roughly or maybe even precisely, as described by the Senator from Montana?

S8090 Mr. METCALF. Will the Senator yield?

S8090 Mr. MELCHER. I am glad to yield to the Senator.

S8090 Mr. METCALF. In the last Congress the bill was extensively discussed in probably on eof the longest conferences we ever had. We have the conference report and it says that "alluvial valley floors do not include upland areas which are generally underlain by a thick veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and wind blown deposits."

S8090 That kind of language is discussed specifically and was specifically adopted by the Senator from Montana who was on the conference committee at the conference of this legislation last year when we had the extensive discussion on alluvial valley floors which appears in the House report.

S8090 So, substantially, we in the Senate have adopted the definition in the concept that was written into H.R. 25, the conference report, in the last year's bill.

S8090 The bill was vetoed by the President except for adding the grandfather clause which was

added at the end of the committee hearings, providing for a special protection for those people who were grandfathered in. So with respect to the Yellowstone and the Tongue and the Rosebud and those other wonderful names for rivers in southeastern Montana, in the opinion of experts who talked about alluvial valley floors and the kind of doubletalk I have just read to the Senator and in the opinion of the Members of the Senate who have asked us to put that in layman's language, we have taken care of the problem that my distinguished colleague from Montana raises. It is the same problem he raised in conference last year, and we agreed to it.

S8090 Mr SCHMITT. Will the manager of the bill consider attempting to find a definition of "alluvial valley floor" that incorporates the gist of what he just referred to as doubletalk, which made perfect sense to me?

S8090 Mr. METCALF. I would be delighted to put in that language. I really did not mean it as doubletalk. It is professional soil conservation language, rather than the kind of talk we farmers use - gravel and soil composition.

S8090 I think it was our intent to have that language as a part of this bill. It is part of our discussion.

S8090 Mr. Harvey, of my staff, will meet with anybody, and we will specifically put that in the statute as a definition.

S8090 Mr. SCHMITT. If we could leave this matter at this point and if my staff and the Senator's staff could work together, perhaps we could find a way to make that definition of alluvial valley floor correspond to the well-stated intent of both Senators from Montana. I think that would relieve a great deal of concern I have about this fairly open-ended definition at the present time.

S8090 Mr. METCALF. The distinguished junior Senator from Montana, who was a Mmber of the House of Representatives when this bill, H.R. 25, was taken up, worked very long and hard in conference on this subject. It was the opinion of the seniro Senator from Montana that we had accommodated his concepts and his ideas in the committee bill.

S8090 However, if we can work out something more precise and at the same time carry out the intent of Congress, I will be very pleased and privileged to work with the Senator from New Mexico.

S8090 Mr. SCHMITT. Let us attempt to do that and defer this matter to later in the day.

S8090 Mr. HANSEN. Mr. President, who has the floor?

S8090 Mr. MELCHER. Mr. President, I yield to the Senator from Wyoming.

S8090 Mr. HANSEN. Mr. President, I appreciate the observations made by the distinguished junior Senator from Montana. I think this debate has been helpful in trying to clarify and help each of us better understand what is contained in the bill.

S8090 Earlier this morning, the distinguished Senator from North Dakota raised some issues with the floor manager of the bill, and I should like to follow up on that and make some observations.

S8090 Section 422 of the bill contains language which deals with the designation of areas unsuitable for surface coal mining. On page 93 of the report is found this language:

S8090 As a condition of having a State program approved by the Secretary of Interior, subsection (a) requires States to establish a planning process enabling decisions on the unsuitability of lands for all or any type of surface coal mining but not for exploration.

S8090 Lands must be so designated if reclamation ad required by this Act is not economically or physically possible.

S8090 Lands may be so designated if: (1) Surface coal mining world be incompatible with existing State land use plans; (2) the area is a fragile or historic land area; (3) the area is in "renewable resource lands" - those lands where uncontrolled or incompatible development could result in loss or reduction of longrange productivity, and could include watershed lands, aquifer recharge areas, significant agricultural or grazing areas; (4) the area is in "natural hazard lands" - those lands where development could endanger life and property, such as unstable geological area.

{S8091} Each study for designation is made only on a case by case basis upon specific petition. In additions, S. 7 contains specific requirements for petition.

S8091 The point I wish to make is that the committee was sensitive to the particular kinds of hazardous or the possibilities that could result from surface mining in these areas. I think most of us will agree that, insofar as Federal lands are concerned, where the coal is owned by the Federal

Government and the surface is owned by the Federal Government, Congress certainly would have far wider latitude in bringing about zoning or any other kind of restriction, even a prohibition, if, in its wisdom, it chose to make such a prohibition.

S8091 However, having in mind the questions raised by the distinguished Senator from North Dakota, I say this: Where fee lands have been patented and where there was no mineral reservation made by the Federal Government, then I think we have to look at the ability of a developer who proposes to extract those minerals and to ask ourselves, as seems to me to be inherent in this language, can these lands that would be designated as "unsuitable" be reclaimed, and is the sort of reclamation that would be required economically or physically possible?

S8091 If the answer is, "No," that it is not physically possible or economically possible to reclaim it, then I assume that we are viewing a situation in which we say that if the coal is recovered by surface mining and it is not physically or economically possible to reclaim the lands, this would be a situation where permanent, irreparable damage could be done.

S8091 The reason why I am concerned about this is that, while people who may own those fee lands and may own the coal would like to have the lands developed - I think we will find that there are people in this category who live in an alluvial valley floor and who have a ranch or farm operation that has been going on for a long time - they may choose, if they were given the option, to say that they want to have that coal developed.

S8091 However, we say in this language, it seems to me, that unless it can be demonstrated that it is both economically and physically possible to reclaim, we may say no anyway. There may be a man downstream who depends upon the water, whether it is a surface flowing stream or an underground aquifer; and if the removal of the coal would do damage downstream to somebody else, then I think it is entirely proper and appropriate that unless the person who proposes to develop the coal can assure his downstream neighbor or others that irreparable damage will not be done, we should not permit that kind of coal removal.

S8091 On the other hand, if the operator or the owner of the fee lands is able to demonstrate to the satisfaction of either the State agency or the secretary that there can be full restoration or there will be no permanent damage left, then it narrows the issue down to what may be the damages that would

occur to a downstream landowner during the mining operation, and in that instance, while I am no lawyer, it would seem as though a person who might be temporarily damaged or inconvenienced for a short period of time certainly would be entitled to damages, but he should not be permitted, in my judgment, to say, "You cannot cause me any inconvenience at all."

S8091 I should think he would be entitled to damages, that is, the downstream man, but he should not be able to prevent the fee simple owner of the surface and all the minerals under that surface from exercising his property rights.

S8091 Undoubtedly this situation can result in court cases. I would make that sort of prediction, and I would say we ought not to be able cavalierly to say to a fee simple owner, "You cannot do certain things that normally would go with the exercise of the ownership of property that you have," without some sort of compensation.

S8091 I have to believe, as I think the Senator from North Dakota indicated, that that would be a taking.

S8091 Now, again, I do not know where to draw these boundary lines, but I think there can be actions taken and, indeed, in past times there have been, when a taking does occur. Zoning is an example.

S8091 There is a whole body of law, case law, that has been written on individual cases, where a subdivision of Government, either a city or a county or the State has said, "We want to achieve certain social objectives." Maybe we want to have open space, or whatever, and you can find all sorts of cases where if, in the opinion of the court a taking has occurred, it has been generally held in favor of the owner of private property. If a subdivision of Government has said, "There are certain things that you cannot do because we think they are socially not desirable or esthetically desirable and you will be entitled to damages," and I do not make the point that the Government has the exclusive right to protect the health and safety of individuals, and I am not raising that issue, but I am raising the broader issue of where it may be in the interest of a community or of a county or of a city to say, "We do not want certain things to occur," and that is the sort of situation I think which has resulted in cases going to court where a judge or a jury listens to the evidence and makes a determination that in the eyes of the court fairly reflects the interests of the various individuals who are affected.

S8091 I wanted to make that observation because I think that was part of the concern expressed by the Senator from North Dakota when he raised the issue of how far can we go. We do not try to make that sort of determination in this bill.

S8091 I think what we have done here is to look at the broader issues and to come down as fairly and as unequivocally as we could in setting forth guidelines that I believe will be helpful.

S8091 It seems to me that these are the sorts of issues that ought to be determined on a case-by-case basis.

S8091 I know full well the concern that the junior Senator from Montana has. I think he, along with all the rest of us who live in the West, appreciates the beauty and the natural characteristics of these important valley areas. But I agree with him that the amendment offered by the distinguished Senator from Colorado, I believe goes too far in just plain, flat out saying, "You cannot mine there." I do not think we should go that far, and I hope that particular amendment would not be adopted by the Senate because, as was pointed out by the distinguished senior Senator from Montana, we are assured that a ban will be before the conference anyway. It is in the House bill.

S8091 I think the wiser course for the Senate to take is to adapt the language in the Senate bill in order that we will have the full opportunity to consider all of the ramifications of this issue, to consider the interests of the public as well as of individuals, and to then be given the sort of latitude that is afforded by the Senate bill in making the kind of determination that will, first, protect the public interest and insure, second, the protection of the private personal interest. There is language in the bill on page 267, section 422, which deals specifically with the designation of areas unsuitable for surface coal mining.

S8091 If Senators will read pages 267, 268 and 269 they will see the requirements that are imposed upon the State. On page 269, as an example, is found this language:

S8091 To comply with this section a State must demonstrate -

S8091 As it draws up its land use plan, and so forth -

S8091 it has developed or is developing a process which includes -

S8091 (A) a State agency responsible for surface mining lands review;

S8091 (B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to supports and permit reclamation of surface coal mining operations;

S8091 That language, and earlier language, I think, is intended to insure that there will be adequate consideration given to these issues, and that a State, even a State, may not arbitrarily take an action if it can be demonstrated to the satisfaction of the Secretary that the laudable objectives of reclamation can insure a restoration of lands so as not to impair either the quality or the quantity of water and will not, at the same time, undermine or deprive a fee simple owner of the right to do those things which, absent this language, he would be permitted to do.

S8091 Mr. HART. Mr. President, will the Senator yield?

S8091 Mr. HANSEN. I would be happy to.

S8091 Mr. HART. The Senator talked about preserving the beauty of these areas. That is not the principal purpose of my amendment. The principal purpose of my amendment is to preserve agricultural lands in the West, which are scarce as it is, and the water necessary to develop those agricultural lands.

S8091 It is not accidental that most major farm organizations I know of are in support of this amendment. They supported it in the House, and the administration supports it.

S8091 This is not a preservation-of-beauty amendment; this is apreservation of western water and agricultural lands.

{S8092} } Mr. HANSEN. Well. I would say to my friend from Colorado that on page 268, at line 17 - maybe I should start a little earlier and read this section beginning on line 7:

S8092 (3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will -

S8092 (A) be incompatible with existing State land use plans or programs; or

S8092 And I would assume that that deals more with the esthetics

S8092 (B) affect fragile or historic lands in which such operations could result in significant

damage to important historic, cultural, scientific, and esthetic values and natural systems; or

S8092 (C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

S8092 I think that that deals specifically with the agricultural concern, if I understand what my friend from Colorado said.

S8092 Mr. HART. I appreciate the Senator's citation of that paragraph. But unfortunately, it does not deal with the problem, or the amendment would not have been offered in the first place or would not have been adopted in the House of Representatives and would not have the support of the national farm organizations. I think the farmers of the West and people who grow crops and graze their cattle on these lands are extremely concerned about the vagueness of that language. That is why there is more specific language in the House bill and why they are supporting the language which I have offered as a substitute.

S8092 Mr. HANSEN. I am not sure exactly how many farm organizations have endorsed the language to which the Senator refers. I happen to belong to a couple of them, and I do not think I have been polled.

S8092 Mr. HART. The National Farmers Organization, the Grange, the Farmers Union, a number of others.

S8092 Mr. HANSEN. What about Farm Bureau? What about the Stock Growers Association and National Cattlemen's Association?

S8092 Mr. HART. I will check on the cattlemen's support of it.

S8092 Mr. HANSEN. I would be interested in the result.

S8092 Mr. HART. My amendment.

S8092 Mr. MELCHER. Mr. President, I inject in this colloquy at this point because the Senator from Colorado has made reference to farmland, making it clear that his amendment dealing with restrictions on mining on alluvial valley floors strips from the bill the reference to farmlands and to croplands. His amendment strips that language referring to farming. I wonder if I could have the attention of the Senator from Colorado.

S8092 I wonder if I could have the attention of the Senator from Colorado.

S8092 The Senator's amendment strips from the section all reference to farming and to croplands and just says that there will be no mining located within an alluvial valley floor. It does not refer to farming or to cropland and does strip from the section of the bill all reference to farming or cropland.

S8092 Mr. HART. It does create a presumption that in these valleys with their ground water supplies or surface water supplies in almost all cases there is agricultural activity of some kind or even grazing. There is with regard to areas adjacent to alluvial valley floors a presumption that those should also not be strip mined, but it does give the Secretary discretion where it can be demonstrated that mining would not materially affect the quality or quantity of the water in the alluvial valley floors to permit strip mining activities there. The reason even that could be prohibited is because of the interconnected hydrology of the water systems in the West of which the Senator from Montana is well aware.

S8092 But there is very definitely a presumption here in favor of either existing or potential agricultural activities in these areas. But again, we are only talking about 2 1/2 to 3 percent of the strippable coal.

S8092 Mr MELCHER. Mr. President, I think we have come full circle on this. We have continuous reference on this particular amendment by the Senator from Colorado as to how it is going to protect farming and cropland by stripping from the bill the reference to protecting farming and croplands.

S8092 We have a question of how we are going to protect the underground water, which is handled in a different section of the bill and which I think needs reference to in this particular protection. We have clearly demonstrated all morning how we want to protect farming operations where it is irrigated or subirrigated but what we run up against is how best do we do that. I think that the Senator from Colorado tries to oversimplify the problem and that his language fails to identify the problem completely enough to guide the Secretary of the Interior, the State regulatory authority, or the courts to protect the vital valleys that I have mentioned like the Yellowstone, Powder River, the Tongue, the Rosebud, and the Sparpy so they cannot continue to farm and use

irrigation, either surface or subsurface, in those areas.

S8092 So I hope we can defeat this amendment, get onto the Johnston amendment, defeat it, and see whether we want to refine the committee treatment of this.

S8092 I yield to my distinguished colleague, the senior Senator from Montana.

S8092 Mr. SCHMITT. Will the senior Senator from Montana yield for a question on the definition of "alluvial valley floor"?

S8092 On page 290, S. 7 as amended now reads in part:

S8092 "alluvial valley floors" means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

S8092 Is it the intent of the legislation that the water available for irrigation come only from the streams and aquifers within the alluvial valley in question?

S8092 Mr. METCALF. Yes.

S8092 Mr. President, are we through with the debate on this amendment? The vote on this amendment will take place at 11:15. So, we can call up some other amendments.

S8092 Mr. HART. Mr. President, with permission of the distinguished floor leader, I wish to preserve 3 minutes prior to the vote for summary argument, if possible. But I have no further arguments on this amendment.

S8092 Mr. METCALF. Mr. President, I ask unanimous consent that we have 5 minutes of debate at 11:10 a.m. The Senator from Montana has 2 minutes and the Senator from Colorado has 3 minutes. And we vote at 11:15 a.m.

S8092 Mr. MELCHER. It certainly is very agreeable.

S8092 The PRESIDING OFFICER. Without objection, it is so ordered.

S8092 Mr. HART. With the floor leader's permission, I also wish to correct the statement I made earlier to the Senator from Wyoming. The Cattlemen's Association has taken no position on this.

S8092 I thank the Chair.

S8092 Mr. METCALF. The Senator from Pennsylvania had an amendment that I was prepared to accept.

S8092 Mr. HANSEN. Mr. President, I also, am prepared to accept it. I think very briefly what the Senator from Pennsylvania was saying was - he is here now.

S8092 For the benefit of the Senator from Pennsylvania, may I observe that the floor manager of the bill has just indicated his willingness to accept the Senator's amendment.

S8092 Mr. METCALF. Mr. President, I ask unanimous consent, despite the previous unanimous-consent order for Senator FORD to bring up his amendment, we be permitted to recognize the Senator from Pennsylvania.

S8092 The PRESIDING OFFICER. Without objection, it is so ordered.

S8092 Mr. HEINZ. I thank the distinguished chairman.

S8092 UP AMENDMENT NO. 255

S8092 Mr President, I call up my amendment and ask for its immediate consideration.

S8092 The PRESIDING OFFICER. The amendment will be stated.

S8092 The legislative clerk read as follows:

S8092 The Senator from Pennsylvania (Mr. HEINZ) proposes unprinted amendment No. 255.

S8092 Mr. HEINZ. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

S8092 The PRESIDING OFFICER. Without objection, it is so ordered.

S8092 The amendment is as follows:

S8092 On page 226, between lines 15 and 16, insert the following new subparagraph (D):

S8092 "(D) provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the regulatory authority and a copy to the resident or owner making the request. The area of the survey shall be decided by the regulatory authority and shall include such provisions as the Secretary shall promulgate."

S8092 Mr. HEINZ. Mr. President, I offer an amendment that would require a preblast survey be conducted, only upon the re[\*] est of a resident or property owner.

{S8093} Thin one-half mile of any portion of the permitted surface mining operation area. Surface mine blasting has inflicted numerous hardships on citizens in Pennsylvania, Ohio, West Virginia, Kentucky, Indiana, Illinois, Tennessee, Virginia, and many other States. An estimated 75,000 people have suffered damages during the last 10 years.

S8093 This amendment will not only protect homeowners and residents, but also protects surface mine operators from fraudulent claims since the results of the preblast survey will be on record with the regulatory authority.

S8093 Mr. President, this amendment is consistent with the House position and would make S. 7 a better bill. I urge the support of my colleagues.

S8093 Mr. President, I discussed the amendment with the distinguished chairman of the committee and ranking minority member. I understand they have no objection to it.

S8093 The amendment is identical to section 515 of the House bill. It amends paragraph (15), and it simply adds to that paragraph which has to do with blasting that a property owner who might be affected by such a blast within a radius of one-half mile would have a right to ask for preblast survey of his structures. I understand, further, that this is something that both the owners and operators and, also, the people who might be affected wish to have, because it protects [\*] oth the operator as well as the resident, or the owner, of the structure.

S8093 Mr. METCALF. I have heard absolutely no objections from anyone on the amendment the Senator offers, and as the ranking minority member, the Senator from Wyoming, has indicated he is willing to accept the amendment, and unless there is objection, Mr. President, I have nothing further.

S8093 Mr. ALLEN. Mr. President, I am pleased to be a cosponsor of the amendment offered by our distinguished colleagues, Senator HEINZ of Pennsylvania and Senator RANDOLPH of West Virginia, which would address a great and growing need to develop the technology and manpower to meet pressing coal research and coal industry needs throughout our country.

S8093 Mr. President, legislation that would have established similar institutes has been enacted by the Congress three times since 1972. Each time the bill was vetoed; once when the 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.

S8093 The amendment now being offered reduces the scope of the previous suggestions and focuses entirely on research activities related to coal.

S8093 Naturally, the State of Alabama has a particular interest in the amendment, because we have the ability to qualify for such an institute in the great University of Alabama system. In order for a State to be eligible to have a State coal mine and coal resources and research institute, a college or university must meet the following criteria:

S8093 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."

S8093 Second. It must have existed for 2 years.

S8093 Third. The division or department must employ at least four full-time faculty members.

S8093 Fourth. The institution must be able to match the Federal contribution.

S8093 Mr. President, in the event that each of the 50 States became eligible for Federal support - an event which is unlikely - and in the event Congress appropriates all of the money authorized in the project grant section, the program would cost \$25 million in fiscal year 1978 - \$10 million for sustaining grants and \$15 million for research grants. Total authorized expenditures for 1978, would be in the amount of \$25 million. That would rise to \$45 million in 1984.

S8093 Mr. President, in light of the crisis facing our Nation regarding future energy supplies, and in light of the President's heavy emphasis on coal taking up the slack to meet future energy needs, it appears to me that the price of providing for new technology and new coal-related manpower expertise, is modest indeed and I urge the adoption of the amendment.

S8093 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8093 The amendment was agreed to.

S8093 Mr. METCALF. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

S8093 Mr. HEINZ. I move to lay that motion on the table.

S8093 The motion to lay on the table was agreed to.

S8093 Mr. METCALF. Mr. President, as I understand it, the next order of business is for the amendments of the Senator from Kentucky to be called up.

S8093 The PRESIDING OFFICER. The Senator from Kentucky is recognized. The Senate will be in order.

S8093 Mr FORD. Mr. President, a parliamentary inquiry.

S8093 The PRESIDING OFFICER. The Senator will state it.

S8093 Mr. FORD. When my amendment is called up, I believe we have unanimous consent to vote at 11:15 on a previous amendment.

S8093 The PRESIDING OFFICER. The Senator is correct.

S8093 Mr. FORD. Then the debate on my amendment would cease at that time, and would continue after the 15-minute roll-call?

S8093 The PRESIDING OFFICER. It would be suspended from 11:15 until the completion of Johnston amendment No. 275.

S8093 Mr. FORD. And will that complete, then, all of the Johnston amendments?

S8093 The PRESIDING OFFICER. It would represent the disposition of one of the pending Johnston amendments.

S8093 Mr. FORD. Well, then -

S8093 The PRESIDING OFFICER. The Chair would like to complete his statement. It would result in the completion of one of the two pending Johnston amendments, amendment 275. The Senator from Louisiana has indicated that he might not call up the second amendment.

S8093 (At this point Mr. FORD called up his amendment No. 280 and addressed the Senate thereon. Pursuant to the following unanimous-consent order, these proceedings on Mr. FORD'S amendment No. 280 are printed in the RECORD following the rollcall vote No. 152.)

S8093 Mr. ABOUREZK. Will the Senator yield? I have a unanimous-consent order which was entered last night to offer two amendments, which have been agreed to by the committee, to follow

the Senator's amendment. Since they will be accepted, I wonder if I might, before the deadling of 11:10, offer those two amendments now.

S8093 Mr. FORD. That will be perfectly all right, Mr. President, if it is all right with the chairman of the committee. I have no problem with that.

S8093 I just ask unanimous consent that the acceptance of the two amendments and the colloquy that may occur will not interrupt debate on my amendment No. 280, and that it be placed at an appropriate position in the RECORD.

S8093 Mr. METCALF. Mr. President, I ask unanimous consent that the amendment of the Senator from Kentucky and our discussion follow the rollcall vote.

S8093 The PRESIDING OFFICER (Mr. SARBANES). Without objection, it is so ordered.

S8093 Is there objection to the unanimous consent request of the Senator from South Dakota? Without objection, it is so ordered.

S8093 AMENDMENT NO. 281

S8093 Mr. ABOUREZK. On amendment 281, which was laid before the Senate last night and on which there was some discussion, we have straightened out a problem with that amendment. I understand everyone involved is satisfied in that respect. I would like to ask for a vote, if the manager of the bill is ready.

S8093 The PRESIDING OFFICER. The clerk will state the amendment.

S8093 The assistant legislative clerk read as follows:

S8093 The Senator from South Dakota (Mr. ABOUREZK) proposes an amendment No. 281.

S8093 The amendment is as follows:

S8093 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."

S8093 Mr. METCALF. The Senator from South Dakota offered this amendment. My distinguished colleague from Montana had some questions about it, as to its impact and as to the language which was changed. Our staffs have been working on the amendment

S8093 As I understand it, and perhaps my colleague will correct me if I am in error, we have met all of the questions he posed last night.

S8093 Mr. MELCHER. Will the Senator yield?

S8093 Mr. ABOUREZK. I yield.

S8093 Mr. MELCHER. Yes. We have had the opportunity since last evening to go over what the effect of the amendment is. I have been reassured by the author of the amendment and by the committee staff that the amendment is right to the point of an agreement that we had previously in this bill in the last Congress. It is effectively a restatement of the same position arrived at in H.R. 25, the bill in the last Congress. I am satisfied with it.

{S8094} Mr. METCALF. The Senator from Wyoming and I have discussed it. We have discussed it with the minority committee staff and our staff. Unless there is objection, I am prepared to agree to the amendment.

S8094 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8094 The amendment was agreed to.

S8094 Mr. ABOUREZK. I move to reconsider the vote by which the amendment was agreed to.

S8094 Mr. METCALF. I move to lay that motion on the table.

S8094 The motion to lay on the table was agreed to.

S8094 AMENDMENT NO. 310

S8094 Mr. ABOUREZK. Mr. President. I call up my amendment No. 310 and ask unanimous consent that the reading of the amendment be dispensed with.

S8094 The PRESIDING OFFICER. The amendment will be stated.

S8094 The assistant legislative clerk read as follows:

S8094 The Senator from South Dakota (Mr. ABOUREZK) proposes an amendment No. 301.

S8094 The PRESIDING OFFICER. Without objection, the unanimous-consent request is agreed to.

S8094 The amendment is as follows:

S8094 On page 230, line 19, strike "and".

S8094 On page 230, line 23, delete the period and insert in lieu thereof the following: ":and",

S8094 On page 230 between lines 23 and 24, insert the following new subsection:

S8094 "(23) to the extent possible using the best available technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable."

S8094 Mr. ABOUREZK. Mr. President, there appears to be an inconsistency in this bill. In section 416, which deals with the surface effects of underground mining, section 10 states reclamation should -

S8094 to the extent possible using the best available technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable;

S8094 The language does not appear in section 415 with regard to surface mining. When we have it for underground mining, I believe it ought to be included so far as surface mining is concerned. It has already been accepted by the committee. I have discussed this with both the majority and minority managers of the bill.

S8094 Mr. HANSEN. Yes.

S8094 Mr. METCALF. Our staffs and the Senator's staff have gone over this since it was offered last night. It is acceptable to the committee.

S8094 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8094 The amendment was agreed to.

S8094 Mr. ABOUREZK. I move to reconsider the vote by which the amendment was agreed to.

S8094 Mr. METCALF. I move to lay that motion on the table.

S8094 The motion to lay on the table was agreed to.

S8094 Mr. FORD. Mr. President. I suggest the absence of a quorum.

S8094 The PRESIDING OFFICER. The clerk will call the roll.

S8094 The assistant legislative clerk proceeded to call the roll.

S8094 Mr. METCALF. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

S8094 The PRESIDING OFFICER. Without objection, it is so ordered.

S8094 AMENDMENT NO. 282

S8094 The PRESIDING OFFICER. The time of 11:10 having arrived, the question recurs on amendments No. 282 as modified.

S8094 The Senator from Montana has 2 minutes of debate time. The Senator from Colorado has 3 minutes of debate time.

S8094 Mr. FORD. Weill the Senator yield at this time for a unanimous-consent request?

S8094 The PRESIDING OFFICER. Who yields time?

S8094 Mr. MELCHER. I yield time.

S8094 Mr. FORD. Without his losing any time, I ask unanimous consent that Tim Dudgeon of Senator HUDDLESTON'S staff be allowed the privilege of the floor during consideration and vote on S. 7.

S8094 The PRESIDING OFFICER. Without objection, it is so ordered.

S8094 Mr. MELCHER. Mr. President, the Senator from Colorado is offering an amendment that seeks to correct some of the language in S. 7, the committee bill. He does it on behalf of the Secretary of the Interior and points out that the House has adopted the same language.

S8094 While I agree with the Senator from Colorado and others that this section of the bill, to protect farming on irrigated valley floors, could be improved and should be improved. I think the Senator from Colorado goes much too far. I think that the Secretary of the Interior is entitled to change his mind on language he wants in a bill that he will have a great deal of authority in administering. But on February 4 of this year, the Secretary wrote a letter, and he discussed at length, in public hearing, this section of the bill and opted for language that is, word for word, amendment 292, the amendment that I am sponsoring.

S8094 If the amendment of the Senator from Colorado goes too far, as I think it does, and would ban some strip mining in land that has nothing to do in the West with farming, and if the committee version needs improving and it is the will of the Senate to do so, then we shall have that option in my amendment 292.

S8094 I hope that we defeat Senator HART's amendment and get on with the question, then, of whether or not the Senate wishes to refine the language in the current bill, S. 7, or whether or not we want more clearly to demonstrate our intent to protect the farming operations on the valley floors that are so significant to us in Western States.

S8094 Mr. HART. Mr. President, the language of the amendment presently before the Senate is identical in nature to that contained in the House strip-mining bill. It has the support of the administration, as evidenced by a letter which Senators have from the Secretary of the Interior, indicating strong support across the board by the administration for this language. It also has the support of the President's energy adviser, Dr. Schlesinger, and indicates that the administration does not feel that the adoption of this amendment will in any way jeopardize, even in a minor way, the efforts of this country to meet its energy obligation.

S8094 This is an amendment directed at the western part of this country. It is an amendment directed at protecting agricultural interests and water necessary to promote those agricultural interests. That, I think, is the primary reason that a large number of the farm organizations across this country have supported this language. This language in this amendment clarifies what kind of mining activities can and cannot take place on alluvial valley floors. If the definition of what an alluvial valley is is unclear to some Senators, that, I think, is a charge laid at the bill itself, rather than at this amendment, since this amendment is premised upon the existing definition contained in the bill.

S8094 This language which this amendment contains would prevent arbitrariness on the part of administrators of this legislation in terms of applying it. It tightens the language up instead of making it looser. I think it would make the bill much more certain. It would, as I have indicated, conform the Senate's version of this bill with that of the House. It does have the support of both the energy and resource sides of the administration.

S8094 Therefore, Mr. President, I urge my colleagues to give this amendment serious consideration. I think it will substantially help solve a serious problem for agriculture and water resource administration in the western part of this country.

S8094 The PRESIDING OFFICER. The question is on agreeing to the amendment as modified. The yeas and nays have been ordered. The clerk will call the roll.

S8094 The assistant legislative clerk called the roll.

S8094 Mr. MUSKIE. Mr. President, on this vote I have a a live pair with the distinguished Senator from Louisiana (Mr. JOHNSTON). If he were present and voting, he would vote "nay." If I were permitted to vote I would vote "yea." I withhold my vote.

S8094 Mr. ROBERT C. BYRD. I announce that the Senator from Iowa (Mr. CLARK), the Senator from California (Mr. CRANSTON), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Hawaii (Mr. INOUE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), the Senator from Rhode Island (Mr. PELL), and the Senator from Michigan (Mr. RIEGLE) are necessarily absent.

{S8095} I further announce that the Senator from Tennessee (Mr. SASSER) is absent on official business.

S8095 I also announce that the Senator from Arizona (Mr. DECONCINI) is absent because of death in the family.

S8095 I further announce that, if present and voting, the Senator from Michigan (Mr. RIEGLE), the Senator from Iowa (Mr. CLARK), and the Senator from Rhode Island (Mr. PELL) would vote "yea."

S8095 Mr. BAKER. I announce that the Senator from Kansas (Mr. DOLE), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), and the Senator from Texas (Mr. TOWER) are necessarily absent.

S8095 I also announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

S8095 I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Alaska (Mr. STEVENS) would each vote "nay."

S8095 The result was announced - yeas 37, nays 45, as follows:

S8095 [Rollcall Vote No. 152 Leg.]

S8095 YEAS - 37

S8095 Abourezk

S8095 Anderson  
S8095 Bayh  
S8095 Biden  
S8095 Brooke  
S8095 Bumpers  
S8095 Case  
S8095 Chafee  
S8095 Chiles  
S8095 Church  
S8095 Culver  
S8095 Gravel  
S8095 Hart  
S8095 Haskell  
S8095 Hathaway  
S8095 Humphrey  
S8095 Javits  
S8095 Kennedy  
S8095 Leahy  
S8095 Mathias  
S8095 McIntyre  
S8095 Morgan  
S8095 Moynihan  
S8095 Nelson  
S8095 Nunn  
S8095 Packwood  
S8095 Percy  
S8095 Proxmire  
S8095 Ribicoff  
S8095 Roth

S8095 Sarbanes  
S8095 Stafford  
S8095 Stevenson  
S8095 Stone  
S8095 Weicker  
S8095 Williams  
S8095 Zorinsky  
S8095 NAYS - 45  
S8095 Allen  
S8095 Baker  
S8095 Bartlett  
S8095 Bellmon  
S8095 Bentsen  
S8095 Burdick  
S8095 Byrd, Harry F., Jr.  
S8095 Byrd, Robert C.  
S8095 Cannon  
S8095 Curtis  
S8095 Danforth  
S8095 Domenici  
S8095 Eastland  
S8095 Ford  
S8095 Garn  
S8095 Glenn  
S8095 Goldwater  
S8095 Griffin  
S8095 Hansen  
S8095 Hatch

S8095 Heinz

S8095 Helms

S8095 Hollings

S8095 Huddleston

S8095 Jackson

S8095 Laxalt

S8095 Long

S8095 Lugar

S8095 Magnuson

S8095 Matsunaga

S8095 McClure

S8095 Melcher

S8095 Metcalf

S8095 Metzenbaum

S8095 Pearson

S8095 Randolph

S8095 Schmitt

S8095 Schweiker

S8095 Scott

S8095 Sparkman

S8095 Stennis

S8095 Talmadge

S8095 Thurmond

S8095 Wallop

S8095 Young

S8095 PRESIDENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED - 1

S8095 Muskie, for.

S8095 NOT VOTING - 17

S8095 Clark

S8095 Cranston

S8095 DeConcini

S8095 Dole

S8095 Durkin

S8095 Eagleton

S8095 Hatfield

S8095 Hayakawa

S8095 Inouye

S8095 Johnston

S8095 McClellan

S8095 McGovern

S8095 Pell

S8095 Riegle

S8095 Sasser

S8095 Stevens

S8095 Tower

S8095 So Mr. HART's amendment (No. 282),

S8095 as modified, was rejected.

S8095 Mr. METCALF. The vote now recurs on to reconsider the vote by which the amendment was rejected.

S8095 Mr. HUMPHREY. I move to lay that motion on the table.

S8095 The motion to lay on the table was agreed to.

S8095 Several Senators addressed the Chair.

S8095 The PRESIDING OFFICER (Mr. ZORINSKY). The Senator from Vermont is recognized.

S8095 Mr. LEAHY. Mr. President, I ask unanimous consent that Judy Hefner, of my staff, have the privilege of the floor throughout the consideration of the strip mining bill.

S8095 The PRESIDING OFFICER. Without objection, it is so ordered.

S8095 Mr. HUMPHREY. Mr. President, I ask unanimous consent that Martha Rogers, a member of my staff, have the privilege of the floor during the consideration of this measure.

S8095 The PRESIDING OFFICER. Without objection, it is so ordered.

S8095 Mr. GRAVEL. Mr. President, I make the same request with respect to Deming Cowles, a member of my staff.

S8095 The PRESIDING OFFICER. Without objection, it is so ordered.

S8095 The METCALF. Mr. President, a parliamentary inquiry.

S8095 The PRESIDING OFFICER. The Senator will state it.

S8095 Mr. METCALF. The vote now recurs on the Johnston amendment?

S8095 The PRESIDING OFFICER. As modified - No. 275.

S8095 Mr. METCALF. May we have a vote?

S8095 The PRESIDING OFFICER. The yeas and nays have not been ordered.

S8095 The question is on agreeing to the amendment.

S8095 The amendment was rejected.

S8095 Mr. METCALF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

S8095 Mr. HANSEN. I move to lay that motion on the table.

S8095 The motion to lay on the table was agreed to.

S8095 Mr. HANSEN. May we have order, Mr. President?

S8095 The PRESIDING OFFICER. The Senate will be in order.

S8095 UP AMENDMENT NO. 256

S8095 Mr. METCALF. Mr. President, I have an amendment to the committee language with respect to "alluvial valley floors." This language was worked out while we were talking to the Senator from Montana (Mr. MELCHER), the Senator from Pennsylvania (Mr. HEINZ), and the Senator from New Mexico (Mr. SCHMITT). I send the amendment to the desk.

S8095 The PRESIDING OFFICER. Unanimous consent is required to set aside the Ford amendment.

S8095 Mr. FORD. Mr. President, reserving the right to object, what is the situation?

S8095 Mr. METCALF. I understand that Senator SCHMITT wants to offer the amendment.

S8095 Mr. FORD. I will be glad to do anything the chairman wishes.

S8095 The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

S8095 The amendment will be stated.

S8095 The assistant legislative clerk read as follows:

S8095 The Senator from Montana (Mr. METCALF), for himself and others, proposes an unprinted amendment numbered 256.

S8095 Mr. METCALF. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

S8095 The PRESIDING OFFICER. Without objection, it is so ordered.

S8095 The amendment is as follows:

S8095 On page 290, line 17, strike the semicolon and insert: "but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits."

S8095 Mr. METCALF. Mr. President, this amendment was prepared in response to the inquiries that were directed to the committee and to the various people who were participating in the debate, including the Senator from Colorado and the Senator from Montana, with respect to the definition of alluvial valley floors.

S8095 I understand that the Senator from New Mexico wanted to offer the amendment. I apologize for offering it.

S8095 Mr. President, I ask unanimous consent that the name of the Senator from New Mexico (Mr. SCHMITT) be added as a cosponsor of the amendment.

S8095 The PRESIDING OFFICER. Without objection, it is so ordered.

S8095 Mr. SCHMITT. Mr. President, will the Senator yield?

S8095 Mr. METCALF. I yield.

S8095 Mr. SCHMITT. The language we have agreed to is basically language previously agreed to in other discussions. It fits directly into the colloquy we had earlier this morning. I believe it adds greatly to the specificity of the definition of "alluvial valley floor" and should relieve many of the difficulties that others, including myself, had with respect to the very general definition that was contained in the committee print.

S8095 I thank the distinguished manager of the bill for his cooperation in working out this language, and I recommend that it be accepted by the Senate.

S8095 Mr. METCALF. The Senator from New Mexico has made a genuine contribution here, not only with respect to this amendment but also in the course of the debate on the bill.

S8095 Mr. CURTIS. Mr. President, will the Senator yield for a question?

S8095 Mr. METCALF. I yield.

S8095 Mr. CURTIS. Does this amendment cover the same proposition or similar proposition as the amendment just voted upon, offered by the distinguished Senator from Colorado (Mr. HART)?

S8095 Mr. METCALF. Directed to the same subject matter - that is, alluvial valley floors.

S8095 However, this is the language, or substantially the same language, adopted last year in the H.R. 25 conference report, rather than to go -

S8095 Mr. CURTIS. It is in the nature of a definition?

S8095 Mr. METCALF. Yes. It is a definition that was worked out last year.

S8095 Mr. CURTIS. Does it contain the element that was in the Hart amendment, in the nature of a prohibition?

S8095 Mr. METCALF. Yes. It is in the nature of a prohibition against mining on alluvial valley floors as defined here. As we discussed the matter, we came to the conclusion that the Hart amendment may have had more of a prohibition against mining on alluvial valley floors than either this definition or the Johnston definition. But they are directed at the same subject matter and prohibit mining on alluvial valley floors as defined by the amendment.

{S8096} Mr. CURTIS. What is the difference between the two? What is the practical

difference?

S8096 Mr. HANSEN. Mr. President, will the Senator yield? If I could respond, I think what this does is to exclude by definition areas that otherwise might be interpreted to have been included.

S8096 I should think, if I could be so presumptuous as to say this, that the Senator from Nebraska, I believe, knowing his feelings and conviction in this area would find this amendment to his liking and would want to support it.

S8096 Mr. SCHMITT. Let me assure the Senator that the definition as worked out would not in any way subvert the intent as we discussed it earlier today. As so eloquently described by the junior Senator from Montana, the intent is that areas of present or potential farmland along the valley floors of various river and stream systems in the West would be contained in the definition of alluvial valley floors and, therefore, be subject to the provisions of this bill.

S8096 The portions excluded are those on the margins of valleys between, say, mountain ranges and the valley floors that are unconsolidated gravel and debris that have no agricultural purpose other than potential grazing purposes.

S8096 Mr. CURTIS. I will state my question another way: What did the amendment do that was just rejected that the Senator's amendment does not do?

S8096 Mr. SCHMITT. The amendment just rejected was directed toward the regulations that would apply to alluvial valley floors. This amendment merely defines alluvial valley floors in a more precise manner so that through regulation or through court action we will not have open or a very, very broad and general definition of alluvial valley floors. Specifically, the present amendment does not relate directly to the amendment we have just rejected.

S8096 Mr. CURTIS. In other words, the amendment we just considered contained the ban on strip mining which the Senator's amendment does not; is that right?

S8096 Mr. SCHMITT. My amendment does not. It is merely a definition of the term "alluvial valley floors."

S8096 Mr. CURTIS. I thank the Senator.

S8096 The PRESIDING OFFICER (Mr. ZORINSKY). The Senator from Montana is recognized.

S8096 Mr. METCALF. I yield to the Senator from Oklahoma.

S8096 Mr. BARTLETT. Mr. President, will the Senator from New Mexico yield?

S8096 Mr. SCHMITT. I yield.

S8096 Mr. BARTLETT. I notice in the definition that this does not deal with upland areas. Does this mean then that the alluvial valleys that are not upland, that any part of the valley area between the mountains that is not upland, would be part of the alluvial valley?

S8096 Mr. SCHMITT. I think not, and I will let the distinguished senior Senator from Montana comment on this question also.

S8096 The definition still includes the material that is presently on page 290 of the committee print in which it says that "alluvial valley floors means the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities."

S8096 Then the amendment takes off but does not include these items that are listed in the amendment, alluvial deposits and other things.

S8096 Mr. BARTLETT. So the Senator's interpretation of the definition is that the areas excluded would be areas in addition to upland areas?

S8096 Mr. SCHMITT. In addition to upland areas that would in no way meet the existing definition of alluvial valley floors, which is based primarily on irrigation. In a sense, that is an additional exclusion. It is a geologic exclusion in addition to the exclusion that is implicit in the standing definition of alluvial valley floors.

S8096 Mr. BARTLETT. In other words, the Senator is including as a part of the definition of "alluvial valley" certain ground water conditions, and if those are not met by other lands in the valley they would not be alluvial valleys even though they were not upland.

S8096 Mr. SCHMITT. I think that is absolutely correct, but we would have to get the committee to agree to that interpretation.

S8096 Could the manager of the bill reply to that question? There has been a question asked, and I would ask the distinguished Senator from Oklahoma to repeat his question for the manager of the bill.

S8096 Mr. BARTLETT. I would say to the Senator from Montana that it has been stated by the Senator from New Mexico that there are in the definition of alluvial valley floors certain conditions of subterranean water. If those conditions are not met by lands that would not be considered upland, but that would be considered on pretty much the same level as the alluvial valley land where the water conditions were met, then my question is, would these areas where the subterranean water conditions are not met but yet would be in the valley, be included or are they excluded?

S8096 Mr. METCALF. In the modification that was submitted, that was agreed to, in conference last year we said it does not include upland areas.

S8096 But that would mean that the marginal areas as described by the Senator from New Mexico would be excluded. However, also excluded are the areas that were raised by the Senator from Montana, the dried creeks, the areas that do not have regular water courses on alluvial valley floors themselves.

S8096 Mr. BARTLETT. But as the Senator from New Mexico said in the dialog we had, there is a geological definition of alluvial valley which consists of certain subterranean water conditions on that land.

S8096 Mr. SCHMITT. Mr. President, if the Senator from Oklahoma will yield for a clarification on that, there are two new components of the definition of alluvial valley floors: One, specifically, which is now in the committee print, relating to flood irrigation and agricultural activities, and in that context the dry water courses, without subirrigation capability, would be excluded from the definition of alluvial valley floors.

S8096 The other definition has to do with the geological definition of areas of sufficient deposits that are also excluded, and those are the ones treated in the amendment before the Senate at this time.

S8096 Mr. McCLURE. Mr. President, will the Senator yield?

S8096 Mr. BARTLETT. Yes.

S8096 Mr. McCLURE. First of all, I think the definition being suggested by the Senator from New Mexico would not affect the problem you are concerned with unless those who are construing the statute would assume that our attempt to further define was intended to include within the

definition those things which are not specifically excluded. I think that is your concern.

S8096 My answer would be that the definition which is contained in the bill, together with the exclusion as defined in the bill, will still be subject to the interpretation of those sections, and the amendment being offered by the Senator from Montana and the Senator from New Mexico is only intended to increase the definition of areas excluded. It should not be read then to include areas not specifically excluded under this other language of the bill.

S8096 Mr. SCHMITT. I would agree with that statement.

S8096 Mr. BARTLETT. I would hope the Senator from Idaho -

S8096 Mr. MELCHER. Mr. President, will the Senator from New Mexico yield?

S8096 Mr. SCHMITT. The Senator from Oklahoma has the floor.

S8096 Mr. BARTLETT. I was saying to the Senator from Idaho I think that the amendment puts certain emphasis on upland areas, any my concern is that those areas that are definitely not upland areas would still be excluded if they did qualify for exclusion for reasons of water, subterranean water, and so forth, as outlined in other places in the bill.

S8096 Mr. McCLURE. I think the Senator from Oklahoma is correct, they would be excluded under the other definition of the bill.

S8096 Mr. SCHMITT. I would agree with that statement, and I will defer to the senior Senator from Montana.

S8096 Mr. METCALF. I concur.

S8096 Mr. MELCHER. Mr. President, will the Senator from Oklahoma yield?

S8096 Mr. BARTLETT. I yield.

S8096 Mr. MELCHER. I think that statement is correct. I think the inclusion of this language of the origin of this language was to clearly identify a certain mining operation in Montana. It was to demonstrate that the definition of alluvial valley floor was not to cover that operation or similar ones. The one I am referring to is the Westmoreland mine in the Sarpy Basin, Treasure County, Mont., where the mining operation is out of the Sarpy Valley upland from the valley but what is identified geographically as the Sarpy Basin. The language of referred by Senator METCALF and

Senator SCHEMITT is to say that the alluvial valley floor definition simply does not apply to those upland areas and, therefore, the exclusion that is contained in the different section of the bill therefore would not apply to any.

{S8097} Mr. METCALF. Mr. President, let us have the vote.

S8097 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8097 The amendment was agreed to.

S8097 Mr. SCHMITT. Mr. President, I move to consider the vote by which the amendment was agreed to.

S8097 Mr. METCALF. I move to lay that motion on the table.

S8097 The motion to lay on the table was agreed to.

S8097 (The following proceedings which occurred earlier in the day are printed in the RECORD at this point by unanimous consent.)

S8097 AMENDMENT NO. 280

S8097 Mr. FORD. Mr. President, I call up my amendment No. 280, and ask for its immediate consideration.

S8097 The PRESIDING OFFICER. The amendment will be stated.

S8097 The legislative clerk read as follows:

S8097 The Senator from Kentucky (Mr. FORD) proposess an amendment numbered 280.

S8097 Mr. FORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

S8097 The PRESIDING OFFICER. Without objection, it is so ordered.

S8097 The amendment is as follows:

S8097 On page 235, between lines 3 and 4, insert the following:

S8097 "(d) (1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit variances for the purposes set forth in paragraph (3) of this subsection.

S8097 "(2) Where an applicant meets the requirements of paragraphs (3) and (4) of this

subsection a variance from the requirement to restore to approximate original contour set forth in subsection 415(b) (3) or 415(c) (2) of this section may be granted for the surface mining of coal where the owner of the surface requests in writing, as a part of the permit application, that such a variance be granted so as to render the land, after reclamation, suitable for an agricultural, industrial, commercial, residential, or public use (including recreational facilities) in accord with the further provisions of (3) and (4) of this subsection.

S8097 "(3) (A) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use, and (B) designed by a registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

S8097 "(4) In granting a variance pursuant to this subsection the regulatory authority shall require that all other requirements of this Act will be met.

S8097 "(5) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

S8097 "(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan."

S8097 On page 235, line 4, by renumbering "(d)" as "(e)".

S8097 Mr. FORD. Mr. President, I ask unanimous consent that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), and the Senator from Alaska (Mr. GRAVEL) be added as cosponsors of this amendment.

S8097 The PRESIDING OFFICER. Will the Senator suspend? The Senate is not in order. The Senator will not proceed until order has been restored, and the Senate remains in order.

S8097 The Senate will be in order. Staff members will either suspend their conversations or leave the Chamber.

S8097 The Senator from Kentucky may proceed.

S8097 Mr. FORD. I ask unanimous consent that Mr. HUDDLESTON, Mr. HARRY F. BYRD, JR., and Mr. GRAVEL be added as cosponsors of the amendment.

S8097 The PRESIDING OFFICER. Without objection, it is so ordered.

S8097 Mr. FORD. Mr. President, S. 7, the Surface Mining Control and Reclamation Act of 1977, has almost completed its journey through the 95th Congress. While the Congress has gone about its business in Washington, another experiment in Government has been unfolding in the small Appalachian community of Jenkins, Ky. I would like to tell the Senate about this project.

S8097 The Appalachian Regional Commission has contributed approximately \$5 00,000 to make possible a residential development located at the eastern Kentucky community of Jenkins. This is a cooperative venture involving the ARC, Beth Elkhorn Coal Co., and Kentucky Mountain Homes, Inc., a nonprofit corporation.

S8097 Sixty-five single family residential lots and others are to be developed for multiple family dwellings. Altogether, there will be modern housing provided for 200 low- to moderate-income families, most of whom - by necessity - now live in substandard housing in location within the flood plain of a stream. What makes this project interesting and exciting is the fact that this entire housing project is to be constructed on the flat and level benches left from previous strip mining. Altogether, the project represents the best in enlightened community and regional planning. When finally completed, the housing will represent a higher land use that will have been achieved in combination with the extraction of coal by the surface mining method.

S8097 In Hazard, Ky., a nursing home has been constructed on the solid bench left from a surface mine. In other areas of eastern Kentucky, there are current surface mining projects which have been planned and conducted so as to result in post mining land use which encompass school, airport and industrial site construction - all of which will be flood free or construction which will occur out of the flood plain.

S8097 The committees of Congress have heard testimony about new projects which have been completed, or are underway, in Kentucky, West Virginia, and Virginia.

S8097 Good post mining land use planning has been all too rare in the Central Appalachia area.

It is difficult to bring together the proper combination of topography, proximity to an existing community, utility service, proper economics and a surface mining operation. Whenever we have the opportunity to combine surface mining with a planned post mining land use of higher purpose such as a residential, commercial, industrial, or public facility use, should the Congress not do all within its power to encourage such development? You know we should.

S8097 S. 7, as written, will forever preclude good post mining land use planning. The legislation's unyielding and inflexible adherence to the concept of "return to approximate original contour" will forever bar the original development, or relocation, of residential, commercial or industrial building sites on the level, flood-free benches which could result from contour mining in Central Appalachia.

S8097 I do not argue that all of the miles of level benches left from previous contour mining have value. Of course they do not - but some do. Neither do I argue that all would have value in the future. Of course they would not - but some would.

S8097 Why should the Congress enact legislation that would prevent one single worthwhile flood-free development project whenever that project could result from good land use planning in conjunction with surface mining?

S8097 I offer an amendment to S. 7 which would provide for a variance from the normal requirement to restore surface mined land to its approximate original contour.

S8097 This amendment requires strict procedures to be developed by State regulatory authorities in accordance with the provisions of this amendment. Basically, the variance procedure would permit the surface owner to request a variance from the requirement to restore to approximate original contour so as to allow the land, after suitable reclamation, to be used for a specific agricultural, industrial, commercial, residential, or other desirable public use.

S8097 As a control mechanism, the request for variance will be subject to certain standards of preparation and review. Specifically, the project must be designed by a registered engineer and reviewed by appropriate land use planning agencies so as to determine that the potential post mining land use of the affected area would constitute an equal or better economic or public use. The

regulatory authority would be required to promulgate regulations governing the granting of variances and follow-up evaluation in accordance with the provisions of this amendment and other requirements of this bill.

S8097 In summation, I do not argue that all flat land resulting from contour mining benches will be useful or desirable. But, I am saying that, in some cases, modification of the original contour has a desirable end product that should not be denied by the inflexible provision presently contained in this legislation.

{S8098} I share your concern on the subject of control. We must guard against a flexible provisions that would allow abuses. Obviously, we do not wish to encourage a situation that would allow variances to become the rule.

S8098 I ask Senators to consider this amendment as a simple application of commonsense. Even though restoration to approximate original contour may be desirable in most cases, it is only logical to conclude tht this could not possibly be true in 100 percent of the cases. Therefore, we must allow for appropriate departure from the general rule wherever such a variancee is desirable and in the public interest.

S8098 Mr. President, we have heard a great deal about the great State of West Virginia and the new law signed by their dynamic leader. Governor Rockefeller.

S8098 I want to quote from that legislation. I have a copy of the bill as it was passed and signed by that Governor:

S8098 (2) Backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials) and grade to restore the approximate original contour of the disturbed land with all highwalls, spoil piles and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this article); and

S8098 And listen to this:

S8098 This subdivision shall not be construed to as to abrogate or limit in any way the authority of the director to modify reclamation requirements to bring about more desirable land uses or watershed control, including, but not limited to, mountain top removal and valley fill techniques.

S8098 These are variances in the West Virginia law, the newest law in the country.

S8098 I am saying that even in that great State, which has a very stringent law - some saying it is more stringent than the Federal legislation we are considering today - they grant variances.

S8098 I might also say, Mr. President, that we have granted a variance in this piece of legislation to the Western States. We have not granted a variance to the Eastern States. If we have granted a variance in this legislation about returning to the approximate original contour in those Western States, why should we exclude those States east of the Mississippi River from the possibility of improving life in the future?

S8098 (This concludes the proceedings which occurred earlier.)

S8098 R. METCALF. Mr. President, may I be recognized to respond to the Senator from Kentucky on the Ford amendment?

S8098 Mr. FORD. Point of information, Mr. President.

S8098 The PRESIDING OFFICER. The amendment will be stated.

S8098 The legislative clerk read as follows:

S8098 The Senator from Kentucky (Mr. FORD), for himself and others, proposes amendment No. 280.

S8098 Mr. METCALF. Mr. President, I ask unanimous consent to yield to my friend from Indiana.

S8098 Mr. BAYH. Mr. President, I ask unanimous consent that Eve Lubain be accorded the privilege of the floor during the debate and discussion on this matter presently before us.

S8098 And I thank my colleague's courtesy in yielding.

S8098 The PRESIDING OFFICER. Without objection, it is so ordered.

S8098 Mr. METCALF. Mr. President, the Senator from Kentucky has made a distinct contribution to this legislation. The Senator from Kentucky participated in the hearings where we were talking about high walls, we were talking about restoration to the original contour, restoration of mountaintop removals, and all these areas, many of which are new and different and significant technologies that we did not know about or did not quite understand about the last time this bill was

considered.

S8098 Many of the amendments that the Senator from Kentucky offered are incorporated in this legislation, and we are taking care of some of the provisions to which the Governor of Kentucky, Governor Carroll and Governor Rockefeller of West Virginia came in and testified before the committee.

S8098 It is with a great deal of misgivings that I have to rise to oppose this final amendment of the Senator from Kentucky. This is the high wall amendment we voted down before. Senator NELSON is the author of the amendment that was in the bill last year on original contours, and this is not even supported by mining people in the area from which it comes.

S8098 I shall read from a resolution of the Interstate Mining Compact Commission.

S8098 The Interstate Mining Compact Commission consists of representatives of the following 12 States: Alabama, Illinois, Indiana, Kentucky, Maryland, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and West Virginia.

S8098 That is essentially a group of Eastern coal mining States. They represent the area where most of the coal in the United States is mined. They represent the great mining areas of the East, including Kentucky, Pennsylvania, and others.

S8098 I am delighted to be in the Chamber for a few minutes talking about amendments that do not pertain to that special situation we have out West, but talking instead about the amendments that we know about in Eastern mining fields.

S8098 So when the Interstate Mining Compact Commission, consisting of representatives of those 12 States, met there was a resolution introduced to provide that we amend, in accordance with the suggestion of the Senator from Kentucky, the section requiring return to the original contour in such a way that the operator could leave a partial highwall. That amendment was offered by Mr. Commissioner John Witt, of Kentucky, who is Kentucky's representative to that commission. That amendment failed for a lack of a second. No other member of that very influential and knowledgeable commission would even second the Kentucky proposal.

S8098 The resolution of the Interstate Mining Compact Commission states that -

S8098 The Interstate Mining Compact Commission does declare its intention to work with the Congress and the executive agencies of the Federal Government to assure that the legislation on surface mining presently under consideration will conform to the state needs in the area of reclamation and environmental control while at the same time allowing for the development of the vital coal resources of this Nation.

S8098 Nevertheless, that decision was from the area that is directly affected by this highwall legislation, from those men who were representative of the Interstate Mining Compact Commission who almost unanimously rejected the amendment that is offered by the Senator from Kentucky.

S8098 As I say, the Senator from Kentucky has brought to the attention of the committee and now has brought to the attention of the Senate many of the new technologies and procedures that have been agreed to and adopted as part of this legislation. But his amendment would allow - in the minds of many of us soil erosion - there is a history of improper soil stabilization, of dumping of spoil over the outslope, especially on steep slopes.

S8098 I am talking about something, only going on the evidence that has been given. I am not an expert in regard to this eastern mining. But these men from the Interstate Compact Commission are experts. The people who testified from the State of Kentucky and West Virginia are experts and they are almost unanimously against this procedure. I urge that, with all due deference to the Senator from Kentucky, we reject this amendment.

S8098 Mr. HUDDLESTON. Mr. President, I rise in support of the amendment to S. 7 that has been offered by my colleague from Kentucky (Mr. FORD).

S8098 The Commonwealth of Kentucky - including its regulatory authority, the department for natural resources and environmental protection - supports Federal legislation to control the surface mining of coal. I have supported strong surface mining legislation, both on a State and a national level, since I have been in public office. We are also concerned, as all States are, with meeting our Nation's energy objectives while at the same time not sacrificing our environmental objectives. The balance between these two objectives, as has already been pointed out many times today, is extremely difficult to maintain. However, it can and must be maintained to preserve the quality of life in America.

S8098 S. 7 as now written contains an element of imbalance. Senator FORD's amendment restores that balance by encouraging the analysis of post mining uses for land disturbed by surface mining.

S8098 Each State has its own ecographical characteristics. No doubt it is safe to say that surface mining conditions vary from State to State, especially in regard to the steepness of slope and soil conditions prevailing where contour surface mining methods are employed. We must realize, however, that living conditions in our various States also vary greatly. For example, in my home State of Kentucky, the heart of Central Appalachia, there is practically no flat land available for housing. Commercial, recreational or industrial use.

{S8099} Unfortunately, much of the flatland now available lies in a flood plain. This disturbing situation was glaringly pointed out by the recent floods which ravaged the eastern Kentucky area.

S8099 I might point out here. Mr. President, that just yesterday a group of officials from counties and cities which were affected by the recent extreme flooding in eastern Kentucky were here in Washington, appearing before an appropriations subcommittee of which I am a member, outlining the difficulties that they are facing right now as they try to recover from the record flooding just 6 weeks ago.

S8099 One of the prime difficulties is that they are unable to place temporary housing for more than 5,000 families in Kentucky who lost their homes because of the flood, because of the requirement that those temporary houses be placed out of the flood plain.

S8099 Well, there is no flat land out of the flood plain in eastern Kentucky on which they can place even a mobile home, virtually none at all. One case was cited in which it required over 18 hours of hard work in order to get a trailer up on the side of a hill so that it would in fact be out of the flood plain. Flat land on which a home can be placed, or a place of business or recreational facility, is in extreme short supply in this area of the State of Kentucky, which also happens to be our prime coal producing area.

S8099 Realizing that mining conditions and living conditions vary as they do across the Nation, we must also realize that Congress, in its wisdom, should not legislate uniformity regarding the possible uses of land after it has been strip mined. S. 7 as presently written does precisely that. As

Senator FORD has indicated, we must guard against inflexible provisions in the law that might run counter to the public interest, and we must guard against flexibility and vagueness in our laws that might encourage abuses.

S8099 I feel that Senator FORD's amendment recognizes the individual needs of the States that make up our great Nation and the need for control mechanisms that would allow post mining land use in the public interest. The variance procedure provided in the amendment is a limited one and by no means will it open the door wide for wanton destruction of the majestic beauty of the mountains of Appalachia.

S8099 Mr. President, I deem it critically important that before voting on this amendment, the Senate hear the comments offered by Mr. Donald Whithead, Federal cochairman of the Appalachian Regional Commission, an independent Federal agency which, since its inception in 1965, has poured more than \$5 billion into that region. At March 3, 1977 hearings of the Senate Appropriations Committee, Mr. Whithead stated that several Appalachian communities were utilizing strip mined land for community development purposes.

S8099 I wish to quote from a letter sent to me by Mr. Whitehead dated May 17, 1977. I ask unanimous consent that his entire letter be printed in the RECORD.

S8099 The PRESIDING OFFICER (Mr. METZENBAUM). Without objection it is so ordered.

S8099 There being no objection, the letter was ordered to be printed in the RECORD, as follows:

S8099 THE APPALACHIAN REGIONAL COMMISSION, Washington, D.C., May 17, 1977.

S8099 Hon. WALTER D. HUDDLESTON, U.S. Senate, Washington, D.C.

S8099 DEAR SENATOR HUDDLESTON: During the Senate Appropriation hearings of March 3, 1977, on the budget of the Appalachian Regional Commission for FY 1978, I had a discussion with you concerning the potential utilization of strip-mined land in Appalachia. At that time, you noted that the interior Committee was considering strip mine legislation and asked if I would object to my statement being forwarded to that committee for their consideration, and I indicated no objections.

S8099 At our March 3 hearings, I stated to you that several Appalachian communities were

utilizing strip-mined land for community development purposes. I believe I indicated that these included a school in Norton, Virginia, which was built on strip-mined land reclaimed by ARC funds; Moraine State Park in western Pennsylvania, which included strip-mined land reclaimed in part by the use of ARC funds; and outside of Jenkins, Kentucky, a project currently underway which will include a housing development on a former strip-mined bench. Using these examples, I stated my belief that while federal regulations were necessary, we should be careful that the opportunities to gain developable land would not be denied by a policy which would require a return to original contour. To state it another way, it may not always be desirable to return the land to original contour for there may be instances where a former strip-mined bench or a truncated mountain top could provide a community with a new development opportunity that was previously not available to them."

S8099 While the full Commission has not taken a position on pending strip mine legislation, Governors Carroll of Kentucky and Rockefeller of West Virginia have, as you know, testified before the Interior Committee. The Commission has taken two recent actions of which you should be advised; first, at a meeting in Annapolis on March 21, 1977, the Commission adopted an energy resolution which touches upon surface mining; and most recently, on May 10, 1977, approved the initiation of plans to assist in long range redevelopment of Central Appalachian flood ravaged areas.

S8099 The energy resolution, copy of which is attached, specifically urged the Congress to enact federal surface-mining legislation which:

S8099 ". . . includes a general requirement for returning land to original contour but permits variances and includes an exception for acceptable mining practices:

S8099 Recognizes that modern mountain top mining technology makes mountain top removal suitable for inclusion among acceptable mining practices; and

S8099 Provides that a general exception to 'return-to-contour' requirements could be made for mountain top removal in cases where the State determines that the land will be placed in equal or higher use and it would be supportive of the States developmental and environmental objectives to permit the exception."

S8099 The second action described the Commission's Willingness to fund multistate planning for

long range development following floods, including consideration of relocations from affected flood plains to more stable areas which might include benches from strip-mined areas of truncated mountain tops.

S8099 I trust this information will be of use to you and to any committees to which you may wish to make it available.

S8099 Sincerely.

S8099 DONALD W. WHITEHEAD, Federal Cochairman.

S8099 Mr. HUDDLESTON. Mr. Whitehead said:

S8099 I believe I indicated that these included a school in Norton, Virginia, which was built on strip-mined land reclaimed by ARC funds: Moraine State Park in western Pennsylvania, which included strip-mined land reclaimed in part by the use of ARC funds; and outside of Jenkins, Kentucky, a project currently underway which will include a housing development on a former strip-mined bench. Using these examples, I stated my belief that while federal regulations were necessary, we should be careful that the opportunities to gain developable land would not be denied by a policy which would require a return to original contour. To state it another way, it may not always be desirable to return the land to original contour, for there may be instances where a former strip-mined bench or a truncated mountain top could provide a community with a new development opportunity that was previously not available to them.

S8099 Mr. President, there are still some questions being raised regarding the entire concept of returning surface mined land on steep slopes to the approximate original contour. Here I would like to read from a Kentucky Department of Natural Resources position paper on approximate original contour. I quote from pages 7 and 8:

S8099 In general, the Kentucky Division of Reclamation sees no insurmountable problem in restoration of approximate original contour in non-steep slope areas or those slopes twenty degrees or less. However, we still do not believe this will always be the most desirable practice. Even in some slopes exceeding twenty degrees - say up to twenty-five degrees - it may be possible and engineeringly feasible to reconstruct to approximate original contour provided appropriate principles of soil mechanics are followed. However, again we believe it is not always desirable to

completely eliminate highwalls and reconstruct to approximate original contour and especially where original slopes range above twenty-five degrees. We believe the recent works of recognized national authorities support our contentions.

S8099 Continuing with the report from the Kentucky Department of Natural Resources:

S8099 Sedimentation in streams from a mining operation generally derives from long, uninterrupted slopes with a less than adequate vegetative cover.

S8099 The staff of both the Senate and House Committees considering this legislation have in their possession initial draft copies of a consultant study prepared by ICF, Inc. for the Council on Environmental Quality and the Environmental Protection Agency. Considerable attention has been given those portions of this study which tend to support H.R. 2 and S. 7. However, in our opinion, sections of this study seem to clearly challenge the conceptual basis of return to approximate original contour in steep slope areas:

S8099 "Unfortunately, vegetative establishment on surface-mined land often is a long-term process. During the first year, perennial cover crops may not provide very efficient control, yet the first year is most critical on surface-mined areas. Furthermore, surfacemining may be completed at a particular time of year when rapid establishment of vegetation is impossible. Thus some form of mechanical stabilization, such as terraces, becomes necessary."

{S8100} "Thus it appears that while approximate original contour generally provides a good level of environmental protection, it does not always achieve the best level of protection when mining on steep slopes."

S8100 "It has also been argued that approximate original contour regrading could preclude some desirable post-mining land-uses. In many areas of Appalachia, there is a shortage of relatively flat, flood-free land available for development. On many steep slopes, the approximate original contour has limited land-use value. In such areas, previous contour mining operations have created new land-use opportunities."

S8100 One U.S.E.P.A. publication points out some specific reasons for not returning the contour mined area to its original slope.

S8100 "If highwalls are not reduced and the benches are properly reclaimed, they can provide

land conducive for:

S8100 1. Pasture development,

S8100 2. Access roads or trails that can be used as:

S8100 a. Forest-fire breaks,

S8100 b. Entrance to remote areas for forest fire control crews,

S8100 c. Logging activities,

S8100 d. Recreation such as horseback riding, hiking, camping, hunting and fishing.

S8100 3. Openings for wildlife (including food, cover and water),

S8100 4. Housing and industrial sites."

S8100 Thus, Mr. President, in light of the great need for useable level land in Appalachia and the continuing controversy surrounding the conceptual basis of the call for return to approximate original contour, I urge my colleagues to support the amendment before us.

S8100 Let me say finally that it is somewhat difficult for me to understand why all this obsession with a high wall or a bench on the side of a mountain. Because nature has made more high walls than strip mining will ever make. Some of them are among the scenic wonders of the world; and it does not seem to me that we should be so concerned about whether or not there is a high wall. If that high wall can remain stable, if the bench that results is a usable, functional piece of land that provides opportunities that an area never had before for housing, or for economic development, or for whatever reasonable use can be made of it, I think there ought to be enough flexibility so that where a use can be defined and it can be demonstrated that it is a better use than was previously available, it ought to be permitted, in my judgment, in this kind of legislation. It need not in any way detract from the environmental objectives of the legislation we are considering today.

S8100 I hope the Senate will take into consideration the unique characteristics of some sections of the country, particularly our State of Kentucky, the Nation's leading coal-producing State at the present time, and will help extend to this section and to the people who live there the opportunity to develop economically in a way they have not had in the past. This is one way it can be accomplished, by giving them a chance to use the land for a better use than had previously been

available to them. I urge the adoption of the amendment of the distinguished Senator from Kentucky.

S8100 Mr. ALLEN. Mr. President, I commend the distinguished Senator from Kentucky (Mr. FORD) for proposing this amendment. I believe it is a very fine amendment which would protect the public interest, which would protect the environment, and still, in many cases, would permit the surface mining of coal.

S8100 In its present form the bill assumes that the best possible reclamation of the land after surface mining is a return to the original contour.

S8100 I submit, Mr. President, that a return to the original contour may not be the most efficient and productive use of the land. This amendment provides that the Office of Surface Mining, Reclamation, and Enforcement will not be placed in a straitjacket, requiring it to insist that the reclamation which takes place after the surface mining shall be to return the land to its original contour.

S8100 What the amendment does is to give the Office of Surface Mining, Reclamation, and Enforcement the right, in the exercise of its discretion, to permit the land to be returned to a better use, and it might well be a better use.

S8100 Upon completion of surface mining, if the land is returned to its original contour much of it might be absolutely worthless as far as the land being put to any productive use at all. All the amendment does is to say that if the applicant, which would be the coal operator, joined by the owner of the surface - and it does take both - makes application "to render the land, after reclamation," in the wording of the amendment, "suitable for an agricultural, industrial, commercial, residential or public use (including reclamational facilities)" it can allow the land to be returned to those uses and those purposes.

S8100 What is wrong with that?

S8100 If the Surface Mining, Reclamation and Enforcement Office in the exercise of its discretion feels that is a better use to put the land to than to return it to the original contour, why should not the Office have that authority? It does not say that they must do it. It says this variance may be granted.

S8100 What good are hills and high walls? What good would it be in its original state if a better use can be found for it? If the operator and the surface owner join in the application, what reason is there for not allowing this variance?

S8100 But this amendments goes further. This does not end the discretion that the Office has.

S8100 "(3) (A) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use, and (B) designed by a registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

S8100 Why should the owner be deprived of the opportunity and the ability to return the land, if the Enforcement Office sees fit, to agricultural use, to industrial use, to commercial use, to residential use, or to public use, including recreation?

S8100 What is wrong with those uses if the environment is protected, if it constitutes an equal or better economic or public use? Why should not the owner have the right to return his land to a better state, to a more useful state?

S8100 The amendment retains all the powers in the Enforcement Office. It does not take one single bit of power away from the Enforcement Office. But it does vest in the Enforcement Office some modest discretion. That is all it does. The Office can allow this variance if, after taking into consideration all the factors involved, it is best for all concerned.

S8100 In short, that is what the amendment does. I do not see why anyone would not want to see an owner of property return his land to a more productive use, provided all of the environmental factors are still present. That is all the amendment does.

S8100 It gives the Office of Surface Mining, Reclamation, and Enforcement modest discretion.

S8100 I can envision the possibility of leveling existing high walls and returning the land to farmland, to subdivision purposes, to industrial use, to commercial use, all of which uses would not be possible if the Enforcement Office is not given some discretion.

S8100 All the amendment does is to vest discretion in the Office to see this land, if the mine

operator and the owner of the surface make proper petition. It seems to me that the public, the environmentalists, and the taxpayers all stand to benefit by the amendment. For the life of me, I cannot see why this discretion should not be vested in the Office set up by this bill.

S8100 The PRESIDING OFFICER. The Senator from Virginia.

S8100 Mr. HARRY F. BYRD, JR. Mr. President, I associate myself with the remarks just made by the able Senator from Alabama. I commend, too, the Senator from Kentucky (Mr. FORD) for introducing this amendment. I was much impressed with the excellent speech made by the distinguished senior Senator from Kentucky (Mr. HUDDLESTON) a few moments ago. I think Senator FORD, Senator HUDDLESTON, and Senator ALLEN have shown just how reasonable this amendment is.

S8100 Not only is it reasonable, Mr. President, but I think it is vitally important to certain areas of our Nation. I cannot speak for Alabama, because I do not know enough about it, but certain parts of the State of Kentucky and the State of Virginia, the southwestern part of my State, have very similar conditions in the coal mining areas. This amendment is extremely important to the well-being of all of the people of areas of that type.

S8100 The amendment of the distinguished Senator from Kentucky is a sound and reasonable one. It will allow the development of many beneficial land uses on reclaimed land, which would not be possible if the so-called approximate original contour" requirement is enforced rigidly in every case.

S8100 My State of Virginia has an excellent reclamation law, which has resulted in many fine land uses. At this point, I want to read into the RECORD a statement given to me this morning by the Honorable Earl J. Shiflet, secretary of commerce and resources for the State of Virginia.

{S8101} } On behalf of the Commonwealth of Virginia, I strongly endorse Amendment No. 280 to S. 7 by Senator Ford of Kentucky.

S8101 Virginia has a strict and active reclamation program, which has resulted in many beneficial land uses on reclaimed land. Many of these uses would not have been possible under a rigid requirement for return of mined land, in all cases, to the approximate original contour.

S8101 Some of the postmining land uses mentioned by Secretary Shiflet have been of great benefit to their communities. Here are a few of them: Cattle grazing operations in Buchanan, Dickenson, and Wise Counties, Va. I might say that Buchanan, Dickenson, and Wise Counties are the three most important coal-mining counties in Virginia. Dickenson and Buchanan are almost entirely dependent on coal mining, and Wise, while it is not as dependent on coal as the other two, is the major coal-producing county of our State. So it is important, I think, that the economic base of these areas be broadened wherever it is reasonable and proper to do so. It has been possible to develop some cattle grazing operations in these counties.

S8101 The Wise County Airport, near Wise, Va., was made possible by the reclaimed land, as was the Pine Hills low-income housing development at Norton, Va.; the high school football field at Clintwood, Va., in Dickenson County; an elementary school at Norton, Va., in Wise County; the airport at Grundy, Va., in Buchanan County; I dedicated, several days ago, a library in Grundy, in Buchanan County, which would not have been possible had the pending legislation been enacted in the form in which it has been reported by the committee; and industrial development park at Esserville, Va., a hospital and shopping center at Norton, Va.

S8101 I believe that from this list my colleagues can see that the technology of reclamation has come a long way. If the law is framed wisely and reasonably - without rigid contour requirements - there is no reason why further beneficial land uses cannot be carried out on reclaimed land.

S8101 As the able Senator from Kentucky (Mr. HUDDLESTON) pointed out earlier, there is a great need in many of the areas of Appalachia for additional usable land.

S8101 It must be borne in mind that protection of environmental values does not in every instance require return to an original contour.

S8101 Studies carried out for the Environmental Protection Agency and the Council on Environmental Quality reached the conclusion that there should be considerable flexibility allowed in the design of the slope of reclaimed land.

S8101 The Ford amendment not only allows for a wide variety of beneficial land use and maintains protection of environmental values - it also protects in every way the rights of the surface owner.

S8101 This amendment will make a major improvement in S. 7, and I urge the Senate to support it.

S8101 It is very important, Mr. President, that this amendment be approved if many areas of Appalachia are to be helped and to have their economic base broadened.

S8101 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8101 Mr. METCALF. Mr. President, I suggest the absence of a quorum.

S8101 The PRESIDING OFFICER. The clerk will call the roll.

S8101 The second assistant legislative clerk proceeded to call the roll.

S8101 Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

S8101 The PRESIDING OFFICER. Without objection, it is so ordered.

S8101 UP AMENDMENT NO. 257

S8101 Mr. FORD. Mr. President, I send a modification of my amendment 280 to the desk and ask for its consideration.

S8101 The PRESIDING OFFICER. The clerk will state the modification.

S8101 The legislative clerk proceeded to read as follows:

S8101 The Senator from Kentucky (Mr. FORD) proposes unprinted amendment 257, a modification to his amendment No. 280.

S8101 Mr. FORD. Mr. President, I ask unanimous consent that further reading of the modification be dispensed with.

S8101 The PRESIDING OFFICER. Without objection, it is so ordered.

S8101 The modification is as follows:

S8101 "Provided, That when sound engineering technology indicates that the highwall can be completely eliminated, the highwall shall be completely eliminated by backfilling with spoil material which will maintain stability following mining and reclamation and, provided further, that when sound engineering technology indicates that the highwall cannot be completely eliminated, the highwall shall be reduced to the maximum extent consistent with sound engineering technology and when the highwall is not completely eliminated a vegetation plan shall be required which is

reasonably calculated to screen the remaining portion of the highwall within five years after seeding or planting."

S8101 Mr. FORD. Mr. President, there has been a great deal of work done to bring this amendment to the floor.

S8101 The PRESIDING OFFICER. The Senator from Kentucky will suspend for a moment for the Chair to ask if there is objection to having the amendment be so modified.

S8101 Without objection, the amendment (No. 280) is so modified.

S8101 Mr. FORD. Mr. President, the distinguished Senator from West Virginia (Mr. RANDOLPH) has been working diligently with us to come up with an amendment which I think will be acceptable to all of those in the coal mining States east of the Mississippi.

S8101 We worked very hard with the patient and distinguished chairman of this committee, who, in my opinion, should get the Job award for patience as we have deliberated this bill.

S8101 Mr. President, what we have done is modify page 2, line 7, by adding, after the word "subsection," the following:

S8101 Provided that when sound engineering technology indicates that the highwall can be completely eliminated, the highwall shall be completely eliminated by backfilling with spoil material which will maintain stability following mining and reclamation and, provided further, that when sound engineering technology indicates that the highwall cannot be completely eliminated, the highwall shall be reduced to the maximum extent -

S8101 And I want these words to be understood -

S8101 consistent with sound engineering technology and when the highwall is not completely eliminated a vegetation plan shall be required which is reasonably calculated to screen the remaining portion of the highwall with five years after seeding or planting.

S8101 Mr. President, what we have done here is take a piece of legislation, we have removed the strictness of this legislation to give us an opportunity on that rare occasion when we can bring all facets together to improve the life of our constituents without damaging the environment.

S8101 I think the modification of my amendment will improve the legislation. It will not be a rule under these circumstances. It really will be a variance.

S8101 Mr. President, we have given a variance for the Western States. I congratulate the State of West Virginia in its new law, and it grants a variance for those procedures.

S8101 Mr. President, I think this is consistent with good reclamation practices, and sound engineering procedures. I sincerely hope the Senate will accept this amendment.

S8101 Mr. RANDOLPH. Mr. President, the able Senator from Kentucky (Mr. FORD) and his colleague, the able Senator from Kentucky (Mr. HUDDLESTON), and the able majority leader, Mr. ROBERT C. BYRD, and I have continued over a period of weeks to hopefully work out this problem that is most difficult. It is complex.

S8101 I think, for the record, if I were just inclined to have some credit come to me, I could wait and offer the amendment that we have been working on. The Senator from Kentucky has knowledge of my amendment.

S8101 But if the modification of the original amendment of the Senator from Kentucky is acceptable to the managers of this legislation, Senator METCALF and Senator HANSEN, then it shall be my desire to join in the amendment.

S8101 It is very important that we ask no preferential treatment for any group or category of operations. We must attempt - as we do in West Virginia - to continue the exactness of our law. Yes, even the stringency of the law in West Virginia.

S8101 We are not in a clash here between Western and Eastern States as to surface mining procedures. We are trying to think in terms of those variances which do not in any wise - I use the word advisedly - desecrate. The Members of the Senate, regardless of this amendment or other amendments, must act to stop the desecration of the land.

S8101 There is no need for a continuing fight that polarizes those that may be called environmentalists and those who would adopt surface mining procedures that would do a violence to the good Earth itself.

{S8102} In the past, we have recongized in the State of West Virginia, in Pennsylvania, [\*] in other States in the East, that, [\*] ankly, we did do violence to the land. At the State level, West

Virginia and the Commonwealth of Pennsylvania have passed very acceptable and fair approaches to variance procedures.

S8102 If the amendment of Senator FORD had been opposed even with the modification by those in charge of the bill, I would have voted against it. But if the managers of the bill believe that this is an approach which is sound and practical - and I understand they do feel this way - I ask for the privilege of being a cosponsor of the amendment that has been offered.

S8102 I reiterate, this has been a very difficult matter. The understanding and the expertise of the staff of the committee who have tried to work with us in this problem has been an example of an attempt not to continue to polarize, but to come to a consensus which will make this surface mining bill an equitable and strong measure. It is not an operator's bill in any sense of the word. It is not an environmentalists bill. It is a bill which can give to us in the years ahead that production of coal by surface mining, which will continue to make increasing contributions to the solving of the energy shortages which we now face.

S8102 I did not intend to speak this long. I have a feeling that Senator ROBERT C. BYRD, with whom I have not yet had an opportunity to confer, would later of the amendment as it has been modified, since the managers of the bill find it acceptable.

S8102 Mr. President, as I indicated we have worked constantly with the staff of the committee and environmental organizations over a period of many days in an effort to develop a reasonable and sound variance to the return of approximate original contour provision. I had intended to offer an amendment had the proposal by Senator FORD not been accepted. I ask unanimous consent that my remarks and the amendment be printed in the RECORD.

S8102 There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

S8102 REMARKS BY SENATOR RANDOLPH

S8102 This amendment will permit the granting of a variance under certain stringent conditions to the approximate original contour requirement contained in Section 415, Environmental Protection performance Standards. This proposal has been carefully drawn in cooperation with the Committee on Energy and Natural Resources, industry representatives and environmental organizations. It is

acceptable to the able manager of the bill, Senator Metcalf and the Environmental Policy Center with whom my staff has worked closely in developing the language of the amendment.

S8102 Under my proposal, each State program and each Federal program may permit variances to the requirements to return the land to its approximate original contour in the reclamation process when the land can be made, after reclamation, suitable for an agricultural, industrial, commercial, residential, or public use, including recreation purposes. Thus, Mr. President, the objective of this amendment is to allow a variance procedure for the creation of useable land in a completely environmentally sound manner in connection with the reclamation of a surface mine area.

S8102 As I indicated, there are certain conditions attached to the use of this variance. The operator must demonstrate that this procedure will improve the watershed control of the area and must accomplish complete backfilling with spoil material to cover completely the highwall, insuring that such material will maintain stability following mining and reclamation.

S8102 Further, the owner of the surface rights must knowingly request in writing that such a variance be granted and this request must be made a part of the permit application. The variance procedures specifies that the potential use of the affected land must be deemed to constitute an equal or better economic or public use; the project area must be designed and certified by a qualified registered professional engineer to assure stability drainage, and configuration necessary for the intended use of the site; and the watershed improvement aspects must be approved by the appropriate state environmental agencies.

S8102 In addition, Mr. President, in the reclamation all spoil material must remain above the bench or mining cut immediately above the seam of coal being mined and all other reseat of coal being mined and all other requirements of the Act must be met.

S8102 The regulatory authority is required to promulgate specific regulations to govern the granting of variances and all exceptions granted under the provisions of this amendment shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

S8102 This proposal is generally designed for use in non-steep slope regions.

S8102 Mr. President, it is my belief that this proposed variance merits the approval of the Senate. It adheres to very strict standards; it is environmentally sound; it does not lessen the objectives of this measure in achieving strong surface mining and reclamation practices. The amendment does, however, allow for a necessary variance to effect better use of reclaimed lands.

S8102 In the development of this proposal, I have given close attention to our West Virginia law on surface mining.

S8102 West Virginia is regarded by the environmentalists as one of the states with the most progressive reclamation programs in the country. West Virginia adopted in April the new Surface Mine Law which establishes the concept of "approximate original contour." However, it clearly recognizes that in certain cases improved watershed control may result in reclamation procedures other than approximate original contour. The law states that a coal operator shall . . . "Backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials) and grade to restore the approximate original contour of the disturbed land with all highwalls, spoil piles and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this article).

S8102 "This subdivision shall not be construed so as to abrogate or limit in any way the authority of the director to modify reclamation requirements to bring about more desirable land uses or watershed control, including, but not limited to, mountain top removal and valley fill techniques: Provided, That the use of any such technique shall be subject to prior written approval of the director."

S8102 West Virginia, in adopting a variance procedure in its new law, recognizes that where watershed control can be improved, the Director of Natural Resources should have the flexibility to grant a variance which prevents soil erosion and improves the watershed control of the surrounding areas.

S8102 For example, they believe that the creation of benches in central West Virginia has increased usable farmland and lessened soil erosion. The benches have significantly contributed to

the watershed control and the alleviation of flooding in central West Virginia.

S8102 Finally, Mr. President, I note that the Appalachian Regional Commission which has had extensive projects in surface mine reclamation has recommended that in certain instances it is better not to return the land to approximate original contour.

S8102 As a result of its experience in reclamation Donald W. Whitehead, Federal Cochairman of the Appalachian Regional Commission met with a member of the staff of the committee on Energy and Natural Resources. Mr. Whitehead stated in that meeting that in several instances better reclamation could be accomplished than through "approximate original contour."

S8102 I ask unanimous consent that a letter on this subject to Senator Huddleston by Federal Co-chairman Whitehead be printed in the Record.

S8102 MAY 17, 1977.

S8102 Hon. WALTER D. HUDDLESTON, U.S. Senate, Washington, D.C.

S8102 DEAR SENATOR HUDDLESTON: During the Senate Appropriation hearings of March 3, 1977, on the budget of the Appalachian Regional Commission for FY 1978, I had a discussion with you concerning the potential utilization of strip-mined land in Appalachia. At that time, you noted that the Interior Committee was considering strip mine legislation and asked if I would object to my statement being forwarded to that committee for their consideration, and I indicated no objections.

S8102 At our March 3 hearings, I stated to you that several Appalachian communities were utilizing strip-mined land for community development purposes. I believe I indicated that these included a school in Norton, Virginia, which was built on strip-mined land reclaimed by ARC funds; Moraine State Park in western Pennsylvania, which included strip-mined land reclamation in part by the use of ARC funds; and outside of Jenkins, Kentucky, a project currently underway which will include a housing development on a former strip-mined bench. Using these examples, I stated my belief that while federal regulations were necessary, we should be careful that the opportunities to gain developable land would not be denied by a policy which would require a return to original contour. To state it another way, it may not always be desirable to return the land to original

contour, for there may be instances where a former strip-mined bench or a truncated mountain top could provide a community with a new development opportunity that was previously not available to them.

S8102 While the full Commission has not taken a position on pending strip mine legislation, Governors Carroll of Kentucky and Rockefeller of West Virginia have, as you know, testified before the Interior Committee. The Commission has taken two recent actions of which you should be advised: first, at a meeting in Annapolis on March 21, 1977, the Commission adopted an energy resolution; which touches upon surface mining: and most recently, on May 10, 1977, approved the initiation of plans to assist in long range redevelopment of Central Appalachian flood ravaged areas.

S8102 The energy resolution, copy of which is attached, specifically urged the Congress to enact federal surface-mining legislation which:

S8102 ". . . includes a general requirement for returning land to original contour but permits variances and includes an exception for acceptable mining practices;

{S8103} Recognizes that modern mountain top mining technology makes mountain top removal suitable for inclusion among acceptable mining practices; and

S8103 Provides that a general exception to 'return-to-contour' requirements could be made for mountain top removal in cases where the State determines that the land will be placed in equal or higher use and it would be supportive of the States developmental and environmental objectives to permit the exception."

S8103 The second action described the Commission's willingness to fund multistate planning for long range development following floods, including consideration of relocations from affected flood plains to more stable areas which might include benches from stripmined areas or truncated mountain tops.

S8103 I trust this information will be of use to you and to any committees to which you may wish to make it available.

S8103 Sincerely, DONALD W. WHITEHEAD, Federal Cochairman.

S8103 415(e) (1) Each State program may and each Federal program shall include procedures pursuant to which the regulatory authority may permit variances for the purposes set forth in

paragraph (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall which material will maintain stability following mining and reclamation.

S8103 (2) Where an applicant meets the requirements of paragraphs (3) and (4) of this subsection a variance from the requirement to restore to approximate original contour set forth in subsection 415(b) (3) or 415(c) (2) of this section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application that such a variance be granted so as to render the land, after reclamation, suitable for an agricultural, industrial, commercial, residential, or public use (including recreational facilities) in accord with the further provisions of (3) and (4) of this subsection.

S8103 (3) (A) after consultation with the appropriate land use planning agencies, if any, the potential use of the affected land is deemed to constitute an equal or better economic or public use, and

S8103 (B) designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

S8103 (C) after approval of the appropriate state environmental agencies, the watershed of the affected land is deemed to be improved.

S8103 (4) In granting a variance pursuant to this subsection the regulatory authority shall require that in the reclamation all spoil material shall remain above the bench or mining cut immediately above the seam of coal being mined and provide that all other requirements of the Act shall be met.

S8103 (5) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

S8103 (6) All variances granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

S8103 Mr. FORD addressed the Chair.

S8103 Mr. METCALF. Mr. President, would the Senator yield?

S8103 Mr. FORD. I yield to the Senator from Montana.

S8103 Mr. METCALF. As the Senator from Kentucky knows, this amendment was opposed in committee. I opposed the amendment as originally propounded in the committee, because I did not believe that we did have the technology to take care of stabilizing this area under the language of the Senator's amendment.

S8103 The modification, as I understand it, has come in so that we still have the same proposition that is in the basic bill except that there can be a variance where a justification is made to the regulatory authority.

S8103 This is a judgment question that we are turning over to the regulatory authority. We are saying to him, "We still stay by the performance standards of the legislation. We still insist on elimination of the high wall, no dumping over the downslope, and so forth. In a few exceptions cases where there is engineering technology sufficient to insure the public safety and guarantee stabilization of the area" then the regulatory authority can issue a variance.

S8103 Mr. FORD. May I respond to the Senator from Montana to say that there is only one variance, and that is the approximate contour - in those cases, and only in those cases, where first we have the surface owner's request and where we have complied with everything we are supposed to do. Then a judgment is made by those people who are empowered to regulate.

S8103 I believe that there is some language that I used that probably comes close to saying it.

S8103 It is difficult to bring together the proper combination of topography, the proximity to an existing community, utility service, proper economics, and a surface mining operation.

S8103 I do not think we are going to find that as a rule. It is the exception, and we are not closing our legislation to that possibility.

S8103 Mr. METCALF. I want to make sure that we are adopting these various rather stringent provisions for complete elimination of the high wall, except for a judgment decree that the

regulatory authority will have to make after a finding with justification for the variance.

S8103 Mr. FORD. That is correct.

S8103 The chairman will recall that in every case I have accepted that no overburden will be put over the slope down into the valley. We have been very particular about that - even in the french drains and the compacted dirt in the hollow fill. We have been very careful and very meticulous to minimize environmental damage.

S8103 Mr. METCALF. I am persuaded by the modification of the Senatorhs amendment, and I am prepared at least to take it to conference and defend our conference position with the House. It is somewhat of a new concept, and I want to go along with the Senator.

S8103 Mr. FORD.I appreciate that. The chairman has been very gracious, and I thank him.

S8103 Mr. METCALF. What does my colleague say?

S8103 Mr. HANSEN. Mr. President, I join the distinguished floor manager of the bill in expressing my willingness to support the amendment as modified

S8103 Mr. FORD.I thank the Senator from Wyoming.

S8103 Mr. President, I ask unanimous consent that the names of the distinguished Seenators from West Virginia (Mr. RANDOLPH and Mr. ROBERT C. BYRD) be added as cosponsors of this amendment.

S8103 The PRESIDING OPPICER. Without objection, it s so ordered.

S8103 The question is on agreeing to the amendment.

S8103 The amendment was agreed to.

S8103 Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

S8103 Mr. RANDOLPH. I move to lay that motion on the table.

S8103 The motion to lay on the table was agreed to.

S8103 The PRESIDING OFFICER. Does the Senator from Kentucky intend at this time to call up his additional amendment?

S8103 Mr. METCALF. He is quitting while he is ahead. [Laughter.]

S8103 AMENDMENT NO. 291, AS MODIFIED

S8103 Mr. CULVER. Mr. President, I send a modified amendment, No. 291, to the desk.

S8103 The PRESIDING OFFICER. The amendment will be stated.

S8103 The legislative clerk read as follows:

S8103 The Senator from Iowa (Mr. CULVER) proposes an amendment numbered 291, as modified.

S8103 Mr. CULVER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

S8103 The PRESIDING OFFICER. Without objection, it is so ordered.

S8103 The amendment, as modified, is as follows:

S8103 On page 208, between lines 21 and 22, insert the following:

S8103 "(d) (1) Except to the extent otherwise provided for in paragraphs (2) and (3) of this subsection, upon enactment of this Act no application for a permit or revision or renewal thereof shall be approved pursuant to this section unless the applicant demonstrates to the appropriate regulatory authority that prime farmland does not comprise more than 10 per centum of the surface area to be disturbed pursuant to such applicant's mining plan. Such demonstration shall be based upon soil maps and data verified for accuracy by the Secretary of Agriculture.

S8103 "(2) Nothing in this subsection shall apply to any permit issued prior to the date of enactment of this Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of this Act.

S8103 "(3) The appropriate regulatory authority may, after consultation with the Secretary of Agriculture, and pursuant to regulations issued hereunder by the Secretary of the Interior with the concurrence of the Secretary of Agriculture, grant a variance from paragraph (1) of this subsection if the operator demonstrates and the regulatory authority finds, on the basis of data relation to prime farmlands comparable to those covered by the permit application, that the applicant can restore the land affected to a condition [\*] least fully capable of supporting the uses which it was capable of supporting prior to any mining.

{S8104} "(4) As soon as is practicable following the date of the enactment of this Act, but in no event later than twelve months following such date, the Secretary of Agriculture shall commence such research, experimentation, and studies as are necessary to determine the impact of surface mining operations on agricultural production including the impact on agricultural lands both directly and indirectly affected by such mining and the most effective and efficient procedures for restoring the productive capacity of prime farmlands subsequent to any mining and based thereon, make appropriate recommendations to the Congress and the President within four years after the date of enactment of this Act."

S8104 On page 291, line 3, strike out the period and insert in lieu thereof a semicolon.

S8104 On page 291, between lines 3 and 4, insert the following:

S8104 "(30) the term 'prime farmland's shall have the same meaning as that previously prescribed, or hereafter modified, by the Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics, and as published in the Federal Register."

S8104 Mr. CULVER. Mr. President, this amendment is intended to strengthen the protection afforded prime farmlands potentially subject to surface mining operations. I am offering it on behalf of myself and Senators PERCY, ABOUREZK, LEAHY, HUMPHREY, BUMPERS, ANDERSON, HART, ZORINSKY, and STEVENSON.

S8104 Essentially, the amendment provides that an applicant for a new permit to conduct surface mining on prime farmland must demonstrate to the State regulatory authority that he can restore the land to its full premining agricultural potential, In addition the amendment directs the Secretary of Agriculture to conduct studies on the general impact of surface mining on agriculture and on developing more effective methods of reclaiming farmland subsequent to mining.

S8104 This amendment is premised upon our belief that prime farmland is a critically important natural resource. Its value is long term and renewable - if it is properly safeguarded, we can benefit from its bounty almost indefinitely. That renewable quality makes it almost unique, other resources once exploited, are gone forever. As a Senator from the State of Iowa which has so long exemplified

the immense capacity of American Agriculture, I may display a certain bias but I believe firmly that next to our people, our fertile soil is our Nation's most valuable resource.

S8104 It is precisely because this soil is so vital that if it is to be used for additional or alternate purposes, its primary usefulness as farmland must be guaranteed. Its permanent loss would severely undermine our future food production potential and place greater pressure on our remaining agricultural resources. As Secretary of Agriculture Bergland has stated.

S8104 Any loss of prime farmland, no matter how small, is a loss that cuts at the very heart of long-term American productivity and strength.

S8104 I believe that our amendment provides the needed guarantee of continued productivity in a manner that is both practical and fair to the nonagricultural potential of farmland.

S8104 The amendment does not prohibit surface mining on prime agricultural land, it merely requires that mined land be restored to its original capacity.

S8104 The amendment uses existing, proven criteria for the definition of farmland. These criteria have been employed for a considerable time by the Soil Conservation Service. They are comprehensive and precise.

S8104 The amendment does not threaten the need for increased coal production. According to OMB, at most 1.3 percent of the 1978 forecast for such production would be affected.

S8104 This amendment does not place unfair burdens on mining operations. The coal companies maintain that reclamation is technologically feasible. That verdict is confirmed by the independent judgment of the Iowa coal project and the Iowa Department of Soil Conservation.

S8104 The amendment protects a significant amount of valuable farmland. OMB calculates that a minimum of 12 million acres of prime farmland contain coal subject to surface mining.

S8104 Finally, I think it is important to recognize that a broad range of public officials with responsibility for different national priorities agree on the need to provide special protection for prime agricultural land. These include Secretary Bergland of the Department of Agriculture, Secretary Andrus of Interior, and James Schlesinger who is President Carter's choice to head the new

Department of Energy on which this body put its stamp of approval only 2 days ago.

S8104 Mr. President, I urge the adoption of this amendment in the belief that it will serve to protect our most valuable agricultural lands while enabling us, to meet our critical energy needs.

S8104 The PRESIDING OFFICER. The Senator from Wyoming.

S8104 Mr. HANSEN. Mr. President, I think the distinguished Senator from Iowa has expressed an interest and a concern which a great many of us share.

S8104 I would say that in opposing the amendment, as I feel obliged to do, first, I express my appreciation for his interest and for the industry that he and others have shown. I note that Senator PERCY, a cosponsor of the amendment, is also in the Chamber.

S8104 I think everyone agrees that the purposes sought to be achieved in this amendments are laudable.

S8104 I would point out, in my judgment, that language contained presently in the bill before us pretty well insures that these objectives will be achieved.

S8104 Basically, the concept is that land shall not be strip mined unless it can be reclaimed. I am concerned about the definitions; and it occurs to me that we are layering yet another set of definitions on top of those presently contained in the bill for which I question the need.

S8104 We bring in yet another set of criteria that would be implemented and, conceivably, could delay or could add to the problem of trying to get on with the job of providing coal for this country.

S8104 The State of Illinois does, indeed, produce a great amount of coal, and I know the Senator from Illinois has been outspoken in his concern that those lands should be and must indeed be reclaimed and I quite agree with him.

S8104 My point is that I believe we do not need this amendment to assure the kind of reclamation effort, to assure the close examination that ought to be undertaken before coal is removed by s rip-mining methods. I think these guarantees are already in the bill. So I would feel obliged to oppose the amendment.

S8104 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8104 Mr. PERCY. I appreciate the careful consideration my distinguished colleague has given to this amendment. As I have said to him, it is an amendment that means a tremendous amount to farmers, and it seeks to reconcile their interests with those of the surface mining companies in those cases of possible conflict.

S8104 Farmers in this country see the constant encroachment on agricultural land as our cities blossom out, and they see that over a period of years urbanization takes millions of acres of fine agricultural land out of production.

S8104 I would just ask my distinguished colleague where this country would be today if we did not have our agricultural exports? I would say we would be in a very bad way. We cannot constantly take prime agricultural land out of production year after year without someday paying a price.

S8104 There are only six countries on the face of the Earth that are exporting food. One hundred forty-four countries import food. We are one of the exporters, and we export more than all the others put together. Last year \$2 2 million came into this country as a result of our exports.

S8104 If we did not have that we would not have the raw materials to keep our factories going. We would not have energy to keep our automobiles moving. So it is for that reason that we are taking a look at this problem now to say, "Shouldn't we give special consideration to prime agricultural land?"

S8104 I have joined with Senator CULVER as a principal cosponsor of the prime farmland amendment, because both of us come from States richly endowed with prime farmland. This amendment is extremely important to the people of Illinois and many other States. These are the States which have a large amount of prime farmland underlaid with coal reserves that can be mined by surface mining techniques.

S8104 According to an OMB study made earlier this year there are about 12 million acres of such prime lands with stripable coal reserves in 14 States.

S8104 Mr. President, I ask unanimous consent that a table listing all of the States in the Union that have such land, together with the percentage figures that we give, be printed in the RECORD at the close of my comments.

{S8105} The PRESIDING OFFICER. Without objection, it is so ordered.

S8105 (See exhibit 1.)

S8105 Mr. PERCY. About half of this acreage, about 6 million acres, is actually located in the State of Illinois.

S8105 We do not seek to impose a moratorium on surface mining of all farmlands, but we must make certain that two important national interests are adequately reconciled. These interests are the preservation of our prime farmlands from undue encroachment, and the increase in production of coal to meet out energy needs.

S8105 These interests are only marginally in conflict. There is an enormous amount of lower grade land underlaid with strippable coal, and there are enormous reserves of deep-mine coal, as well.

S8105 Moreover, the most serious encroachment on prime farmlands is urbanization, not strip mining. However, our amendment will allow strip mining in prime farmlands if the mining company demonstrates to the State regulatory authority that it can and will return the land to its former level of agricultural productivity.

S8105 (At this point Mr. MORGAN assumed the chair.)

S8105 Mr. PERCY. The mining companies argue very persuasively - and I would certainly say in this regard that I have discussed it privately with my distinguished colleague, Senator HANSEN, and I would like to reaffirm that in discussions with the coal companies - that they do have the technology and the knowhow to do exactly what our amendment provides. I am much inclined to believe they have this know-how and, thus. I believe we are are not imposing any undue burden on them to require that they simply demonstrate to the State permitgranting authority that they c an and will restore the land.

S8105 Several coal companies that I have talked to in recent days have reaffirmed to me and to my staff that - while they would object strongly to a moratorium on surface-mining of prime farmland - they can live with the kind of case-by-case review procedure provided in this amendment.

S8105 If our amendment becomes law, the impact on coal production will either be nil or very

small indeed. If each application for a permit is approved on a case-by-base basis, the impact on total production will be zero. If some applications are disapproved, but the coal companies simply go to other sites on less good land, the loss of production can easily be compensated. Even if all applications for stripping prime lands are rejected, and there is no offsetting increase in production on marginal land, the total loss of production would be only 1.3 percent of the national total, according to the OMB study I cited earlier.

S8105 In short, Mr. President, I believe this amendment reconciles the major concerns of those who seek to protect our prime farmlands and those who seek to raise coal production.

S8105 In this regard I feel that it offers a sensible compromise, rational and reasonable. According to the coal mining operators with whom I have consulted, the procedures we have laid down are not onerous. To farmers it would mean extremely welcome relief. For the first time, the Federal Government would be taking into account that these prime agricultural lands are an invaluable resource to us, and we cannot simply pave over them, we cannot simply urbanize them all - and we simply cannot strip mine them, unless we assure ourselves that all prime lands that are mined will be returned to their original use and their original level of productivity.

S8105 It does us no good in Illinois to take prime agricultural land on which we grow row crops, soybeans and corn, that are invaluable as a national asset - and absolutely desperately needed to maintain our balance of trade position - if we take that land out of production and return it to grazingland that simply does not help the national interest. Our need for those coal reserves is not that great.

S8105 For that reason. I commend my distinguished colleague from Iowa. Senator CULVER, and the five other Member of the Senate who have cosponsored this amendment. I really urge that we give careful consideration to it. I hope the managers of the bill will agree with us that we have reached a compromise position which best serves the interest of all concerned. From the standpoint of having any adverse effect upon coal production in this country, it will be so small one could hardly even measure it. Because in a case-by-case analysis we think most of those can be adequately handled.

---

---

\*6\*EXHIBIT 1  
 \*6\*STRIPPABLE  
 COAL AND  
 PRIME  
 FARMLAND

n3 of	Strippable coal counties			Other available coal reserves	
	Total acres of prime farmland n1 (thousands)	Percent prime farmland n1 (average)	Prime farmlands potentially impacted by stripping n1 (thousands of acres)	Strip coal on Nonprime land n2 (millions of tons)	Deep-mine coal reserves (millions tons)
Alabama (10 counties)	1,700	27	459.0	129	1,789
Indiana (16 counties)	1,600	46	736.0	937	8,948
Illionis (43 counties)	9,400	63	922.0	4,838	53,441
Kentucky (38 counties)	1,100	23	253.0	5,741	18,185
Maryland (1 county)	50	13	6.0	86	901
Ohio (24 counties)	1,000	15	150.0	3,057	17,423
Pennsylvania (22 counties)	1,500	17	255.0	854	22,788
Tennessee (17 counties)	500	11	55.0	282	667
Virginia (4 counties)	20	2	.4	755	2,833
West Virginia (37 counties)	500	5	25.0	1,575	34,377
Missouri (13 counties)	2,000	37	740.0	1,733	6,073
North Dakota (20 counties)	7,700	43	3,311.0	10,328	NA
Montana (20 counties) n4	700	7	49.0	34,668	65,834
Wyoming (7 counties) n4	200	2	4.0	22,030	29,490

---

S8105 n1 Data derived from "Report of the Interagency Task Force on the Issue of a Moratorium or a Ban on Mining in Prime Agricultural Lands," prepared by the Office of Management and Budget. Soil Conservation Service, Bureau of Mines, Federal Energy Administration, and the Environmental Protection Agency, February 1977.

S8105 n2 "Impact Of Proposed Moratorium on Surface Coal Production." R. Neil Sampson. Soil Conservation Service, Apr. 26, 1977.

S8105 n3 U.S. Bureau of Mines.

S8105 n4 Prime lands in these States coincide largely with alluvial valley floors.

S8105 Mr. PERCY. Mr. President, I ask unanimous consent to include in the RECORD an outstanding statement of Robert L. Masterson, Knox County zoning administrator, on behalf of and with the authority of the county board, Knox County, Ill., before the Subcommittee on Minerals, Materials, and Fuels of the Senate Energy and Natural Resources Committee, on March 3, 1977. I ask that this statement be printed in the RECORD at this point to reinforce the case that I have made today.

S8105 There being no objection, the statement was ordered to be printed in the RECORD, as follows:

S8105 STATEMENT OF ROBERT L. MASTERSON

S8105 I am Robert L. Masterson. I reside in Galesburg, Illinois. I have been employed by the County of Knox since early 1967 as Zoning administrator, plat officer and de facto director of planning. I appear here today on behalf of, and with the authority of, the County Board of Knox County, Illinois. The County Board expresses its appreciation to you, Mr. Chairman, and the subcommittee for this opportunity to present a statement of its concern for and support of the strip mining legislation presently being considered by both the U.S. Senate (S 7) and the House of Representatives (HR 2).

S8105 The County Board wishes to make clear that its primary concern is to protect and preserve the prime agricultural land of Knox County and to assure a continued, healthy agricultural economy for the county. My appearance here today is not intended as an indictment, by the County Board, against any particular coal company or the industry in general. On the other hand, the Board does not wish to minimize the serious and, it feels, fatal effects that continued strip mining will have, not only on Knox County, but, on a good segment of Illinois and the agricultural heartland of the country - the Midwest.

{S8106} } My presentation will consist of a prepared statement and a slide presentation. I would

like to present our statement completely and then follow with the slide presentation.

S8106 It appears to the County Board and others in Illinois, who have followed the history of efforts to pass federal strip mine legislation, that most of the concern and attention has been directed toward the adverse effects of surface mining on areas in the eastern states, appalachian states, and the far west with little, or no, attention to the midwestern states where the major strippable bituminous coal reserves are located under some of the most fertile, agriculturally productive and irreplaceable farmland in the country, indeed in the world. Without minimizing the devastating effects of strip mining in these other parts of the country, the Board wishes to call attention to the impact that strip mining is having, and will continue to have, in Illinois and Knox County.

#### S8106 ILLINOIS

S8106 Illinois contains some of the richest agricultural land in the world, with some 29,100,000 acres, or 82% of its total land surface, devoted to farming. In 1975 over 22.8 million acres, 78% of all farmland in Illinois, were in crop production, while 3.3 million acres, approximately 10%, were devoted to posture for livestock production. Between 1970 and 1975, cropland harvested in Illinois increased from 20.1 million acres to 22.8 million acres.

S8106 In spite of the tremendous increases in crop land harvested in Illinois, the state has been losing farmland at an alarming rate of 80,000 to 100,000 acres per year to other uses. This apparent contradiction is explained, in part, in the U.S.D.A., publication, "Farmland: Will There Be Enough?", as being attributable to the evolving "free market policy" of the U.S. Department of Agriculture which has resulted in abandonment of the food reserves system, the end of the federal crop acreage set-aside program, and a tough international commodity transactions stance. It is also partially the result of expanded irrigation, clearing of marginal lands and development of dry land farming techniques.

S8106 In past years it has been possible to offset production losses, due to a reduction in the agricultural land base, by increased yields from less land using more and improved fertilizers, herbicides, pesticides and improved farming techniques and management. However, the energy crisis and resulting fertilizer and fuel shortages will continue to hamper, if not prevent, the farmer

from consistently producing more on less land. Also, regulations on the use of some agricultural chemicals will contribute to this slowdown.

#### S8106 Coal reserves

S8106 In addition to its vast riches in prime farmland, Illinois is also endowed with the greatest amount of bituminous coal reserves of any state in the nation. The Illinois State Geological Survey estimates these reserves to be 161.6 billion tons which underlie 65% of the state. Ninety-seven billion tons are contained in seams of at least 42 inches thick. In 1975, Illinois ranked fourth among all major coal producing states in the nation.

S8106 Of the estimated coal reserves in Illinois, only 12.1%, or 19.5 billion tons, is strip mineable; the remainder of the 161 billion tons is recoverable only by the deep mining method.

#### S8106 Prime agricultural land

S8106 Prime agricultural land, as used in this presentation, is the highest quality or most productive land in terms of specific crops of significant economic value raised in Illinois. The major cash grain crops in Illinois are corn, soybeans, wheat and oats. Prime agricultural land, therefore, is the land which produces the greatest yields of these four cash grain crops.

S8106 The productivity of Illinois soils for these four crops has been studied for many years in Illinois and a soil productivity index has been developed to measure the relative response to management and facilitate comparisons between groups of crops and soil productivity.

S8106 The development of the productivity index, to determine quality of soil, is the work of Dr. J. B. Fehrenbacher, professor of Pedology; B. W. Ray, associate professor of Pedology; and T. S. Harris, research assistant; all in the Department of Agronomy, University of Illinois, Urbana; and E. Voss, Soil Conservation Service state soil scientist for Illinois.

S8106 Productivity indexes for a high level of management, plus corn yields, were used to further define three grades of prime farm land in Illinois: Grade A, excellent; Grade B, very good; and Grade C, good. The productivity indexes and corn yields for the three grades, based on recently revised values (1976), are:

---

Productivity indexes (P.I.)

Corn yield bu/acre

Grade A	141-160	140-161
Grade B	126-140	123-139
Grade C	106-125	101-122

---

S8106 (Source: Soil Association of Knox County, Illinois, J. B. Fehrenbacher, et al; Corrected Printer's Galley proofs, February 1977.)

S8106 KNOX COUNTY, ILLINOIS

S8106 Location and area

S8106 Knox County is one of the 51 counties in Illinois underlain with strippable coal reserves. It is a grain and livestock producing county of 720 square miles, more or less, or 461,216 acres, located in west-central Illinois midway between the Mississippi and Illinois Rivers. It is equidistant from Chicago and St. Louis.

S8106 The soils

S8106 Knox County soils are some of the most agriculturally productive soils in Illinois and the world, containing soil characteristics which, when combined with the very favorable climatic conditions of the area, provide for the most ideal farming and crop producing situation.

S8106 Based on a general soils survey of Knox County, conducted by Dr. J. B. Fehrenbacher et al during 1975 and completed in early 1976, 71.3 per cent or 324,664 acres, of Knox County's soils was determined to be prime agricultural soil with 190,736 acres, 41.4% of the county and 58.7% of the prime agricultural land, classified as grade "A" or excellent; 129,939 acres, 28% of the county and 40.0% of the prime land, classified as grade "B" or very good; and the remaining prime land, 3992 acres, graded as "C", good.

S8106 The Soil Conservation Service, U.S.D.A., classifies 360,711 a cres, or 78%, of Knox County soils as being in capability classes

S8106 I, II E, III W and III E.

S8106 The main factors affecting the quality of the present Knox County soils are: soil parent materials, climate, native vegetation, topography, drainage and soil development time span.

S8106 Parent materials

S8106 The most extensive and desirable parent material in the County is loess, a silty soil parent material found extensively on the nearly level (0 to 2 per cent slopes) uneroded uplands with thicknesses varying from 7 feet in the southern part of the county to 12 or 15 feet in the northern part. This loess was deposited during the Wisconsin glacial stage and is considered to have formed over approximately 11,000 to 12,000 years.

S8106 Alluvium deposited on stream flood plains in Knox County is also an important soil parent material which has generally developed into agriculturally productive soils.

S8106 The major soil associations developed from these parent materials and which make up about 70 percent of the county soils are:

S8106 3A. Ipava-Sable Association, distributed throughout the county and comprising 19 per cent of the county land surface. This association is found on the uplands on slopes of 0-2 per cent. They are dark-colored soils developed from the silty (loess) parent material under tall prairie grasses with poor to somewhat poor drainage. However, almost all these soils have been tilled to aid drainage.

S8106 This soil association is used predominantly for intensive corn and soybean production and the soils are well suited for this row crop use. It is graded "A" with a high management productivity index of 141 to 160 and a corn yield, under a high level of management, of between 109 and 158 bushels, and an average soybean yield of 50 bushels per acre.

S8106 3B. Ipava-Tama Soil Association, comprises 22 per cent of the total county area. The soils in this association were developed from the silty (loess) parent material and consist of dark-colored soils developed under tall prairie grasses. These soils are found on slopes of between 2 and 5 per cent along the drainage divides. They occur commonly on shoulder slopes, upper side-slopes and narrow ridge tops around the edges of extensive upland flats.

S8106 Again, these soils are well suited for intensive row crop, corn and soybean, production if properly managed. They are rated as excellent for row crop production with a productivity index of 141-160 and average corn yields of between 140 and 161 bushels per acre and soybean yields of between 36 and 49 bushels per acre.

S8106 3C. Tama-Elkhart-Downs Soil Association of soils is commonly found on sloping areas of

the uplands on slopes ranging from 5 to 10 per cent and are distributed throughout the county. This soils association constitutes about 7 per cent of the total county land area. This association consists of soil developed under grass and exhibits a moderately dark color. They, again, are formed from the silty (loess) parent material and are well to moderately well drained.

S8106 The soils in this association are best suited for row crop production (corn and soybeans mainly) on a rotation basis. Erosion is the most important hazard on these lands and close-growing crops are recommended, along with terracing and conservation tillage, to check erosion.

S8106 This soils association is graded "B", very good, and has a P.I. of between 126 and 140 and a corn yield of 123 to 139 bushels per acre and a soybean yield of 31 to 38 bushels per acre.

S8106 26 AB. Keomah-Clinton-Clarksdale Association soils are found on nearly level to gently sloping ridgetops of 3 to 5 per cent slopes and make up 12% of the county soils. They are characteristically light to moderately dark soils developed under forest or mixed forest-grass vegetation. Drainage is from poor to good. The soils in this association developed in loess deposits of more than five feet thick and occur widely throughout the county.

S8106 The soils in this association are used intensively for cultivated crops such as corn and soybeans. Small grain and hay pastures are also found in this association. This soil association is graded "B", very good, with a P.I. of 123-139, a corn yield of up to 139 bushels per acre and a soybean yield of up to 42 bushels per acre.

S8106 40 B. St. Charles-Batavia Association, 40 C. St. Charles-Camden Association and 43 B. Worthen-Littleton-Raddle Association are all prime lands graded "B", "C" and "A" respectively and comprising 0.6, 0.5 and 0.4 per cent, respectively, of the total county land area and are of such small area that a detailed discussion is omitted here.

{S8107} } 69 A. Lawson-Huntsville-Orion Association soils occur on the flood plain areas of Knox County and comprise about 9 per cent of the total county area. These soils have slopes of between 0 and 2 per cent. They have surface soils which are dark grayish-brown or black silt loam and range in thickness from 20 to 40 inches. These soils are very productive and have been intensively cropped to corn and soybeans. These soils are graded "B", very good, with a P.I. of

126-140 and corn yields of between 123 and 139 bushels per acre and soybean yields of between 40 and 46 bushels per acre.

#### S8107 Climate

S8107 Climate is a very critical factor in original development of the soils in Knox County since it controlled the moisture and temperature conditions of the soil and the native vegetation which grew on the land during the soil development. It is concluded by Dr. J. B. Fehrenbacher et al. ("Soil Associations of Knox County, Illinois," corrected galley proof, 1977) that the climatic conditions existing at the time of the last glaciation, "except for a warmer and drier period some 4,000 to 6,000 years ago," were the same as those which now prevail. The current mean annual temperature of Knox County is 51 degrees F., with cold winters and hot summers. Precipitation averages about 34 inches per year and there is a growing season of approximately 175 days, all favorable and vital to a viable and highly productive agricultural area. Knox County has never experienced a complete crop failure due to drought or wash out.

#### S8107 Native vegetation

S8107 Fifty-seven per cent of the county was in prairie grasses while 33 per cent was forest vegetation during the soil formulation period. Soils developed under the prairie grasses have thick, dark-colored surfaces while the forest developed soils have dark or moderately dark surface soils of 4 to 5 inches thick.

#### S8107 Soil texture and moisture availability

S8107 Soil texture is an important factor in the productive capacity of soil. Texture is the relative proportion of sand, silt and clay in the soil, both surface and subsurface layers. Texture will determine a soil's ability to retain moisture for crop production and depth permissible for root penetration of crops.

S8107 Knox County soils are mostly silt loam surfaces and silty clay loam subsoils. On surfaces which are moderately to severely eroded, the surface silt loams have disappeared, exposing the subsurface silty clay loams.

S8107 Silt loams are easy to work and have good moisture retention capacity but are erosive and subject to frost heave and crusting. Most of the silty clay loam subsoils have good structural

development, retain moisture and allow good root penetration for row crops grown in the county.

S8107 Strip mining in Knox County, as elsewhere, has completely disturbed these soil relationships and according to Dr. Fehrenbacher et al, strip mined land, approximately 21,000 acres in Knox County. "represents areas of extreme variability in materials and slopes where the natural soil has been greatly disturbed." These materials are composed of layers or random mixtures of loess, glacial till, and bedrock (mainly shale) with slopes ranging from very steep to very gently rolling on the more recently mined areas. Rock content on these spoiled and "reclaimed" areas ranges in size, depth and amounts from area to area and makes cultivation difficult to impossible in most spoiled areas of the county.

#### S8107 Value of crop production

S8107 Illinois Cooperative Crop Reporting Service, 1976 Annual Summary, reports that in 1975, Illinois ranked second or states in the nation in agricultural cash receipts for crops, and seventh for livestock with \$3.5 billion and \$1 .9 billion respectively, and fourth in the nation for total agricultural cash receipts - \$5.4 billion.

S8107 The Galesburg Register Mail on July 21, quoted John E. Corbally, President of the University of Illinois, as saying that Illinois led the United States in agricultural exports in 1975 which amounted to \$1.67 billion. The state ranked first in soybean exports with \$699 million, second in corn with \$723 million and second in meat products exported, \$2 8.6 million.

S8107 Illinois Cooperative Crop Reporting Service, 1976 Annual Summary, reports that Knox County produced, in 1975, 20,965,000 bushels of corn on 165,000 acres with a farm production value of \$5 2.6 million, and 2,660,900 bushels of soybeans on 65,000 acres with a farm production value of \$1 2.5 million. Wheat and oats took up a combined 16,000 acres with a farm production value of \$1.48 million, a grand total of the four major cash crops of \$66 6.55 million. This represented an increase of \$6 .56 million over 1974. Total acreage in the four crops amounted to 391,000 acres, 84% of the total county land area and a rather high utilization of the agricultural productivity of the county. All factors being favorable, this experience can be duplicated on an annual basis.

#### S8107 STRIPPABLE COAL RESERVES IN KNOX COUNTY

#### S8107 Strippable coal reserves

S8107 One of the major threats to the continued productivity of the Knox County soils and a healthy agricultural economy locally is the result of another abundant and valuable resource - coal.

S8107 Knox County, according to the Illinois State Geological Survey, Circular 348, 1963, Class I coal reserves (reasonably accurate) amount to 1.25 billion tons and when Class II (based on projection of geologic information) coal reserves are added, an information) 1.53 billion tons of strippable coal underlie Knox County soils.

S8107 284,646 acres, or 61.0%, of Knox County is underlain with strippable coal (figure 1), the vast majority of which, obviously, is under the most productive agricultural soils of the county.

S8107 As of February 1977, County records (Recorder of Deeds and Supervisor of Assessments) show approximately 39,000 acres owned or controlled by coal companies in Knox County. Of this total, however, approximately 21,000 acres have already been strip mined at least once (a second vein of coal exists under much previously stripped land). Most of the remaining 18,000 acres are located in three of the most productive townships in the county: Victoria, Copley and Sparta. Land purchases continue and the county is presently being surveyed by a second major coal producer with hopes of opening mines.

#### S8107 RECLAMATION

##### S8107 History

S8107 In Knox County generally, reclamation has been directly tied to what the law required. In many cases it may be questioned whether the final results met the legal requirements.

S8107 The first state land reclamation act in Illinois was adopted in 1962 and since then there have been two major revisions, the Surface Mined Land Conservation and Reclamation Act of 1971 and the 1975 comprehensive amendments to the 1971 Act.

S8107 Prior to 1961, 12,110 acres of agricultural land were strip mined in Knox County with almost all being left in spoil banks and no concerted effort to put this land to any producterted effort to put this land to any productive use. Of course, during these earlier years, little concern was

expressed by the public, and the full impact of strip mining on the land was not realized. The full impact is not yet understood, generally. Much of this land (8,063 acres) was and is utilized for pasture. Possibly because it is only traversable by livestock and considered substandard at best. 1,151 acres is put to no observable use; organized recreation utilizes 1,066 acres of stripped land and 192 acres of strip mine created water areas. Agricultural uses, aside from pasture, were observed on 375 acres, 352 in hay and 23 in tilled crops. The remainder was used for a variety of other uses such as an airport, 20 acres; water consumption, 576 acres; public highways, 33 acres, to name a few.

S8107 Under the 1968 amendments to the Surface Mined Land Reclamation Act, most land was reclaimed to "strike-off" pasture. This involved striking off, or grading, the spoil peaks to an 18 foot width to allow easy movement of farm machinery and other necessary equipment. The Act also established seeding requirements. The Act also allowed graded pasture, land graded to gently rolling topography and seeded to pasture. The easiest and least costly method of "strike-off" was the predominant reclamation. Again, this pasture was decidedly substandard and the land nowhere approached pre-mining productivity.

S8107 The most severe reclamation standards were incorporated into the 1971 Surface Mined Land Conservation and Reclamation Act by comprehensive amendment in 1975. These standards allow the Director of Mines and Minerals, under rule 1104 of the Act, to require row crop reclamation if he should decide that the land affected (stripped) is: (1) capable of being reclaimed for row crop agricultural purposes based on United States Soil Conservation Service soil survey classifications of the affected land prior to mining, and (2) when the Director determines that the optimum future use of the land is for row crop agricultural purposes. Row crop reclamation under the act involves grading to a topography comparable to pre-stripping, replacement, up to 18 inches if available, of the original surface soil and providing four feet of suitable root medium subsoil with prescribed texture. This row crop provision is currently being applied in Knox County with the first such "top soil" replacement now taking place.

S8107 In spite of these seemingly strict and severe requirements of grading and soil replacement, no one is able to guarantee that the end product will be a soil capable of the pre-mining productivity

or, for that matter, if it will be productive at all or for how long. The Director of the Illinois Department of Mines and Minerals, Russell Dawe, who is responsible for administering and enforcing the reclamation regulations, admits that "it is not known if lands can be restored to their original productivity. . . ." n1

S8107 n1 Letter from Russell Dawe to Mike Schechtman, Illinois South Project, April 19, 1976

S8107 Knox County's legal efforts

S8107 Knox County has, on two separate occasions, attempted, under the zoning powers granted by the state legislature, to regulate locally the strip mining of prime agricultural lands and the subsequent reclamation of those lands. Both attempts were frustrated by the Illinois Supreme Court, once in 1954 and again in 1974.

S8107 In the 1954 case, Knox County attempted to ban strip mining on certain areas of the county. The Supreme Court eventually ruled against the county noting, however, that the county could under certain circumstances (not elaborated) possibly ban strip mining.

S8107 The 1974 Supreme Court ruling against the county resulted from the county's efforts, again under its zoning regulations (a new zoning resolution was adopted in 1967). to establish minimum reclamation conditions in the granting of a "Conditional Use Permit" to strip mine. The Court ruled that the county had no authority to set reclamation [\*] because the Illinois Surface Mined [\*] Conservation and Reclamation. Act pre-empted County Zoning.

{S8108} The county is again in court over whether or not it can, again under zoning, attach any conditions to strip mining. The current case involves conditions set on use of blasting and the filing of impact statements with the county covering the effects of mining and blasting on the hydrology of the surrounding and adjoining properties. While this case is pending, the operator has secured a court injunction keeping the county from enforcing its regulations and allowing strip mining as usual. How such this case will be settled is no longer a matter of urgency for the operator with a mining permit good until June of 1979.

S8108 Every effort by the county to locally regulate mining and reclamation and to protect its soils has been successfully frustrated legally.

S8108 Knox County has also been very active on the state legislative level to effect amendments

to the reclamation act to tighten up the reclamation standards.

S8108 ASSESSED VALUE AND TAXES

S8108 Another critical area of concern to the County Board is the effects of strip mining on assessed valuation of affected land. The industry has been quick to assure the county, and critics, that they have not sought an adjustment in the assessed valuation of these stripped lands for taxing purposes, nor do they intend to do so. They further point out that the property remains on the tax books at the same assessed value as prior to being stripped. Both contentions are true, to a point. The coal companies do not request an adjustment and the assessed value for taxing is not reduced on the land at that point. All improvements present on the land are removed during stripping and this does lower the assessed value.

S8108 The Knox County Zoning Department conducted a study of the effects on assessed valuation and tax dollars returned per acre on stripped and unstripped land in four townships which have experienced extensive strip mining. The study covered a period from 1940 to 1971 and included a random selection of sites, both stripped and unstripped. An effort was made to compare lands of comparable soil conditions prior to stripping and which were in close proximity to each other. All values were adjusted to 1940 dollars to offset the effects of inflation.

S8108 The four townships included Salem (6,762 acres stripped), Maquon (1,865 acres stripped), Victoria (5,528 acres stripped) and Copley (3,459 acres stripped). There were 53 stripped and 92 unstripped parcels analyzed.

S8108 The countywide average of per cent of change of equalized n2 assessed value per acre and tax dollars per acre for the 31 year period were:

---

*4*[In percent]	Stripped land	Unstripped land	Difference
Assessed value (equalized)	-4.8	+43.8	48.6
Tax dollars per acre	+3.3	69.0	65.7

---

S8108 n2 Equalized assessed value is determined by the County Board of Tax Adjustment and is the figure used to determine taxes.

S8108 In discussing the results with the County Supervisor of Assessments, it was learned that the County, in 1958 and 1959, had a general re-evaluation of all lands in the county. Lands affected by strip mining, particularly spoil banks, were drastically reduced since the original productivity of the land, the basis of farm land assessed valuation, no longer existed. So, even though the land owner may not request an adjustment, the threat of lower assessed values and tax dollars per acre on stripped land is ever present and real. The county is currently considering another general re-evaluation of assessments in 1978 or 1979, and, according to the Supervisor of Assessments, productivity of the soil will again be a basis for establishing assessed values on rural farm land, with a resulting lowering of assessed values of lands strip mined since the last general re-evaluation.

#### S8108 SUMMARY AND CONCLUSION

S8108 Illinois and Knox County were blessed with some of the richest, most fertile and irreplaceable agricultural soils in the world, with over 71 percent of Knox County's soils rated prime. These soils, which have developed over a period of 12,000 years, are vital to the agricultural economy of Knox County, Illinois and our country. The prime agricultural lands of this area have been farmed for over 150 years and will continue to be if properly conserved and protected. We do not have lands reserves.

S8108 Strippable coal reserves underlie approximately 61 percent of Knox County and threaten to destroy upwards of 284,000 acres of its farmland. Past reclamation practices have not returned stripped land to its premined productivity, and no one knows whether or not surface mined land can ever be fully restored to pre-mining agricultural productivity.

S8108 Since property assessed valuation for taxing purposes is based on soil productivity in the rural areas, loss of soil productivity eventually results in loss of valuation, placing an increased burden on those lands undisturbed.

S8108 With only 12 per cent of Illinois' abundant coal reserves strip mineable; with an ever increasing demand for energy, both coal and food, throughout the world; and with both resources, coal and soil, being irreplaceable, they should be developed with prudence with the soil being our real long-term energy resource.

S8108 In conclusion, the Knox County Board expresses its support, generally, for the proposed "Surface Mining Control and Reclamation Act of 1977" and wishes to offer the following considerations for possible amendments to H.R. 2 and S. 7:

S8108 1. That all prime agricultural land be placed off limits to strip mining until the reclamation of prime agricultural lands can fully restore them to pre-mining productive capability.

S8108 2. That Section 506 (H.R. 2) and 406 (S 7) "Permits" provide that the applicant prove that no prime agricultural land is included within an area to be strip mined.

S8108 3. That Section 513 (H.R. 2) and 413 (S 7) "Public Notice and Public Hearings" be amended to provide local governments between forty-five (45) and sixty (60) days to respond to the official notification of the regulatory agency of an application for surface mining. Many County Boards only meet once a month and it is possible that the thirty days, as proposed in the present bill, could fall between meetings.

S8108 4. That Section 522 (H.R. 2) and 422 (S 7) be amended to automatically designate all prime agricultural land as unsuitable for surface mining. Prime agricultural land shall be defined or determined by the State Department of Agriculture and the United States Department of Agriculture, Soil Conservation Service. "Valid existing right" should be defined and limited. Ownership of the land should not be sufficient to establish a "vested" right to surface mine.

S8108 5. That definition 17, "person", in Section 701 (H.R. 2) and Section 501 (S 7) be expanded to include "appropriate local units of government."

S8108 In closing, the County Board calls attention to an apt inscription on the former Agronomy building on the campus of the University of Illinois, Urbana, Illinois: "The wealth of Illinois is in its soil - its strength lies in its intelligent development."

S8108 Mr. LEAHY. I wish to commend the statements of Senators CULVER and PERCY and associate myself with them.

S8108 Prime agricultural land is one of our Nation's greatest natural resources. The permanent loss of this highly productive land severely undermines our future food production potential and places greater pressures on our remaining agricultural resources. The rapid increases in the prices of land, equipment, and fertilizer in recent years give us some indication of what that increased

pressure means in real terms.

S8108 The purpose of the amendment we offer new today is to assure that reclamation plans for surface mining on prime farmlands are designed to restore those lands to their full agricultural capability prior to mining.

S8108 Briefly, the amendment requires that an applicant for a new permit to carry out surface mining on prime farmland must demonstrate, to the satisfaction of the regulatory authority in the State, that he can restore the land to its full premining potential in agricultural production.

S8108 This amendment should not adversely affect our coal production potential. Studies have indicated that the reclamation of prime farmland is technically feasible, and clearly, from the attached table, there are sufficient coal reserves in nonprime lands to avoid any depressing effect on coal production as reclamation techniques are perfected and incorporated into overall mining procedures.

S8108 The need to protect prime farmland is generally recognized. The President's energy chief, James Schlesinger, Secretary of Agriculture Bob Bergland, Secretary of the Interior Cecil Andrus, the National Farmer's Union, the National Corn Growers Association, and environmental organizations have all indicated their support for a provision in this bill that provides greater protection for prime farmlands. I hope the Senate will be able to support us in this effort.

S8108 Mr. HANSEN. Mr. President, on page 3 of the amendment beginning on line 10 is found this language:

S8108 The term "prime farmland" shall have the same meaning as that previously described or hereafter modified, by the Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics, and as published in the Federal Register.

S8108 I ask my friend from Iowa where in the bill or in this is the term "prime farmland" defined?

S8108 Mr. CULVER. I appreciate the Senator's inquiry. I think it is a most appropriate one.

S8108 It certainly is a legitimate inquiry to determine how "prime farmland" is to be defined and

whether or not this constitutes a workable definition for the purposes of implementing this amendment.

{S8109} The amendment adopts the definition that has been in use for some time by the U.S. Department of Agriculture Soil Conservation Service. This definition is very detailed and technical, and a copy of it was printed in the RECORD on Wednesday of this week. I also have a copy here with me.

S8109 Mr. HANSEN. Does the Senator wish to read the definition, or is it a very lengthy one?

S8109 Mr. CULVER. It is quite lengthy. It is two pages of extremely technical data and information.

S8109 But I ask unanimous consent to have it printed in the RECORD at this point.

S8109 Mr. HANSEN. I have no objection to it being printed in the RECORD.

S8109 There being no objection, the definition was ordered to be printed in the RECORD, as follows:

S8109 DEFINITION

S8109 Prime farmland meets the following criteria:

S8109 1. The soils have an adequate moisture supply. Included are:

S8109 a. Soils having aquic or udic moisture regimes. These soils commonly are in humid or subhumid climates that have well distributed rainfall or have enough rain in summer that the amount of stored moisture plus rainfall is approximately equal to or exceeds the amount of potential evapotranspiration. Water moves through the soil at some time in most years.

S8109 b. Soils having xeric or ustic moisture regimes and in which the available water capacity is great enough to provide adequate moisture for the commonly grown crops in 10 or more years out of 10.

S8109 c. Soils having aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality. Also included are soils having xeric or ustic moisture regimes in but the area has a developed irrigation water supply that is dependable and of adequate quality. Counties in which there are soils having these moisture regimes need to be

surveyed to determine the areas in which a dependable water supply of adequate quality has been developed.

S8109 d. Soils having sufficient available water capacity within a depth of 40 inches (1 meter), or in the root zone if the root zone is less than 40 inches deep, to produce the commonly grown crops in 7 or more years out of 10.

S8109 A dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown.

S8109 2. The soils have a soil temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches (50 cm), have a mean annual temperature higher than 32 degrees F (0 degrees C). In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 degrees F (8 degrees C); in soils that have no O horizon the mean summer temperature is higher than 59 degrees F (15 degrees C).

S8109 3. The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep. This range of pH is favorable for growing a wide variety of crops without adding large amounts of Amendments.

S8109 4. The soils have no water table or a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, oilseed crops common to the area to be grown.

S8109 5. The soils can be managed so that, in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.

S8109 6. The soils are not flooded frequently during the growing season (less often than once in 2 years).

S8109 7. The soils have a product of K (erodibility factor) x percent slope of less than 2.0 and a product of I (soil erodibility) x C (climatic factor) not exceeding 60. That is, prime farmland does not include soils having a serious erosion hazard.

S8109 8. The soils have a permeability rate of at least 0.06 inches (0.15 cm) per hour in the upper 20 inches (50 cm) and the mean annual soil temperature at a depth of 20 inches (50 cm) is less than 57 degrees F (14 degrees C): permeability rate is not a limiting factor if the mean annual soil temperature is 57 degrees F (14 degrees C) or higher.

S8109 9. Less than 10 percent of the surface layer in these soils consists of rock fragments coarser than 3 inches (7.6 cm). These soils present no particular difficulty in cultivating with large equipment.

S8109 Mr. CULVER. The Department of Agriculture has also verified by telephone that this is the definition they are using, and I would like to point out to the Senator from Wyoming that the amendment also requires that the definition be published in the Federal Register and be subject to regular rulemaking procedures under the Administrative Practices Act.

S8109 Mr. HANSEN. I think I do have a copy. In order to illustrate some of the concern I have in order that Senators may know, and I am certain I will not be able to pronounce some of these words because they are indeed, I suspect, technical, words not familiar or in common usage by most of us, I will try to read and where I cannot pronounce I will attempt to spell these words in order to illustrate what it seems to me this amendment may do.

S8109 As used in this subsection, the term "prime farmland" means farmland which meets the following criteria:

S8109 (a) The soils have an adequate moisture supply.

S8109 Mr. CULVER. Excuse me. I think that is "aquic."

S8109 Mr. HANSEN. What?

S8109 Mr. CULVER. I think it is "aquic."

S8109 Mr. HANSEN. It says a-d-e-q-u-a-t-e in the copy I have. Is that a misspelling?

S8109 Mr. CULVER. I see the Senator is starting up above. I am sorry. I thought he was reading from subsection 1(a).

S8109 Mr. HANSEN. No.

S8109 Then I repeat:

S8109 The soils have an adequate moisture supply including (1) soils having aquic or udic

moisture regimes.

S8109 And then in parentheses:

S8109 (These soils commonly are in humid or subhumid climates that have well distributed rainfall or have enough rain in summer that the amount of stored moisture plus rainfall is approximately equal to or exceeds the amount of potential evapotranspiration. Water moves through the soil at some time in most years.

S8109 (2) soils having xeric -

S8109 How do we pronounce that word?

S8109 Mr. CULVER. Where was that again?

S8109 Mr. HANSEN. Under small subparagraph (ii) soils having z-e-r-i-c would be xeric? Is the Senator familiar with that word?

S8109 Mr. CULVER. I am not familiar with the Senator's reference he is pointing out. I see paragraph (2). Is the Senator in paragraph (2) or is it a subsection of paragraph (1)?

S8109 Mr. HANSEN. I am under subsection (a), subsection (ii), or maybe if I could, I am looking at the amendment that I think was probably offered yesterday - I will read it, Mr. President.

S8109 Soils having x-e-r-i-c -

S8109 However that is pronounced, I would suspect xeric - or ustic moisture regimes and in which the available water capacity is great enough to provide adequate moisture for the commonly grown crops in 7 or more years out of 10.

S8109 (iii) Soils having aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality. Also included are soils having xeric or ustic moisture regimes. . . .

S8109 Mr. CULVER. Will the Senator yield?

S8109 Mr. HANSEN. I am happy to yield.

S8109 Mr. CULVER. I think I am aware of the thrust of the Senator's concern about the relative technical nature of how we define "prime agricultural land." It is, in fact, a technical subject. But I think the important thing to keep in mind is that not every layman is required to possess a technical

competence on making such definition in this area of statute or proposed law any more than he is in any other.

S8109 We have the U.S. Soil Conservation Service Offices in every county - I know in my own State of Iowa, they already cultural and and for the ones that they do not possess they certainly, within 24 hours, can go out to the site and take a sample and make the designation.

S8109 Mr. HANSEN. I ask the Senator, has he ever done that?

S8109 Mr. CULVER. No, I have not personally done it.

S8109 Mr. HANSEN. I have done that. I happen ot be a very poor graduate of the agricultural college of the University of Wyoming, and I do not think it is quite that simple or quite that easily done. In the first place, if I understand, a number of smaples may be required and to gatehr the samples on the one hand and then to make all the determinations and classifications, including the type of soil and water permeability, and those other issues that I suspect would be relevant to such a determination, I would think might very well take more than 24 hours. But I realize that it was some time ago that I graduated and it could very well be that that process has been expedited. But if soil samples have to be sent in which I would think is the case to -

S8109 Mr. CULVER. What is the Senator getting at here? Is this unworkable? What is the Senator's concern?

S8109 Mr. HANSEN. I think I can illustrate my concern by saying that we passed an OSHA law here a few years ago. I was not one who voted against that bill. I think some three persons did vote against it, Mr. President, and it was not until the Federal Government started trying to enforce that law that we realized what a nightmare we had forced on people.

{S8110} The Senator from Nebraska (Mr. CURTIS) and I offered, unsuccessfully, amendments to change some of the parts of that law. Do you know what we ran into?

S8110 Senator CURTIS tried to get the applicable printed law so we could bring it to the floor to illustrate what the problem was; and we found that there was no printed law that contained all of the OSHA regulations.

S8110 So he went to the Library of Congress and asked the Library of Congress to furnish him all of the printed law and all of the pertinent and relevant regulations which would apply on OSHA.

S8110 They said, "Senator CURTIS, we cannot comply with your request. We can give you much of it, but not all of it, and the reason why we cannot give you all of it is that by reference, codes and regulations have been made part of this law; there simply is a reference to a fire code, a building code, an electrical code, or a sanitary code; and some of these materials are in such short supply that we cannot let them be taken from the Library of Congress."

S8110 So even though a Member of the U.S. Senate asked for permission to bring all the material here, that request could not be granted by the Library of Congress.

S8110 So the average person was not able to be warned ahead of time; and I noticed in yesterday's paper that the OSHA Administrator is saying they are going to stop all that nitpicking, they are going to stop insisting that a toilet stall in a washroom have a split seat, or that there be a coat hanger on the door, that there be a couch - Mr. President, you could not believe, unless you have examined the list, and I expect most Senators have examined it - all of the things that are in the OSHA regulations.

S8110 I make the point because it would seem to me that if such a bill as this is going to be defended, I wanted to be able to tell my Wyoming ranchers what we are talking about.

S8110 I nte, according to some information I have before me, that there are 200,000 acres of prime farmland in the State of Wyoming, and that the percentage of farmland to the overall picture is about 2 percent. I want to be able at least to tell my constituents what we have done here. And it would seem to me rather difficult to try to explain what I started to read; if it had not been for my good friend from Iowa I would not even have been able to pronounce a lot of the words, because they are certainly words with which I am not familiar. I just do not want to get into an operation or be a part of an action that will require me to say to my farmers and ranchers, "We have put some special restrictions on prime farmland, but I cannot tell you what they are nor what parts of the State they may be found in."

S8110 Mr. CULVER. Mr. President, will the Senator yield?

S8110 Mr. HANSEN. "Because I do not understand all of this complicated scientific jargon that is used in trying to explain, as the Department of Agriculture has, what is prime farmland."

S8110 Mr. CULBER. Will the Senator yield?

S8110 Mr. HANSEN. Happy to.

S8110 Mr. CULVER. Mr. President, we live in a complicated world, and -

S8110 Mr. HANSEN. I do not want further to complicate it.

S8110 Mr. CULVER. Well, I am not anxious to do that; but I think unfortunately the definition of what constitutes prime farmland is not really, like beauty, in the eye of the beholder, based on a subjective determination. Unfortunately, that just is not the case, and it never will be the case unless we want to live in a dream world rather than the real world.

S8110 We cannot let someone go out on the north 40 and say, "This is prime farmland and it costs \$3 ,000 an acre, because I think it is prime farmland." In the absence of that kind of anarchy, we have to address responsibly the very real crisis in American agriculture today - soil erosion. We are facing the disappearance of our most important national asset - with the exception of our people - our prime agricultural land. I come from a State which has one-tenth of it, and it is the only reason that we are economically strong in America today, because without that export market, we could not afford the imports of energy to keep us from going over the brink economically.

S8110 There are many of us, and it is not a parochial view, who believe that we must stop this reckless, irresponsible diversion of this, our richest asset, with the exception of our people.

S8110 If we, in this generation, do not evidence and demonstrate some responsible stewardship over this land on Spaceship Earth in a complicated time in world history, then we have no business standing in this Chamber.

S8110 Now, we have to decide what prime farmland is. Obviously we can open it up. We can say that any time anyone has thrown some grain on the ground, we will call it agricultural land, and we will put a moratorium or a ban on mining it.

S8110 I would remind the Senator from Wyoming of the position of Mr. Schlesinger, Secretary Bergland, and Secretary Andrus, all three of them, coming at this problem from three different perspectives and different senses of national priorities.

S8110 They were in unanimous accord when they said that it is desperately important to our

national economic viability and strength that we make adequate provision for and protection of, this incalculably valuable national resource.

S8110 That is what they said. Now, what this amendment does is not a moratorium. On the other hand, we are not buying the irresponsible notion that we can continue to dissipate this precious resource and not suffer economically as a nation. If we have any conscience in terms of the generational consequences of an arrogant, cynical disregard of environmental quality of life on this Earth while we are here, we must manage it as stewards and as trustees.

S8110 That is what this amendment talks about.

S8110 As far as whether or not Wyoming ranchers or Iowa farmers can figure it out, I cannot speak for your ranchers, but my farmers want this. They want it because they are the true conservationists in this country. They go out on that soil and that land every day, and they want that farm to go to their son or their daughter.

S8110 I know Iowans would say, "Don't let this strip mining thing get out of hand, so that we see the diversion of this precious resource to other than prime agricultural uses for ourselves and for posterity."

S8110 That is what they would say. They are not worried about whether they are smart enough - we have one of the highest literacy rates in this country in Iowa - to figure out what prime agricultural land is. Iowans can figure it out, and the way they figure it out is with the competent technical help of the soil conservation department, professionally qualified, which has been operating for years.

S8110 This amendment requires that the definition of prime agricultural land, by the Soil Conservation Service of the Department of Agriculture - which they have worked with for years, and which is the current definition - has to be published in the Federal Register and must comply with the rulemaking procedures under the Administrative Practices Act.

S8110 If anyone has problems with it, he can come in regular order, with due process, with public notice, and address the particular aspects of this technical definition until we reach a responsible, informed, publicly determined notion of the appropriate definition. He can propose what modifications, modern science, or other considerations should be applied to a more informed and proper judgment.

S8110 Second, subsection 3 of this amendment requires that the Secretary of the Interior publish rules and regulations governing the entire variance procedures.

S8110 Mr. MELCHER. Will the Senator yield?

S8110 Mr HANSEN. I will be happy to yield.

S8110 Mr. MELCHER. What the amendment does is to add, as my former colleague in the House, the esteemed MOE UDALL, said, another layer of bureaucracy in getting a permit.

S8110 Also, what the amendment does is to do what we have always said we are going to do in a strip mine bill. We have said that before any mining permit was granted, the applicant would have to affirmatively demonstrate in his application, to the satisfaction of the regulatory authority, that after the land was mined, the reclamation would succeed to the extent of at least returning the land to as good a condition and productivity as it was prior to mining.

S8110 Mr. BURDICK. Will the Senator yield?

S8110 Mr. MELCHER. I will yield in a moment.

S8110 If we mean what we say, that we are going to protect the agricultural productivity of the land, then what the amendment does is to carry out what we have always said we wanted to do in the bill. I will grant it does lay on that layer of bureaucracy. The regulatory authority, if it is in my State of Montana, or in any other State, provides itself with the proper statutes to run the reclamation program which will be required under this act.

{S8111} Our regulatory authority, in reviewing the applicant for a mining permit, would have to come up with the answer, "Yes, reclamation will succeed, and the land will be returned to at least the productivity it was before mining."

S8111 On that basis, there is nothing wrong with the amendment. It carries out what we have always said we wanted to do.

S8111 I am delighted to yield to my friend from North Dakota, who has a high percentage of prime land in the set of figures developed by the executive agency.

S8111 Mr. BURDICK. Mr. President, the able Senator from Montana mentioned a former colleague of ours, Mr. UDALL. I understand that the House acted upon an amendment that is almost identical to the one we are acting upon now. Is that correct?

S8111 Mr. MELCHER. That is correct.

S8111 Mr. BURDICK. I thought I would read what Mr. UDALL said in the House on a similar amendment so I will know where we are going.

S8111 Mr. UDALL. I thank the gentleman for yielding.

S8111 Mr. Chairman, let me say I like what we have worked out, what the gentleman from Michigan and I have worked out. The gentleman from Massachusetts (Mr. TSONGAS) was the original author of good solid agricultural farmland in the amendment. I like it in the bill. I am now perfectly content with the way it is now. I have not had such full court press as we have had in the last few days from the administration on this prime-land business. The reason I accept it is I have read it carefully, and I do not think it makes any difference.

S8111 Mr. BAUMAN. Mr. Chairman, if I can reclaim my time, if it makes no difference, why would not the gentleman oppose it

S8111 Mr. UDALL. If the gentleman will yield further, apparently the authors of the amendment and some people in the administration who want to say they have a strong bill are using this as some kind of symbol as to whether or not we are going to have strong protection of prime agricultural land. It says in the amendment one can get a variance. What does one have to do to get a variance? One has to do what we have already provided in the bill. I do not think there is any great deal of difference whether it is in or not. The reason I do not like it is it adds another level of bureaucracy.

S8111 My question is: Does this add anything we do not already have in the bill?

S8111 Mr. MELCHER. I think it clear that it offers another safeguard. It is requiring the Secretary of Agriculture to be consulted by the regulatory authority to see whether or not the land involved is prime farmland and, if so, if the reclamation plans are adequate to carry out successful reclamation to make sure it is retained to at least as good a condition as it was prior to mining. By being in as good a condition, I mean the same level of productivity or better.

S8111 Mr. BURDICK. But those requirements are in the bill now.

S8111 Mr. MELCHER. I think the requirements have been inherent in the bill all through the

discussion and all through the years that we have had the strip mine bill before us. But I do not think it hurts a bill to reiterate them again, to make sure that the Secretary of Agriculture can act as an umpire, and have a further safeguard to make sure they are carried out.

S8111 Mr. CULVER. Will the Senator yield?

S8111 Mr. MELCHER. I yield.

S8111 Mr. CULVER. I thank the floor manager of the bill for his support of this amendment.

S8111 I would like to address the question raised by the Senator from North Dakota as to the need for this particular amendment or lack of need, or what its implications might be.

S8111 First of all, let me say that this amendment is, in fact, different from that which was the focus of the general House debate, and, secondly, from what was ultimately adopted in the bill by the other body on this same point.

S8111 Why is there a need for this particular amendment in this bill?

S8111 Under the current bill the language states that an applicant for a new permit to strip mine must demonstrate that he can restore the land affected to a condition at least fully capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses.

S8111 It is true, as the floor manager of the bill suggests, that implicit in this is that a reasonable person may interpret it, and so construe it, that a restoration to prime agricultural land use would be a minimal essentiality under that language. But that caveat of a higher or better use is the hooker. That is the loophole you can drive a truck through. I shall tell why.

S8111 The effect of this amendment is to set a standard for reclamation of prime farm lands. Without this amendment, someone in the short term can determine that a better use is a recreational use; a better use is a residential use; a higher use is an industrial use. We are giving all that discretionary authority to some bureaucrat.

S8111 I do not want to do that, if we are worried about bureaucrats. I want to tell them what to do. We tell them loud and clear here, and we address a very, very vulnerable aspect of this legislation.

S8111 We are not talking about mood music in this legislative history. The debate is replete with

all these assurances that we are going to do generally beneficial things. That is not good enough. We have to nail it down. We see an opening here which can really be nothing but a pipeline for soil erosion and the destruction of the fundamental base of prime agricultural land in America. That is what we want to guard against.

S8111 Mr. BURDICK. What did the Senator say is the difference between this and the Udall bill?

S8111 Mr. CULVER. First of all, I do not know what the Udall bill does.

S8111 Mr. BURDICK. As I read the text, they are very similar.

S8111 Mr. CULVER. What the House actually addressed -

S8111 Mr. BURDICK. Here it is. Page 3774 of the RECORD of April 28, 1977.

S8111 Mr. CULVER. The House bill, with respect to land use, provided, really, three things. One, it assumed restoration of agricultural farmland. Secondly, it provided that you could borrow the black earth from your neighbor to bring about that reclamation that was called for. Third, there was a low minimum bond provision. There is a much higher bond provision in this bill than the \$10,000 bond figure that is in the House bill. So this is really a tougher amendment. I think it will better accomplish the objective that the National Farmers Union and others feel so strongly about.

S8111 Mr. BURDICK. I am not opposing the Senator, necessarily. I just want to know what this adds.

S8111 Mr. CULVER. I guess for the last half hour, I have been laboring under some misapprehensions.

S8111 Mr. BURDICK. I just want to know what this adds to the present bill. That is my only question.

S8111 Mr. CULVER. I hope I have advised the Senator.

S8111 Mr. BURDICK. I am not sure the Senator has.

S8111 Mr. CULVER. This Senator has done his best, I assure the Senator from North Dakota, of that.

S8111 Mr. BURDICK. I thank the Senator.

S8111 Mr. HANSEN. Mr. President, I do not think that there is really much more to be said. I

make two points: No one would disagree with my friend from Iowa that if the terrible things that he describes so eloquently were to come about because of the absence of this amendment, we would certainly all have to be for it. I would be for it. I am certain that every other person within the sound of his voice would be for it.

S8111 I must say, though, that, as was pointed out by the Senator from North Dakota, I have worked on this bill. We have been pretty diligent in holding hearings and attending markups, and I think I know some of the provisions that the bill contains. I am of the opinion that, outside of adding another layer of bureaucracy charged with implementing another layer of definitions and regulations, there is not anything more that will be achieved by the adoption of this amendment, insofar as reclamation goes, insofar as concern for agricultural productivity goes, than is already in the bill.

S8111 Mr. PERCY. Mr. President, will the Senator yield at an appropriate point for a question?

S8111 Mr. HANSEN. I am happy to yield.

S8111 Mr. PERCY. Senator CULVER began his colloquy on the question of whether or not we can define what prime farmland is. I just wonder whether the Senator from Wyoming can now go back to his constituents and feel properly equipped to define and explain what primary farmland is.

S8111 Mr. HANSEN. The Senator uses the word "primary" as I understood him. He means "prime," does he not?

S8111 Mr. PERCY. That is correct, prime farmland.

S8111 Mr. HANSEN. A very simple answer to the Senator's question is, no, I could not.

S8111 Mr. PERCY. May this Senator put it in very simple terms, then, so my distinguished colleague could go back to his State and explain it? It is soils having aquic or udic moisture regimes; or soils having xeric or ustic moisture regimes.

{S8112} If the farmer does not understand that, we could say soils having aridic or torric moisture regimes. If we want to be more specific, we could say soils having a soil temperature regime that is frigid, mesic, thermic, or hyperthermic - that is, pergelic or cryic regimes are excluded; or, soils with zero horizon which is higher than 47 degrees Fahrenheit or 8 degrees centigrade.

S8112 If the farmer wants to have further explanation, I would go on to tell him then, as an expert in the field, that soils having a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches would qualify, or that have the conductivity of saturation extract that is less than 4 mmhos/cm and the exchangeable sodium percentage - that is, ESP - is less than 15.

S8112 I anticipate that the Senator may ask me to explain one or two of those terms. Very well, I would say if it is selling at the prices most of our farmland is in Illinois is selling, it is prime land! If they are planting corn row to row on it, the Senator can be pretty sure it is prime farmland!

S8112 To return to another point raised by Senator HANSEN, the Senator said we are adding a layer of bureaucracy. We really are not. All we are saying is that the State agency is to be used.

S8112 All our 132,000 farmowners and farm families know whether they are on prime land or not. All they ask is, before a surface permit is granted, the operators must show that they are going to be able to put it back in the same condition that it was in before.

S8112 I have had county commissioners, I have had tax assessors come in and talk to me about this. If the Senator from Wyoming is in doubt about what to do, I can say that what we must do is reassure the 132,000 farm families in Illinois that we really care. In other words. We give a damn about the land that they live on and work on, the land that is producing \$2 2 billion of export sales to countries abroad, land that is feeding the world, land that makes us only one of six nations on Earth, out of 150 nations, that are able to export food.

S8112 That is what prime farmland is. We are just saying stop, look, and listen before we pave over everything, before we urbanize everything, before we put shopping centers everywhere. That is just all part of the law of supply and demand, I suppose. But strip mining is something that really digs at the emotions. We can all fly over and see the ravages that we have cast upon our land, whether in West Virginia or Virginia or Kentucky or Illinois. We are simply saying, as we now begin to convert back in many instances from oil to coal, "Let us just be certain, in this perfectly legitimate quest for coal, that we do not rip up all the land that is feeding us." That is all we are saying.

S8112 Mr. President, our amendment provides a mechanism to accomplish this. And the coal

companies in Illinois tell me that, those who have called on me, that they can live with this, it makes sense, and it is better than a moratorium - they do not want a moratorium. This is not a moratorium, as Senator CULVER has pointed out.

S8112 I really hope that we can see fit to give this reassurance to farmers that we care about the land they live on. That is all we are asking. If the Senator from Wyoming would like any further explanation as to what prime farmland is. I shall be glad to get into more technical detail.

S8112 Mr. HANSEN. Mr. President, I appreciate the always generous impulses of my good friend from Illinois.

S8112 Mr. President, at one time we had a rather well-known author named Owen Wister who spent some time in Wyoming in the southern part of the State, in the Medicine Bow country and later on he came to Jackson Hole, and the Park Service, if I am not mistaken, attaches some importance to the Wister cabin which was occupied by this distinguished author for some time.

S8112 In one of his stories entitled "The Virginian" he relates how a little trouble erupts and one person calls another a name that is not oftentimes used, where-upon the person to whom the name has been applied said: "When you call me that, smile."

S8112 I have to say that I do not propose to go out into Wyoming and respond to a question of what is prime farmland using some of this language. I am afraid I might get socked in the nose. They might misunderstand what I am trying to say when I use the words the Senator pronounces so easily and which I am afraid I would stumble over. They might even think I am calling them a bad name.

S8112 So I suspect I will have to say to my good friend from Illinois that probably the average farmer can determine what is prime farmland on the basis of what a willing buyer and a willing seller will agree commands a certain price.

S8112 Having said that, Mr. President, let me observe that I think there is adequate language in the bill to accomplish these worthwhile objectives so articulately and forcefully enunciated by my friend from Illinois and my friend from Iowa, that there is no further need to add duplication to what we have in the bill already.

S8112 But certainly, I do not disagree at all as to the importance of farmland.

S8112 I did not think there was anything in this bill that dealt with or addressed the subject of extension of airports, of paved areas of urban sprawl, supermarkets, and that sort of thing, and I gather that the Senator from Illinois did not mean to suggest that this amendment, if it were adopted, would address those issues.

S8112 On the other hand, I say simply what has been said by my good friend from North Dakota. I think we have already gotten it in here. I suspect that our colleague in the other side of the Capitol (Mr. UDALL) thought it was pretty well in here, too.

S8112 With that, I have nothing further to say. If we want to vote on it, I am ready.

S8112 Mr. HUMPHREY addressed the Chair.

S8112 The PRESIDING OFFICER. The Senator from Minnesota.

S8112 Mr. HUMPHREY. Mr. President, I want to vote on it, too. I say to my good friend from Wyoming that it is really too bad we feel the necessity to vote immediately because I have a powerful speech already in hand, but I think I will save it for another day.

S8112 Not only that, my good friend and colleague from Iowa, has stated the case not only brilliantly, but he has stated it emphatically. My friend from Illinois has given us enough technical data here to convince anyone.

S8112 I say in all candor, if we want to find out what prime land is, there is the soil conservation service.

S8112 Most of us from rural areas know the land in our States has already been surveyed. There are soil maps that tells us the condition of that soil, its chemistry, its moisture, its texture, the whole thing.

S8112 So prime farm land, agricultural land, is no big secret any more than the prime rate on interest is a secret. All we need to do is go to a banker and he can tell us, and if he cannot, we go to the Federal Reserve Board.

S8112 It has been said here that we can go to the proper State regulatory agency or to the Soil Conservation Service and we will get the information.

S8112 I support this amendment. I think we are indebted to the distinguished Senator from Iowa for his leadership.

S8112 As has been said, the bill is supposed to have adequate protections. Let me say that this gives a little extra protection, and it gives protection to the most valuable resource we have in this country, even more than the coal that may be under it; namely, the topsoil, the productive soil on America's agricultural lands.

S8112 I think it is an amendment that is needed.

S8112 THE IMPORTANCE OF PRIME FARMLANDS

S8112 Mr. President, any loss of prime farmland, no matter how small, is a loss that cuts at the very heart of long-term American productivity and strength.

S8112 Those concerned with the removal of prime agricultural lands from production see a weakening of the agricultural economy in a region or the entire country, creation of upward pressures on food and fiber prices, and dislocation of individual farmers and ranchers.

S8112 At a time when one million acres of prime farmland each year are lost to all land use shifts and developments, it is imperative that we adopt a definite policy toward the preservation of this invaluable natural resource.

S8112 I am convinced that there is a need for leadership with a commitment to the concept of agricultural preservation. Such a commitment demands that we discourage the surface mining of our best farmlands.

S8112 For this reason, I have joined with several other Senators in sponsoring an amendment to S. 7, the Surface Mining Control and Reclamation Act of 1977, which will strengthen the protection afforded prime farmlands potentially subject to surface mining operations. It provides for a special permit procedure whenever a mining plan includes more than 10 percent prime farmland. In this situation, the operator would have to demonstrate, to the satisfaction of the regulatory authority in the State, that he can restore the land to its full premining potential in agricultural production.

S8112 In addition, it requires that the Secretary of Agriculture begin a study of special reclamation practices and conduct soil reconstruction programs for prime farmland mining

operations to determine whether prime farmland should be made available for further surface mining.

{S8113} Basically, the purpose of this amendment is to divert new strip mining starts to nonprime areas until it is determined whether strip mining should proceed on prime farmland.

S8113 The continued loss of lands well-suited to the production of food, forage, fiber, and timber is a matter which is of growing concern to the Nation. I believe that this amendment reflects this concern and demonstrates our determination to protect our best farmlands. I urge the Senate to adopt this amendment.

S8113 Mr. President, I am ready to vote and I think we are going to find the good sense of the Senate in agreeing to it.

S8113 Several Senators addressed the Chair.

S8113 The PRESIDING OFFICER. The Senator from Montana.

S8113 Mr. METCALF. Mr. President, I have been persuaded by the Senator from Iowa and the Senator from Minnesota and others, but I have been especially persuaded by the Senator from North Dakota that this is just another "pancake," this is just the addition of another bureaucratic layer, and we brought the Secretary of Agriculture into enforcement of some of the provisions on the Federal lands.

S8113 I am prepared to vote for the amendment, if we can accept the amendment. I am prepared, if we have a rollcall vote, to vote against the amendment.

S8113 I ask my colleague on the other side: Why do we not accept the amendment? I think it is covered by the bill. I think it is completely covered by other provisions in the legislation. Why do we not accept this?

S8113 Mr. HANSEN. I am willing to.

S8113 Mr. METCALF. And get along with passage of this legislation.

S8113 ADDITIONAL STATEMENT SUBMITTED ON AMENDMENT 291 AS MODIFIED

S8113 Mr. STEVENSON. Mr. President, I am pleased to cosponsor the amendment and to urge its adoption. It will strengthen the bill's protection of prime farmlands and signal our determination to preserve one of our greatest resources, the land that feeds our own people and much of the world's

population.

S8113 The amendment does not bar strip mining; it is not a moratorium. It simply says that no one may strip prime farmland unless and until he can guarantee its return to prime condition. The mining companies have assured us that full restoration is possible and that they will achieve it. Indeed, some of them are working toward that end now. They are raising crops on treated land and are helping to finance university research on land rehabilitation. I do not yet share their confidence, but I would not deny them the chance to show that full restoration is possible. The amendment gives them that opportunity.

S8113 My State has a profound interest in the amendment. We are told that 160 billion tons of coal lie under Illinois. Eighty-eight percent of this coal can be extracted only by deep mining. Only 12 percent, or about 19.5 billion tons, can be stripped, but about half of our current production comes from strip mines. The deep-mine coal is concentrated in the south-central region of the State. The strippable coal is found in 51 counties scattered throughout the State.

S8113 Illinois' coal reserves are immense, but our greatest resource is our prime farmland. Over 80 percent of our total land surface is devoted to farming, and three-fourths of this land is in row crop production. In a recent year Illinois ranked second among the States in cash receipts for crops, and we led the Nation in agricultural exports. Our corn and soybeans are helping to feed the world. They have been a major offset to the payments imbalances caused by the rising costs of Middle Eastern oil.

S8113 A Federal interagency task force recently reported that 14 States have strippable coal lying under prime farmland. Illinois led the list, with 43 affected counties. Sixty-three percent of our 9.4 million acres of prime farmland could be affected by strip mining. This amendment will not save it all. It will not affect any permit issued before April 1, 1977. We are already losing five or six thousand acres a year to strip mining, and the Illinois Department of Mines and Minerals reports that a 3-year permit covering 17,235 acres has been issued to Illinois coal operators. The department estimates that 75 percent of this acreage may be classified as prime.

S8113 Our State has one of the best regulatory statutes, but it is not adequate with respect to prime farmlands. It gives the director of the department of mines and minerals the discretion to

decide whether row crop agriculture is the optimum future use of land to be mined, but it gives him no guidelines for making the decision or for deciding what other uses might be deemed superior. Moreover, local governments have little power to prevent the spread of strip mining over prime lands in their own communities. Their plight was graphically described by Mr. Robert L. Masterson, zoning administrator of Knox County, Ill., in recent testimony before the Senate Committee on Energy and Natural Resources.

S8113 Mr. Masterson reviewed the county's efforts to regulate strip mining and require proper reclamation through use of the county's zoning powers. In 1954 the county lost by decision of the Illinois Supreme Court. In 1974, the State supreme court again ruled against the county, holding that the State's Surface Mined Land Conservation and Reclamation Act preempted county zoning ordinances. The county is again in court seeking a ruling on whether it has the right to attach any conditions at all, such as a requirement that impact statements be filed on the effects of blasting and mining on the hydrology of neighboring properties. In the meanwhile, the mine operator has obtained an injunction against enforcement of the county's regulations and is continuing to strip mine.

S8113 Mayor Terry Dolan of Catlin in Vermilion County, Ill., testified before the House Subcommittee on Energy and Environment. He pleaded for stringent protection of prime agricultural lands. There is no strip mining activity at the moment in Catlin Township, but a large coal company has announced plans to strip mine 6,000 acres in the township. Much of this acreage is among the world's most productive cropland. The people of Catlin have good reason to be apprehensive. The countryside around them bears the scars of old strip mines. Moreover, no one has been able to show them an example of complete restoration of any similar highly productive land.

S8113 Mr. President no one doubts the necessity for increasing the production of coal. Adoption of this amendment will not block that goal. It may limit production in some areas, but it should not affect total production. Abundant reserves of coal are available in areas that do not include prime farmlands. We are not forced to choose between coal and crop production. But if we fail to act now, as the demand for coal intensifies, we will sacrifice much of our prime land and forgo essential food production far into the future.

S8113 The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

S8113 The amendment (No. 291) as modified, was agreed to.

S8113 UP AMENDMENT NO. 258

S8113 Mr. DOMENICI. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

S8113 The PRESIDING OFFICER. The amendment will be stated.

S8113 The assistant legislative clerk read as follows:

S8113 The Senator from New Mexico (Mr. DOMENICI) for himself and Mr. MELCHER and Mr. HANSEN proposes unprinted amendment No. 258:

S8113 On page 159, line 8, after "title" insert the following: "or, after the objectives of the fund set forth in Sections 302 and 306 of this Act have been achieved, for programs for the construction of public facilities in communities impacted by coal development".

S8113 The PRESIDING OFFICER. The Senator will suspend until the Senate is in order. May we have order? Will Senators conversing in the aisles kindly go to the cloakroom?

S8113 Mr. METCALF. Will the Senator yield?

S8113 Mr. DOMENICI. I am pleased to.

S8113 Mr. METCALF. Mr. President, all of us have been concerned with this expenditure of the funds for the reclamation of orphaned lands. Some of the funds go to the State where the coal mining takes place, half to the States where we have other orphaned lands.

S8113 When the Senator from New Mexico presented this amendment, I objected.

S8113 If felt that it would be an opportunity to give the State, or any other State, an opportunity to expend these Federal funds for any outside activity before they expended it for orphaned lands.

S8113 The amendment that is offered by the Senator from New Mexico takes care of that and makes it specific that we have to take care of all the orphaned lands, all the abandoned coal lands, all the other qualifying lands, before we can have additional expenditure of funds.

S8113 After consultation and work with the Senator, I am prepared to agree to his amendment.

{S8114} Mr. DOMENICI. I thank the Senator from Montana.

S8114 Mr. President, I ask unanimous consent that the junior Senator from Montana (Mr. MELCHER) and the senior Senator from Wyoming (Mr. HANSEN) be added as original cosponsors of this amendment.

S8114 The PRESIDING OFFICER. Without objection, it is so ordered.

S8114 Mr. DOMENICI. Mr. President, the senior Senator from Montana has just described this amendment and I want to ask him just one clarifying question.

S8114 The Senator is absolutely correct. There is no intention by this amendment to let States use their allocated funds in any way other than that they must first take care of abandoned, unreclaimed mines as defined in this bill. There is no change in that. They must first do that.

S8114 Then the Senator said that when they have finished that, this amendment will permit the alternate use. We do mean each State. We mean that the Senator's State will first do all its abandoned reclamation, my State will, and any others, with their allocated funds, after which, at some point in history, they can use it for the alternate purpose stated.

S8114 Mr. METCALF. I am delighted that the Senator from New Mexico has clarified that.

S8114 Each State has to exhaust its reclamation of abandoned mines before it can use these funds for other purposes.

S8114 Mr. HANSEN. Mr. President, if the senator will yield, I should like to engage in a hortatory colloquy with the distinguished floor manager of the bill, in order that I might make doubly clear what the intention of this legislation is.

S8114 I ask the Senator from Montana if he construes this provision to mean that in areas like Rock Springs, where homes, businesses, and public property have been damaged by subsidence, Wyoming's share of funds from the reclamation fund could be used to repair such property, or in the event of damage beyond repair, to compensate citizens suffering losses as a result of subsidence?

S8114 Mr. METCALF. Mr. President the Senator from Wyoming knows that I am familiar with

the Rock Springs area. I have flown over Rock Springs with him when we had a light snowfall and there was a tremendous and brilliant indication of some of the subsidence. I understand the concern of my colleague from Wyoming and share his interest in helping people like those in Rock Springs who have been harmed as a result of past mining.

S8114 In answer to his question, I would say that the section in the bill referred to by the Senator from Wyoming would, indeed, permit the use of money from the abandoned mine reclamation fund to repair and rehabilitate housing damaged by subsidence or other situations related to past mining. I believe the provision is sufficiently broad as to permit the use of the money to address most any kind of problem associated with past mining, including damage to property, both public and private.

S8114 Mr. HANSEN. Would the Senator agree with me that the provision would permit compensation to persons already damaged or harmed by subsidence which has been occurring over a period of several years? An example that comes to mind is the situation of a retired citizen in Rock Springs who had to abandon his home a few years ago because it was damaged beyond repair by subsidence. He received no compensation for his home. It was a total loss. Could such people who already have suffered losses as a result of subsidence or other problems associated with past mining be helped by this provision?

S8114 Mr. METCALF. I believe the provision would help such people and would apply in situations of damage because of subsidence from past mining. The whole purpose of title III and of setting up the fund is to address problems associated with past mining.

S8114 Mr. HANSEN. I thank my colleague. I appreciate his support of the amendment offered by the Senator from New Mexico.

S8114 I think that when we have done these things, with the funds that are reserved to the States, we have taken a major step forward in addressing the problems of orphaned lands and of subsidence with money that we agree should be and can be made available under this bill. I thank him for his clarification.

S8114 Mr. METCALF. I want to make sure - and I think the Senator from New Mexico underscored this - that we have to do these things before we can embark upon some of the other provisions that the Senator from New Mexico wants to have accomplished.

S8114 Mr. DOMENICI. As I understand the dialog that the Senator from Wyoming and the Senator from Montana have just engaged in, it covers items that are properly within the abandoned fund, even without my amendment.

S8114 Mr. METCALF. Yes. It would be taken care of before the Senator's amendment would be applied.

S8114 Mr. DOMENICI. I thank the chairman of the committee and the ranking member for their understanding of this problem and for their willingness to work to help States that see problems in the future as to where the resources are going to go when they have in fact cleared up the abandoned, unreclaimed mines they have in their States.

S8114 Mr. METZENBAUM. Mr. President, will the Senator yield?

S8114 Mr. DOMENICI. I yield to the Senator from Ohio.

S8114 Mr. METZENBAUM. I ask the Senator from New Mexico whether, in effect, if this amendment is adopted, that truly will not withdraw from the reclamation funds otherwise available to restore strip-mined areas a substantial amount of dollars which will be used in the future only to provide for community facilities in areas impacted by coal developers, but that it actually will result in a deprivation of a substantial number of billions of dollars by the entire concept of the orphaned lands needed to be reclaimed.

S8114 I question whether the amendment can be considered actually to be in the best interests of those of use who have a concern about the ravaged lands that exist throughout the breadth of this Nation at the present time by reason of the damages done over a period of years.

S8114 Although I do not question the concern of using dollars for communities that have been impacted by coal development, I truly question whether or not this is the proper source from which to gain these funds.

S8114 Mr. DOMENICI. I will answer the Senator from Ohio this way: I will not deny that it is possible that what the Senator has described could happen. However, from the standpoint of my State, if the estimates of the Geological Survey are correct, they would figure that in New Mexico there is about \$2 30 million needed to clean up the unreclaimed, abandoned mines.

S8114 All I am saying to the Senator from Ohio is that if that takes 20 years - and it might - before we get that done, perhaps Ohio might first finish all its reclaim work, and it appears to me to be fair that at some point in time when we have done all that work, all that money is coming in, when we have done all that work, all the money is coming out of our States for the mining of coal there, it should not come back to the Secretary of the Interior to make up this national pool which is already there.

S8114 Fifty percent of this money is not allocated; only half of what is collected is going back. The other half is used under this bill for all the various purposes that are defined, including funding the Senator's State and my State for its reclamation administration; and a great deal of flexibility is given the Secretary as to what he does with his own 50 percent. I am only speaking of the 50 percent to go sent back.

S8114 I submit to the Senator that most of the States that have problems now are going to be mining right along here for the next hundred years. They are going to get their share of the 50 percent as it comes back to their States, and they can use it for both purposes, but not until they have cleaned up and cleared up the reclamation, the abandoned, reclamation projects.

S8114 I think the Senator from Ohio is familiar with the very exciting article by the Governor of Colorado which appeared recently in the Washington Post, in which he talks about the enormous impacts that are going to occur as we develop our coal reserves in the Senator's State and in mine. I know that is going to be a problem, and I do not want to divert this money to the economic impact problems until we have cleared up in each State the abandoned reclamation, with their moneys, moneys from their taxes, taxes on their coal.

S8114 Mr. METZENBAUM. But is it not a fact that the assumption is that there will be some surplusage before and that in some of the Western States there will be millions of dollars; that there is no place to use those funds which otherwise would be used for reclamation purpose in Kentucky, West Virginia, Ohio, Pennsylvania, Tennessee, and other Eastern States?

S8114 (At this point Mr. DURKIN assumed the chair.)

S8114 Mr. METZENBAUM. By adopting this amendment what the Senator is saying is that those additional funds, surplusage funds, will remain in the State to be used for purposes other than

restoration of strip-mined land; is that not the fact?

{S8115} Mr. DOMENICI. Put in that way, I answer again that that is possible. I actually believe most of the Western States, from the reports I have been given, had huge reclamation that is needed because, as the Senator knows, this bill does not only prescribe that this abandoned fund is used for coal, abandoned coal reclamation, but rather for any kind of mining reclamation that remains undone today. So we have the gold of the past, the copper of the past, the silver, and we have got to do all that in our States.

S8115 To answer the Senator's question specifically, it is possible.

S8115 Mr. METZENBAUM. That is the only reason, as a matter of fact, for the proposing of this amendment.

S8115 Mr. COMENICI. I did not hear the Senator.

S8115 Mr. METZENBAUM. That is to assume there will be additional funds, surplus funds.

S8115 What the Senator is asking to do is to use the strip-mining funds to provide for community facilities not for restoration of the land, not to protect the land that has been stripped, but to go downtown and take care of a new office building or city building or a local sewer facility.

S8115 The reason I questioned the Senator from New Mexico is I do not think there is anything wrong about providing funds for those community facilities, but what I do find is that there will be a shortage of funds available to reclaim the lands that have been devastated and desecrated over a period of years by strip mining.

S8115 What this amendment will do will be to reduce the total number of dollars available for that purpose and make it available for the erection of officer buildings and other types of structures.

S8115 Mr. METCALF. Mr. President, will the Senator from New Mexico yield for a moment?

S8115 Mr. DOMENICI. I would be pleased to yield.

S8115 Mr. METCALF. The Senator from Ohio comes from an area where there are substantial damages which have been done as a result of strip mining operations.

S8115 But when the Senator suggests that this is a particularly Western bill and that we are going

to build office buildings, and so forth, I say to my friend that the State of Montana has had depredations from gold dredges and hydraulic mining, and all of those will take, I anticipate, a lot longer than it will in the State of Ohio to restore our orphaned lands and abandoned mines.

S8115 There are many areas in the United States that are going to get a 50 percent share of the money which have very few mines. What are they going to do with funds their consumers are participating in paying for? After they have reclaimed all the orphaned mines in their States, as the Senator from New Mexico has said, and after they have taken care of their abandoned mines, they are then going to go into the kind of public service program that the Senator suggested.

S8115 Each coal producing State gets a share of half of the funds proportionate to its coal production, the other 50 percent goes to areas of greatest need. The Senator from New Mexico wants to say, after we have reclaimed our orphaned lands - whether they are in the West, the East, the South, or the North - we want to spend money left over for something else rather than have it revert to the common fund.

S8115 Mr. METZENBAUM. My question is - and the Senator from Montana knows the respect I have for him and the leadership he has given in this area - that the problem we are facing in our country has to do with strip mining and what the strip miners have done to the land.

S8115 This amendment, if you had a pot of \$1 00 million, under the present law if there were \$50 million that was returned to the States, and the other \$5 0 million would be available for the Secretary of the Interior to distribute as needed for reclamation projects, of the \$5 0 million to be distributed to the States, it is true that even with this amendment first there will have to be reclamation to the extent needed. The whole basic premise of this amendment, however, is that there will be surplusage funds, and that is the concern that I have.

S8115 If there are to be no surplusage funds then you do not need the amendment because you do not need to have a basis or an amendment for making it possible to spend the money for community facilities. If you had done all the reclamation in a State, then what would happen, absent this amendment, is that those funds would be available to restore other stripped land to be part of the Secretary of the Interior's 50 percent, and that is the way I believe it ought to be because I think all

of us would like to see the stripped land of this country, whether in Montana or New Mexico or Ohio or Pennsylvania or Kentucky, we would like to see those lands restored.

S8115 That is the reason why I think since this amendment is based on an assumption there will be a surplus, I think the amendment should not be adopted, and I think it will not serve the best interests of the objective of the bill.

S8115 Mr. DOMENICCI. Mr. President, will the Senator from Ohio yield?

S8115 Mr. METZENBAUM. I yield.

S8115 Mr. DOMENICCI. Let me first say to the Senator that I commend him for the concern he has here.

S8115 Let me see if I can explain it a bit differently than his understanding here on the floor.

S8115 First, I say to my good friend from Ohio, in a State that is producing coal, that is mining coal, we began to levy the per ton tax. We have to understand that, first of all, 10 percent of that goes to the Secretary of the Interior under this bill - 100 percent.

S8115 Now, I say to my good friend 50 percent is returned to the States; 50 percent of that which it got from the State is returned to the State to be used under the section of the bill to which we are referring. The other 50 percent stays with the Secretary of the Interior for the purposes described under this bill, and is not returned to the States from whence it came. It is used to administer this bill and for reclamation purposes as defined in this bill.

S8115 So there is an excess from producing States in that fund if the Secretary, in his broad discretion, locates that fund around the country, and some goes to the Senator's State because it has very serious problems.

S8115 What the Senator is asking us to do is to make that 50 percent that is flexible, that was obtained from our States, the Senator wants to make it 100 percent because he is saying when we run out of abandoned reclamation work even the 50 percent, half of what comes from our production, that half ought to go back and become surplusage.

S8115 We do not think that is fair. We think we are accomplishing the goals of this bill by collecting 100 percent, sending 50 percent back to the States, and those that have had problems from the past are going to get their own 50 percent of their production taxes, and the national fund that the

Secretary has for the other 50.

S8115 The Senator would ask us to give the other 50, when it becomes surplusage - borrowing the Senator's term "surplusage" - because we do not have all those problems for 100 percent of abuse, but we have got some other enormous those problems for 100 percent of abuse, but we have got some other enormous problems. We have got problems directly related to producing our coal almost exclusively through strip mining, and we are just saying at that point in time, perhaps 10 years, perhaps 20 years, from now your States have all been getting their own 50 and part of the national kitty, that is 50, and we are saying at least guarantee us that 50 percent of what comes from our States' production, their growth, and the problems generated with it, and we do not think it is inconsistent at all.

S8115 Mr. FORD. Mr. President, will the Senator yield?

S8115 Mr. DOMENICI. I am delighted to yield.

S8115 Mr. FORD. Is the Senator saying he wants 100 percent of the money returned from strip mining and deep mining in the State?

S8115 Mr. DOMENICI. No. absolutely not. I am saying 50 percent.

S8115 Mr. FORD. Well, the Senator is getting 50 percent under the bill, and the balance of it is at the discretion of the Secretary; is that correct?

S8115 Mr. DOMENICI. That is all we are talking about, the first 50 percent the Senator referred to.

S8115 Mr. FORD. Do you not get all of it back?

S8115 Mr. DOMMENICI. We are saying if in 10, 15 years we do not have any abandoned reclamation work to be done, we can use it for other things.

S8115 Mr. FORD. I would say to the Senator if he is talking about 15, 20 years from now, the Senator has taken care of all his problems. Either he or I would be on the Senate floor, hopefully both of us maybe, but 15 or 20 years from now we are going to have new technology; 15 or 20 years from now we may have different problems. Does the Senator want the money to go on forever?

S8115 So why make a statement today or offer an amendment today that may take money away from what the intent of this bill - to do something 15 or 20 years from now? Hopefully, someone

will be around here smart enough to make the judgment to put that money into good use. I do not see any need for the amendment. I do not see any need to take the money away and redirect it on the basis of what we are trying to do.

{S8116} Mr. MELCHER. Mr. President, will the Senator yield?

S8116 Mr. DOMENICI. I am pleased to yield.

S8116 Mr. MELCHER. We do have problems that are run into or we have to absorb simply because in the West strip mining is expanding. We have social impact problems. There are problems of whether or not you can get a road built that is safe to a mine. There are problems concerning whether or not you can have housing, whether or not you can have water and sewer for the workers in those particular mine.

S8116 So in the Western States where there is 50 percent being collected it is 17 1/2 cents per ton of every ton strip mined.

S8116 What the Senator from New Mexico and I are attempting to do in this amendment is to make it clear that in that portion, that 17 1/2 cents, the State can decide to use it for the purposes of social impact that occur with ongoing mining now after the orphan abandoned mining lands are reclaimed in our State. It is a tradeoff, but it is a sensible one.

S8116 If we are truly going to expand strip mining of coal in the West, we should be able to meet some of the social impacts head on at the time of the rapid expansion.

S8116 I think it is an eminently fair presentation, and it is not new. It is what we have envisioned in the bill for at least 4 years. It is something that we want to make clear as the Senate adopts this section of the bill. I think the amendment does that, and I hope our colleagues will accept it.

S8116 Mr. METZENBAUM. Mr. President, let me make it clear there is no objection to any State getting back its 50 percent provided it uses that 50 percent for the purpose of reclaiming the land that has been stripped. What we are talking about here has nothing to do with that issue. What we are talking about here is whether or not we are going to take moneys that have been proposed as strip mining tax to restore the strip mined lands of this country and use it as a community facilities provision. That is what this amendment is about.

S8116 This is a community facilities amendment, and every community in the country probably

needs more help with respect to its community facilities. But that covers a broad gamut of interests.

That is what we need to do, and we are going to have an unbelievable shortage of dollars available to the Secretary of the Interior for the purpose of reclaiming strip mined lands throughout the breadth of this Nation.

S8116 I am very impressed with the argument of my good friend from New Mexico that it is only fair that we get back that which we give, and I wish we could add an amendment to this bill providing that for every dollar of taxes that Ohio pays into the Federal Treasury we get back a dollar. Now we get back 70 cents.

S8116 But we do not run this country that way. We do not say you get back that which you give and that which you pay. Sometimes it is necessary by reason of wheat problems on the Western Plains to pass legislation in the Chamber to help the farmer, and those of us who live in urban communities do not object to that; sometimes it is necessary that we pass legislation to help urban areas, and those in farm communities do not object to that.

S8116 But we have no concept that we take all the cigarette tax money that comes out of Ohio, New Mexico, or Montana and sent it back to those States on a per-dollar basis. Nor as to hardly any other tax do we send back that which we get.

S8116 I suggest that this amendment will do violence to the objectives of this particular piece of legislation. It is true that in the Appalachian area there is the greatest amount of devastation, and that is what concerned me. We know there will not be enough dollars available from this strip-mined tax to reclaim all those lands in Appalachia. But the fact is that if there are surplus dollars let us use them; let us use them for the purposes of this legislation, not for some other worthy purpose.

S8116 I urge the Senator to withdraw the amendment. It is not fair to the remainder of the Nation that needs the funds for strip mining to reclaim the strip-mined lands.

S8116 Mr. DOMENICCI. Mr. President, I have no purpose in delaying this matter. I wish to make only a few remarks, then I am prepared to vote. I once again thank the chairman of the full committee, Senator METCALF, and Senator HANSEN, for their understanding and support.

S8116 I just briefly again summarize, so there will be no misunderstanding of what I am trying to

do. There is nothing magical, Mr. President, about this fund, and there is nothing magical about saying every bit of it should be used for the next 50 or 100 years to reclaim abandoned mines in this country. One of the prime purposes of the bill is that, and I repeat, only 50 percent of the taxes are at issue. Fifty percent go to the National Government. That is a surplusage in the sense that he uses his best discretion as to where it is needed most. I am speaking only of the 50 percent that is returned to the individual State from whence it came, not 100, but that 50 percent. And I merely am providing for an optional use of that money by that State when it has done all of its reclamation work as prescribed by this law.

S8116 I do not believe it is fair to say that there is anything sacred about the full 100 percent going to abandoned mines in this country for as long as the fund exists. I do not think that is necessarily the intent of the bill. So, repeating, I am only talking about 50 percent that goes to the States from whence it came. I am trying to protect that 50 percent, first to be used for reclamation, thereafter for impact. I think that is fair when we consider that it is only 50 percent to begin with.

S8116 Mr. FORD. Will the Senator from New Mexico accept maybe an amendment or modification of his amendment? Will he say that no portion of this amendment shall be effective for 20 years?

S8116 Mr. METZENBAUM. That would be agreeable.

S8116 Mr. DOMENICI. No, of course not.

S8116 Mr. FORD. The Senator said he would not use it for 15 or 20 years and he wants to get it in being so the money could be used. I suggest the Senator could get this amendment passed if he said 1997.

S8116 Mr. DOMENICI. I do not question the Senator's suggestion. I understand what point he is trying to make. But he knows that I used that number of years in explaining that it varies from State to State as to how long it is going to take them to get their abandoned mine work done. But I do mean, in all sincerity, that we are not talking about this being used for impact purposes in the very near future. I could not stand here in fairness to the States that have this particular problem and agree with it being 5 years, 10 years, or 20 years. I use it to explain the purpose that that 50 percent, not the 100 percent, but the 50 percent must first be used to get rid of the abandoned mine problem.

It may take long in some States. It may not take so long in others.

S8116 Mr. FORD. Mr. President, if he cannot accept my modification I have to be opposed to his amendment.

S8116 Mr. DOMENICI. I understood that from the beginning, I say to my good friend.

S8116 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8116 Mr. METZENBAUM. I ask for the yeas and nays.

S8116 The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

S8116 The yeas and nays were ordered.

S8116 The PRESIDING OFFICER. The clerk will call the roll.

S8116 The legislative clerk proceeded to call the roll.

S8116 The PRESIDING OFFICER (Mr. RIEGLE). The Senate is not in order. The Senate will be in order. Conversations in the well will please stop until the rollcall is completed.

S8116 The clerk may proceed.

S8116 The rollcall was resumed and concluded.

S8116 Mr. DOMENICI. Regular order, Mr. President.

S8116 Mr. ROBERT C. BYRD. I announce that the Senator from Iowa (Mr. CLARK), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), the Senator from Rhode Island (Mr. PELL), the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

S8116 I also announce that the Senator from Arizona (Mr. DECONCINI) is absent because of death in the family.

S8116 I further announce that, if present and voting, the Senator from Iowa (Mr. CLARK) would vote "nay."

S8116 I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL) would vote "yea."

S8116 Mr. BAKER. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), and the Senator from Texas (Mr. TOWER) are necessarily absent.

{S8117} I also announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

S8117 I further announce that, if present and voting, the Senator from Oregon (Mr. HETFIELD), and the Senator from Alaska (Mr. STEVENS) would each vote "yea."

S8117 The result was announced - yeas 45, nays 41, as follows:

S8117 [Rollcall Vote No. 153 Leg.]

S8117 YEAS - 45

S8117 Allen

S8117 Bartlett

S8117 Bellmon

S8117 Bentsen

S8117 Bumpers

S8117 Burdick

S8117 Cannon

S8117 Chafee

S8117 Chiles

S8117 Church

S8117 Curtis

S8117 Dole

S8117 Domenici

S8117 Eastland

S8117 Garn

S8117 Gravel

S8117 Hansen

S8117 Hart

S8117 Haskell

S8117 Hatch  
S8117 Helms  
S8117 Humphrey  
S8117 Inouye  
S8117 Jackson  
S8117 Laxalt  
S8117 Leahy  
S8117 Lugar  
S8117 Magnuson  
S8117 Mathias  
S8117 Matsunaga  
S8117 Melcher  
S8117 Metcalf  
S8117 Moynihan  
S8117 Packwood  
S8117 Pearson  
S8117 Roth  
S8117 Schmitt  
S8117 Sparkman  
S8117 Stafford  
S8117 Stevenson  
S8117 Stone  
S8117 Thurmond  
S8117 Wallop  
S8117 Young  
S8117 Zorinsky  
S8117 NAYS - 41  
S8117 Abourezk

S8117 Anderson  
S8117 Baker  
S8117 Bayh  
S8117 Biden  
S8117 Brooke  
S8117 Byrd, Harry F., Jr.  
S8117 Byrd, Robert C.  
S8117 Case  
S8117 Culver  
S8117 Danforth  
S8117 Durkin  
S8117 Ford  
S8117 Glenn  
S8117 Griffin  
S8117 Hathaway  
S8117 Heinz  
S8117 Hollings  
S8117 Huddleston  
S8117 Javits  
S8117 Kennedy  
S8117 Long  
S8117 McClure  
S8117 McIntyre  
S8117 Metzenbaum  
S8117 Morgan  
S8117 Muskie  
S8117 Nelson  
S8117 Nunn  
S8117 Percy

S8117 Proxmire

S8117 Randolph

S8117 Ribicoff

S8117 Riegle

S8117 Sarbanes

S8117 Sasser

S8117 Schweiker

S8117 Scott

S8117 Talmadge

S8117 Weicker

S8117 Williams

S8117 NOT VOTING - 14

S8117 Clark

S8117 Cranston

S8117 DeConcini

S8117 Eagleton

S8117 Goldwater

S8117 Hatfield

S8117 Hayakawa

S8117 Johnston

S8117 McClellan

S8117 McGovern

S8117 Pell

S8117 Stennis

S8117 Stevens

S8117 Tower

S8117 So Mr. DOMENICI'S amendment was agreed to.

S8117 Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment

was agreed to.

S8117 Mr. CURTIS. Mr. President, I move to lay that motion on the table.

S8117 The motion to lay on the table was agreed to.

S8117 UP AMENDMENT 259

S8117 Mr. METZENBAUM. Mr. President, I call up an amendment that I have at the desk.

S8117 The PRESIDING OFFICER. The amendment will be stated.

S8117 The second assistnat legislative clerk read as follows:

S8117 The Senator from Ohio (Mr. METZENBAUM) proposes unprinted amendment No. 259 on page 175, line 16, after word "removed", delete the colon (:), and insert a period (.). Strike the remainder of line 16 and strike lines 17 through 23.

S8117 Mr. METZENBAUM. Mr. President, The "small miner" exemption presently in the bill will enable mine operators who produce less than 200,000 tons of coal per year to escape all but one of the interim reclamation standards provided for in the bill for a period of 30 monts. This is a radical departure from all previous strip mining bills passed by either House. Its sponsors argue that such an exemption is necessary on the ground that many small miners cannot financially afford to comply with these standards within the 9 months already allowed. They argue that the additional 21 months are necessary to enable these operators to pay off outstanding loans and debts made to finance their equipment.

S8117 While it is undoubtedly true that there are some "small miners" who will not be able to maintain their present modus operandi, I share the opinion of the administration, the environmental community, the Ohio Mining and Reclamation Association, and the State of Ohio's Division of Reclamation that the current provision: First, encompasses far more than "small miners," and second, does not deal with the financial problem of the small miners. Let me amplify briefly on each of these two points.

S8117 First. In the Appalachian States, the region which would be most affected by this amendment, production of less than 200,000 tons per year is not small. On the contrary, my own State of Ohio provides a good example of the exemption's impact. There are a total of 190 strip mine operators. One hundred and sixty-six operators, or 87 percent, would be exempt under the

present language; or put another way, one-third of our State's total production would be exempt from the environmental safeguards provided in this bill.

S8117 Another striking example is the State of Pennsylvania, where, according to the 1975 Statistical Report of the Department of Environmental Resources, 462 companies out of a total of 503 surface mine operators, or 91 percent, would be exempt from the Federal standards for 30 months. Fifty-three percent of the total production in Pennsylvania would be exempt.

S8117 It is a fact that my own State of Ohio and our neighbor, Pennsylvania, have State strip mining laws which are reputed to be the best in the Nation. But that is not the answer. The ruination of our land by strippers is a national problem. It is a national disgrace. Yesterday, we rejected the so-called States rights amendment by a vote of 51 to 39. Today, we must not permit a gaping hole in the legislation, as it emerged from the committee, to permit continued massive degradation of our national heritage.

S8117 The major purpose of this bill is to protect the quality of life in those States which have been unable or unwilling to adopt a minimum level of environmental safeguards. On a national level, the legislation before us - and I direct the Senate's attention to this figure would exempt 93 percent of the strip mines in this country, or 33 percent of our total production in 1975, the last year for which any figures are available.

S8117 My resource for that is the Mineral Industry Surveys of the U.S. Department of Labor, just recently published by the Department of the Interior. In one State, only 2 of 332 mines would be covered, in another, only 2 out of 75 would be covered. Clearly these figures document how misleading the term "small miners" is when defined by 200,000 tons or more per year, and the environmental destruction which could continue for 30 months in those States which have failed to adopt acceptable minimum standards.

S8117 I point out to the Members of the Senate that when this will come over from the House, it had no exemption in it for the small miner.

S8117 Second. Most observers concede that compliance with the minimum standard in S. 7 may be more burdensome for the small operator who has been operating under less stringent State standards. The bill passed by the House dealt with this question directly by authorizing \$1 0 million

from the reclamation fund to be set aside for the small operator, defined as operations under 100,000 tons. In the House bill, it was provided that that would be used to pay the costs of core samplings and hydrological studies required by this bill. In addition, the 30-months time exemption is much longer than is needed for small miners in particular. It is precisely those operators who move rapidly from one small tract to another, and by reason of this fact, some States require new permits every 6 months.

S8117 Neither I nor the strip miners in my State, represented by the Ohio Mining and Reclamation Association, can see any justification or necessity for an exemption from reclamation standards. The issue of financial assistance is already covered in the House bill, and I assume it will be retained in conference.

S8117 When an amendment, similar to the committee provision, was offered on the House floor, Chairman UDALL stated:

S8117 Of all the amendments that have been considered in this debate, this provides the biggest loophole. It is the biggest granddaddy of them all.

S8117 That is the amendment that is in the committee draft.

S8117 Subsequently, the amendment failed to attract enough support to even warrant a recorded vote.

S8117 I hope the Members of the Senate will give careful consideration to eliminating this provision from the bill. My amendment to strike it has the full support of the administration and the environmental community. I believe that if we are to make this a truly meaningful piece of legislation, it deserves the support of the entire State.

S8117 Mr. FORD. Mr. President, there are a lot of things that amaze me about this great deliberative body. One thing is the direction that we take on many occasions. You know, Mr. President, we are taking over now. The Federal Government is taking over strip mining operations in this country and, every time the Federal Government takes over, the big get bigger and the small go out of business.

S8117 Here we are, today, trying to say to those small business people, "You have been operating legitimately; you have been operating under your State law, and you have been conforming to your legislators' intent for surface mining in your State."

S8117 So what do we do? We ask to give them a little time - 21 extra months is all. Let me give an example of what these small operators do.

S8117 They sign noncancellable contracts for equipment and machinery. One such operator signed a contract for a half million dollars, put down \$150,000, and 2 years later it was delivered, and that was last February. He went to the bank, borrowed \$240,000, and he is making an effort to any that off.

{S8118} } His wife keeps the books. He is an honest, legitimate operator. And now we are saying to him, "You have to have your hydrologist, you have to have your engineers, and Big Brother is going to tell you, Little Fellow, how to operate."

S8118 I think it is about time we stopped and gave some thought to what we are doing.

S8118 If this amendment is agreed to, the big fellow is going to buy out the little fellow at 35 percents or 40 cents on a dollar. The little fellow buys from the businessman in the community. They call it TBA - tires, batteries, and accessories.

S8118 But the big fellow has a big warehouse full of big tires, batteries, everything. He does not have to worry about it. He does not buy from the small businessman. He buys direct.

S8118 That is what we are trying to do here today.

S8118 There is a real problem for small operators who are operating pursuant to valid State permits to bring themselves into compliance in any standards the Secretary might place upon them.

S8118 I have letter after letter from good financial institutions in small Appalachian communities that have been leaders in financing these small operators.

S8118 I have an amendment to be considered later on today, I hope, because there is that shadow they keep talking about back in the back that never came out.

S8118 Yet, the big operators are going to split up and they will be able to do anything they want to.

S8118 The Senator from Ohio remembers in committee that I accepted his amendment to this exclusion that said that no overburden would go over the side. That is what he wanted. But now, here we come, we are going to take another run at it.

S8118 When it works in here to talk about Congressman UDALL, that is fine, and when it does not work, we do not use his name.

S8118 Then we read from the House language. I understand what they are trying to do.

S8118 But one time - one time - why do we not think about that small businessman out there who is operating legitimately, morally, and doing a good job.

S8118 I do not see any reason, if we are going to limit those companies in business on May 2, not going to add any new ones, we just give him a little more time to comply, at least get out of debt and pay off the bank.

S8118 Yet here come people that want to crush the little folks.

S8118 I am very hopeful that the Members of this body say that now is not the time for us to put little people out of business.

S8118 Mr. President, I hope the Members of this body see it in their good judgment to defeat this amendment.

S8118 Mr. METCALF addressed the Chair.

S8118 The PRESIDING OFFICER (Mr. STONE). The Senator from Montana.

S8118 Mr. METCALF. Mr. President, the Senator from Ohio has presented some very stratling statistics. Ninety-three percent of the people, the strip mienrs in some States, 90 percent of strip mienrs in the Nation or something of that sort. A tremendously high percentage will come under this qualification of 200,000 tons.

S8118 I am inclined to concur with him that a man who mines 200,000 tons in a year is not a little operator.

S8118 When we exempt from all interim strip mine standards people who are mining 200,000 tons, we are considering exactly the same thing that the Senator from Ohio pointed out we were considering yesterday, when we considered and rejected the so-called State's rights amendment.

S8118 When an operator mining 200,000 tons in a strip mine and dumping it over the slope, a lot of spoil can go down a slope in 21 or 30 months and a lot of damage and a lot of depredation can happen.

S8118 Mr. FORD. Will the Senator yield?

S8118 Mr. METCALF. I am delighted to yield to the Senator.

S8118 Mr. FORD. But, Mr. President, the amendment was accepted in committee.

S8118 Mr. METCALF. Yes.

S8118 Mr. FORD. That would not allow the spoil to go over the bank and the Senator from Ohio submitted that modification to Senator JOHNSTON'S and my amendment to the bill.

S8118 Now, that is prohibited even during this extension.

S8118 Mr. METCALF. But nothing goes into effect for 21 to 30 months.

S8118 Mr. FORD. I think if the Senator will look at the language, and the Senator from Ohio will have to agree, that when we exempted them for the 30 months, that spoil would not go over the bank.

S8118 Mr. METCALF. The Senator from Kentucky is correct.

S8118 Mr. FORD. Because I am not trying to be irresponsible. I am trying to be responsible and I accepted that.

S8118 Mr. METCALF. Regarding the one-half million dollars, Mr. President, which the Senator from Kentucky has pointed out a person needs to buy himself a drag line, a bulldozer, whatever: That is not small business. That is not a little operator. That is not the small person that we are trying to take care of in this amendment.

S8118 If I may ask a couple of questions of the Senator from Ohio, what would happen if we shifted to 100,000 tons?

S8118 Now, that figure is in the House bill.

S8118 Mr. METZENBAUM. Let me make it clear that what is in the House bill is exactly that which would be in the Senate bill if we adopted my amendment as is.

S8118 What is in the House bill with respect to the 100,000 tons and the definition of the small operator applies to the question of being in a position to apply for the \$10 million fund.

S8118 The Senator has asked, what would happen if we had 100,000 as distinguished from 200,000?

S8118 Today, on a national basis, 33 percent of the total production is exempted and 93 percent of the operators in the country are exempted.

S8118 Mr. METCALF. On the basis of 100,000 tons?

S8118 Mr. METZENBAUM. Two hundred thousand.

S8118 Mr. METCALF. Yes.

S8118 Mr. METZENBAUM. If we dropped it to 100,000, 23 percent of the production would be exempted and 86 percent of the mines would be exempted.

S8118 Have I answered it?

S8118 Mr. METCALF. Yes.

S8118 Now, is that what would happen in the Senator's own State of Ohio, or is that national?

S8118 Mr. METZENBAUM. That is national. Those are national figures.

S8118 Mr. METCALF. What would happen in the Senator's own State of Ohio, for example?

S8118 Mr. METZENBAUM. I am sorry that I cannot answer that. I do not have that figure.

S8118 I want to point out to the Senator from Montana that my State, across the board in Ohio, supports this legislation without any exemption in spite of the fact that we have a strong law in Ohio.

S8118 I cannot give the answer for Ohio, as such.

S8118 Mr. METCALF. Mr. President, I suggest the absence of a quorum.

S8118 Mr. JACKSON. Will the Senator yield first?

S8118 Mr. METCALF. Yes.

S8118 Mr. JACKSON. Mr. President, I must say that I am not unmindful of the problems that our friends face in these key deep mining States, as well as the States that are involved in Appalachia in strip mining.

S8118 I think the real issue before the Senate is whether we are going to have a truly meaningful strip mining bill that makes some sense, because as I read this amendment with the 200,000-ton exemption, both in terms of the number of operators that are exempted, which is very high, and in terms of production, which is very high, it affects the credibility of a strip mining law.

S8118 With the 100,000-ton exemption - and I think we ought to have more data on that - I notice that in West Virginia, for example, the number of mines exempted is 85 percent and total production exempt is 51 percent.

S8118 In Kentucky, it is 92 percent of the operators that are exempt and production is 36 percent - over a third that are exempt from the basic provisions of the act.

S8118 I would only observe, Mr. President, that it would seem to me that the 100,000-ton figure is a sensible one as offered by the Senator from Ohio.

S8118 Mr. METCALF. He did not offer it. I was asking questions about it.

S8118 Mr. JACKSON. I am sorry.

S8118 Mr. METCALF. I say to the chairman that I was going to suggest that we have a quorum call and see what the Senator from Kentucky would agree to. Earlier, the Senator from Washington said that the Senator from Kentucky would not agree to 100,000 tons. I cannot agree to 200,000 tons, as the Senator knows, in view of the statistics submitted by the Senator from Ohio.

{S8119} } Mr. JACKSON. Mr. President, I suggest the absence of a quorum.

S8119 The PRESIDING OFFICER. The clerk will call the roll.

S8119 The assistant legislative clerk proceeded to call the roll.

S8119 Mr. METCALF. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

S8119 The PRESIDING OFFICER. Without objection, it is so ordered.

S8119 The question is on agreeing to the amendment of the Senator from Ohio.

S8119 Mr. FORD. Mr. President, I ask unanimous consent that the pending amendment be set aside until such time as we can have a conference and it be brought up at a later time today.

S8119 The PRESIDING OFFICER. Without objection, it is so ordered.

S8119 UNANIMOUS-CONSENT AGREEMENT

S8119 Mr. DANFORTH. Mr. President, it is my intention to call up two amendments. I ask unanimous consent for the following procedure to deal with them:

S8119 I shall debate and discuss amendments No. 298 and No. 299 together. I will then ask for the yeas and nays on amendment No. 298. We will have a vote on that. That vote will be followed by no more than 5 minutes of debate to be evenly divided on amendment No. 299. Whether or not I will ask for the yeas and nays on amendment No. 299 will depend on how I do on amendment No. 298. But that would be the suggested procedure - so that we would have back-to-back votes, if we are going to have a second rollcall vote, with no more than 10 minutes to vote on the second amendment.

S8119 The PRESIDING OFFICER. Is there objection?

S8119 Mr. METCALF. Mr. President, reserving my right to object, are we all clear on the unanimous-consent request? I shall have no objection at all. I express my appreciation to the Senator from Missouri for working out this sort of a procedure. No objection.

S8119 The PRESIDING OFFICER. Without objection, it is so ordered.

S8119 AMENDMENT NO. 298

S8119 Mr. DANFORTH. Mr. President, I call up amendment No. 298.

S8119 The PRESIDING OFFICER. The amendment will be stated.

S8119 The assistant legislative clerk read as follows:

S8119 The Senator from Missouri (Mr. DANFORTH) proposes an amendment numbered 298.

S8119 Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

S8119 The PRESIDING OFFICER. Without objection, it is so ordered.

S8119 The amendment is as follows:

S8119 On page 217, beginning with line 3, strike out all through line 6 and insert in lieu thereof the following:

S8119 "(2) restore the land affected to a condition capable of supporting a use or uses which satisfy and land use requirements of affected State and local governments or agencies thereof which would have to initiate, implement, approve, or authorize the proposed use or uses of the land following reclamation, so".

S8119 Mr. DANFORTH. Mr. President, these two amendments make essentially the same point. The point is that, whereas there is a Federal interest in regulating matters of health, safety, water pollution, and water diminution, matters of appearance, and land use alone - insofar as they do not impinge on other environmental, health, or safety concerns - should be left to State and local governments.

S8119 The thrust of amendment No. 298 is that matters of land use not touching on water pollution and not touching on health and safety should be matters for State or local governments to decide - not for the Federal Government to decide. That is the whole point of this amendment.

S8119 I will concede that one can argue that anything done within the country with respect to water pollution has an interstate effect and is a matter of national concern. Arguably, if a drop of sewage is spilled on land in the State of Missouri, it will eventually enter the water supply for the whole country, and that is a matter of national concern.

S8119 Strip mining, which produces acid flowing into the streams of America, is a matter which Congress can and should regulate. But when we go beyond matters of water pollution and water supply, when we go beyond matters of mine safety - which the Federal Government has addressed itself to previously - when we go beyond the question of slides and the like, and get further into the question of land use and the uses to which land should be restored after strip mining occurs, then, if those questions have nothing to do with health and safety and nothing to do with water supply, I say they are appropriate matters for the State or local government to decide.

S8119 The second amendment has to do purely with matters of esthetics. That is to say, amendment No. 299 concedes that health and safety are matters for the Federal Government to regulate, but states that when we get beyond that and go purely to the way the land looks, then the Congress of the United States should have no basis and no monopoly to make a decision on how, for example, land should appear in Henry County, Mo. The amendment says that the State legislature of our State should be able to address itself to matters of contour, as long as the contour question does not go further and get into a question of water runoff, water pollution, or safety. That is the whole thrust of the amendment.

S8119 The problem with this bill as it is now written, Mr. President, is the problem that we have

now in government so generally: That we in Congress have concluded that there is a serious matter that we should address; namely, strip mining, and that the way we see to solve the strip mining problem is for Congress to get into the act. We pass a statute, we set up a new agency, and the agency promulgates regulations and, above all, creates forms for people to fill out.

S8119 When the issue is presented to us, it is presented on the basis of: Are you for strip mining or against strip mining, for strip mining control or against strip mining control?

S8119 I would like to say, Mr. President, that my whole career in public life has been the career of an environmentalist. During the 8 years that I was attorney general of Missouri, my office was responsible for drafting or participating in the drafting of every significant piece of environmental legislation passed by our State legislature, including our Missouri strip mining reclamation law, which was passed in 1971, and which provides for the establishment of a board, which provides for licensing, which provides for bonding, which provides for requirements for revegetation and the like.

S8119 I believe in that. But somehow we have to come to grips in Congress with the notion that there is such a thing as big government and there is such a thing as local governments, and that they have to be given some powers of decision.

S8119 I think the senior Senator from Wyoming, who is the ranking minority member of the committee that reported this bill, put it very well in his additional views printed in the committee report when he said:

S8119 Proponents of this bill will point out the sections of this bill that allow state control. These sections are ineffective if state control is their purpose. State administration of this Act will require state enforcement of federally mandated standards under cumbersome federally mandated procedures. Nowhere does this bill provide a mechanism for the local governments to make any policy decisions.

S8119 Mr. President, that is exactly the point. We are so anxious to solve every problem at the Federal level that we have steadily transformed State and local governments to no more than administrative extensions of the Federal Government, to implement Federal programs, to spend Federal money, and to participate in no sense in the decisionmaking process.

S8119 So the point of these amendments, Mr. President, is simply to carve out some areas in which State governments and local governments can act - not in matters of health or safety, although certainly from a legal standpoint matters of health and safety were once considered to be within the so-called police powers of the States. We concede here that the States should not act alone in matters of health and safety, nor in matters concerning water pollution and runoff or poisoning of the water supply, nor in matters of large environmental concern involving danger to the environment. But I believe very strongly that States should act alone on matters of land use and contours insofar as they pertain to esthetic appearance itself.

S8119 So, Mr. President, the first amendment, No. 298, is a land use amendment. Those are the key words, and those in fact are the words in the bill as well as the words in the amendment.

S8119 What we are saying in the amendment, very simply, is that when land use goes beyond water pollution and water supply questions, health questions, and safety questions, to questions involving land use insofar as whether it is for agricultural or conservation purposes, or construction on the land, those questions of land use are matters which should be left for the State government and the local government to decide.

{S8120} In my judgment these two amendments could be incorporated into this bill and not detract at all from the rest of the concerns of the bill, which are very valid concerns of the Federal Government.

S8120 Mr. President, I call for the yeas and nays on amendment No. 298.

S8120 The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

S8120 The yeas and nays were ordered.

S8120 Mr. METCALF. Mr. President, I shall be very brief.

S8120 We have argued extensively an amendment for prime agricultural lands. This wipes it out.

S8120 We have argued for environmental control. This amendment wipes it out.

S8120 We have said that we will turn over to the States administrative authority if the States pass the necessary legislation. The distinguished Senator from Missouri merely wants to shrug that off

and just say we are giving the States the authority to handle these matters, without any decision on the part of their legislatures as to these important managerial questions.

S8120 For a long, long time. Mr. President, the people of America have been concerned about the impact and the effect of surface mining on the land, the water, the forests, the streams, and the environment of the people of America. For a long, long time we in Congress have been concerned about our congressional and constitutional responsibility to handle the Federal lands so as to comply with the highest and best use for the people of the United States. This bill does both of those things.

S8120 It carries out our congressional responsibility, insofar as Federal lands are concerned, and tries to meld that responsibility into the various States involved, as far as the environment and land use is concerned.

S8120 We have tried to give the States as much administrative authority as possible. Indeed, we have said that if the States will do something about the problem, along with the provisions of this legislation, they will be delegated our authority, the authority of the Congress, to administer the Federal lands so there will be uniform and consistent administration.

S8120 This amendment is an attack on all of the purposes of the legislation which are set forth in pages 149 through 151.

S8120 We have debated and discussed such things as the prime agricultural land, alluvial valley floors, all the longtime amendments that have been proposed, discussed, and debated.

S8120 This is no time, at this late time in the afternoon, to turn completely around and say we are going back over this legislation and just pass health and safety standards, and other provisions the distinguished Senator from Missouri has enumerated.

S8120 Mr. DANFORTH. Mr. President, this amendment would do absolutely nothing to change the law with respect to Federal lands. This amendment would do absolutely nothing with respect to changing the law on matters of environmental protection.

S8120 This amendment is addressed exclusively to the very narrow problem of land use, of what is to be done in the use of the land insofar as that use has no effect on health, on safety, on water supply or water pollution.

S8120 It is purely the question of whether Federal law should determine whether the topography of the land is of one sort or another, whether one kind of a building is put on it, or whether agricultural purposes are pursued. These kinds of land use considerations should be matters for State and local concern. That is the whole point. It is not the gutting of the bill. It is simply an attempt to carve out something State and local governments should do.

S8120 I can say, after having spent 8 years in State government - hardly a reactionary, hardly somebody standing in the schoolhouse door, but I believe I was a progressive force in the State government in Missouri - increasingly what State officials are doing is simply administering Federal programs, as this bill would have the State of Missouri do.

S8120 The only decisionmaking that is left to the State is no decisionmaking.

S8120 If the State of Missouri is willing to comply with extremely lengthy Federal requirements, it can do what the Federal Government wants in the way the Federal Government wants something done.

S8120 The State is converted by this bill, as it now exists, into nothing more than an administrator - a subservient administrator - of Federal law.

S8120 It seems to me we have been so anxious in the Congress to accomplish broad policy ends that we have spent no time paying attention to how those ends are reached. All we do is vest more authority in Washington and less authority in the people of this country.

S8120 Let us ask ourselves why so many people in America are now turned off about government and feel that it is so large, so distant and so obtrusive. Why do they feel that way? The reason, I would suggest, is that we are so pretentious here in Washington. We have reached the point where we tell the people of Henry County, Mo., what their land should look like and what kind of farming should be done on it.

S8120 This, to me, is the issue. If Montana, Missouri, of New Mexico cannot have some responsibility - not unlimited responsibility, but some responsibility - to determine how their own real estate is used, then I say we have gone overboard in taking from State and local governments any decisionmaking responsibility.

S8120 Mr. DOMENICI. Will the Senator yield for a question?

S8120 Mr. DANFORTH. I yield.

S8120 Mr. DOMENICI. Before I ask the question, I want to say to the Senator it does not matter to this Senator how late it is in the consideration of this bill. The thought the Senator has expressed here today, coming fresh out of 8 years as a progressive attorney general in a great State, is needed by this institution. I commend the Senator for it.

S8120 Let me ask this question: Somewhere in the last 5 minutes of the Senator's discussion, he said in his experience his State had been turned into an administrator for the Federal Government. We passed the laws or the regulations and the Senator's office in his sovereign State was trying to do what we pretentiously, as the Senator said, dictated should be done.

S8120 Would the Senator tell us a little bit about those things that we dictated to him by administrative fiat, our carrots, our partial categorical grants? Tell us how good were those particular programs once the Senator had to put them in place in the field for the problems and the people of his State? Would the Senator comment on that?

S8120 Mr. DANFORTH. I would say it was a mixed kind of a situation. For example, on the question of the 55-mile speed limit, I agree with the 55-mile speed limit. As a matter of end result that was a step forward. It used to be that the State legislature determined speed limits on highways, not Washington. We were told by the Congress, "No, that is not something to be decided by State legislatures any more. That is to be decided by the Congress."

S8120 I believe it is important to note that even if we agree with the end results - and I do agree with the end results of this bill - the question is how do we get to those results?

S8120 That was the question upon which the Founders of this country focused. They went into the whole decisionmaking process at great length in the Federalist Papers as to how decisions were to be made in a free society. Does somebody here or in a distant place simply decide the best thing is for the country to do such and such a thing and then have it carried out? Or do we allow the decisionmaking responsibility to be diffused throughout a pluralistic society?

S8120 What I am concerned about is that we are taking decisionmaking from State and local governments. That is exactly what this bill is doing. I believe Senator HANSEN pointed it out very clearly in his additional comments.

S8120 Mr. RANDOLPH. Will my able colleague yield?

S8120 Mr. DANFORTH. Yes.

S8120 Mr. DANFORTH. Reference has been made to the national speed limit law of 55 miles per hour. I disagree, of course, with my colleague as to whether that should have waited for possible action within the States.

S8120 Mr. DANFORTH. If the Senator will yield, I do not intend to take up the 55-mile speed limit. I agree with it. It was just the first example which came into my mind. I would hope that we would not rehash that. The law is there and I believe it should stay.

S8120 Mr. RANDOLPH. I do not desire to rehash it. I only wanted to comment because there had been comment made about it.

{S8121} Since we are talking about a speed limit on the highways of America, I do think there are many illustrations where it was absolutely necessary for the Federal Government, not so much to move in - I am not for that - but to take care of conditions and situations as they arose.

S8121 We would never have had the interstate highway system, which is in Indiana as in West Virginia, and in Wyoming and New Mexico and Missouri - all over this country - had we not written into law the interstate highway system in 1956.

S8121 I appreciate the yielding of my friend from Missouri.

S8121 Mr. DANFORTH. I say to the Senator from West Virginia, I have no doubt that the Federal Government has done some wonderful things for the people of this country. I am not a reactionary. I hope my record is clear in that respect. I do not think we are dealing here with a black and white kind of situation.

S8121 One of our colleagues, when I told him that I was going to get into this, asked, "Are you going to be prepared to be consistent on every vote in the Senate on a States' rights basis?". The answer is, of course not.

S8121 I hope I am not an ideological purist, somebody who always has to say, here is a philosophical position that has to be superimposed on this issue and everything should follow from that.

S8121 That fact of the matter is that I think we have spent almost no time discussing the philosophical question of where decisions are to be made. I think that we have been so anxious to solve ad hoc problems as they arise that the quickest way to solve those problems is always to pass a Federal law, create another Federal program, establish another Federal agency, and devise more forms and more regulations that people have to comply with.

S8121 Now, be people of our country are beginning to say, "What have you done in Washington, and whom do we write to get something corrected?" And we cannot tell them whom to write.

S8121 I am just saying that, with respect to the land, land is not in interstate commerce. Runoff might be. My amendment would provide that Federal law would govern the pollution question.

S8121 Safety is, arguably, an interstate question. My amendment would provide that safety would be governed by this law.

S8121 When we get to the question of the land itself - this cold of granite under our feet - then the question is, esthetically, how does it look and how is it used and how is it zoned? My view is that that, at least, is the bottomline in State and local determination. That is the whole point of these amendments.

S8121 Mr. President, I yield the floor.

S8121 The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

S8121 The legislative clerk called the roll.

S8121 Mr. ROBERT C. BYRD. I announce that the Senator from Iowa (Mr. CLARK), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), the Senator from Rhode Island (Mr. PELL), the Senator from Mississippi (Mr. STENNIS), the Senator from Georgia (Mr. TALMADGE), the Senator from Vermont (Mr. LEAHY), the Senator from Minnesota (Mr. ANDERSON) are necessarily absent.

S8121 I also announce that the Senator from Arizona (Mr. DECONCINI) is absent because of death in the family.

S8121 I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON), the Senator from Iowa (Mr. CLARK), and the Senator from Rhode Island (Mr. PELL) would each voter "nay."

S8121 Mr. BAKER. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from Vermont (Mr. STAFFORD), and the Senator from Texas (Mr. TOWER) are necessarily absent.

S8121 I also announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

S8121 I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Alaska (Mr. STEVENS) would each vote "yea."

S8121 The result was announced - yeas 36, nays 46, as follows:

S8121 [Rollcall Vote No. 154 Leg.]

S8121 YEAS - 36

S8121 Allen

S8121 Bartlett

S8121 Bellmon

S8121 Bentsen

S8121 Byrd, Harry F., Jr.

S8121 Chafee

S8121 Curtis

S8121 Danforth

S8121 Dole

S8121 Domenici

S8121 Estland

S8121 Ford

S8121 Garn

S8121 Gravel

S8121 Griffin  
S8121 Hansen  
S8121 Hatch  
S8121 Helms  
S8121 Huddleston  
S8121 Laxalt  
S8121 Long  
S8121 Lugar  
S8121 McClure  
S8121 McIntyre  
S8121 Morgan  
S8121 Moynihan  
S8121 Nunn  
S8121 Packwood  
S8121 Roth  
S8121 Schmitt  
S8121 Scott  
S8121 Sparkman  
S8121 Thurmond  
S8121 Wallop  
S8121 Young  
S8121 Zorinsky  
S8121 NAYS - 46  
S8121 Abourezk  
S8121 Baker  
S8121 Bayh  
S8121 Biden  
S8121 Brooke  
S8121 Bumpers

S8121 Burdick  
S8121 Byrd, Robert C.  
S8121 Cannon  
S8121 Case  
S8121 Chiles  
S8121 Church  
S8121 Culver  
S8121 Durkin  
S8121 Glenn  
S8121 Hart  
S8121 Haskell  
S8121 Hathaway  
S8121 Heinz  
S8121 Hollings  
S8121 Humphrey  
S8121 Inouye  
S8121 Jackson  
S8121 Javits  
S8121 Kennedy  
S8121 Magnuson  
S8121 Mathias  
S8121 Matsunaga  
S8121 Melcher  
S8121 Metcalf  
S8121 Metzenbaum  
S8121 Muskie  
S8121 Nelson  
S8121 Pearson

S8121 Percy  
S8121 Proximire  
S8121 Randolph  
S8121 Ribicoff  
S8121 Riegle  
S8121 Sarbanes  
S8121 Sasser  
S8121 Schweiker  
S8121 Stevenson  
S8121 Stone  
S8121 Weicker  
S8121 Williams  
S8121 NOT VOTING - 18  
S8121 Anderson  
S8121 Clark  
S8121 Cranston  
S8121 DeConcini  
S8121 Eagleton  
S8121 Goldwater  
S8121 Hatfield  
S8121 Hayakawa  
S8121 Johnston  
S8121 Leahy  
S8121 McClellan  
S8121 McGovern  
S8121 Pell  
S8121 Stafford  
S8121 Stennis  
S8121 Stevens

S8121 Talmadge

S8121 Tower

S8121 So Mr. DANFORTH's amendment was rejected.

S8121 Mr. METCALF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

S8121 Mr. METZENBAUM. I move to lay that motion on the table.

S8121 The motion to lay on the table was agreed to.

S8121 Several Senators addressed the Chair.

S8121 AMENDMENT NO. 299

S8121 The PRESIDING OFFICER (Mr. MATSUNAGA). The Senator from Missouri (Mr. DANFORTH) is recognized to call up his second amendment.

S8121 Mr. DANFORTH. Mr. President, I call up amendment No. 299.

S8121 The PRESIDING OFFICER. The amendment will be stated.

S8121 The second assistant legislative clerk read as follows:

S8121 The Senator from Missouri (Mr. DANFORTH) proposes an amendment numbered 299.

S8121 Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

S8121 The PRESIDING OFFICER. Without objection, it is so ordered.

S8121 The amendment is as follows:

S8121 On page 217, beginning with line 17, strike out all through line 21 on page 219 and insert in lieu thereof the following:

S8121 "(3) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to -

S8121 "(A) satisfy any requirements of State and local governments or relevant agencies thereof with respect to the contours and physical appearance of the land, and

S8121 "(B) satisfy any requirements of this Act or other Federal law or regulations with respect to public health, safety, water diminution, or pollution.".

S8121 On page 234, strike lines 13 through 16 and insert in lieu thereof the following:

S8121 "(2) Complete backfilling with spoil material shall be required in a manner in which such material will maintain stability following mining and reclamation, in order to -

S8121 "(A) satisfy any requirements of State and local governments or relevant agencies thereof with respect to the contours and physical appearance of the land, and

S8121 "(B) satisfy any requirements of this Act or other Federal law or regulations with respect to public health, safety, water diminution, or pollution."

S8121 The PRESIDING OFFICER. The Senator is reminded that there is a 5-minute limitation on debate on this amendment.

S8121 Mr. DANFORTH. Mr. President, may we have order in the Senate?

S8121 The PRESIDING OFFICER. The Senate will be in order.

S8121 Mr. DANFORTH. Mr. President, amendment No. 299, which I will explain in 2 minutes or less, is very simple. It provides that with respect to reclamation of the land, the land must be restored to the conditions which are necessary to satisfy Federal law and Federal regulations with respect to public health, safety, water diminution, and pollution. With respect to purely esthetic conditions, insofar as they have no effect at all on pollution or on safety or on health, States or local governments have exclusive jurisdiction.

S8121 My position on this amendment is that if the States do not have responsibility at least to decide how their land looks to the eye, if it has no effect other than esthetics, then the States, if they do not have that responsibility, do not have any responsibility or discretion at all.

S8121 Mr. President, I ask for the yeas and nays.

S8121 The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

{S} 8122 The yeas and nays were ordered.

S Mr. METCALF. Mr. President, this amendment is very simple, and it would do the same things as the amendment the Senator from Missouri offered earlier. It would wipe out the prime farmlands amendment that we adopted on this floor. It would wipe out the State's authority over alluvial valley

floors. It would prevent environmental or esthetic operations in the restoration of and that has been strip-mined. It would eliminate half of the legislation we have considered and passed on the floor of the Senate yesterday and today.

S Mr. DANFORTH. Mr. President, I will take 15 seconds to say, with all due respect, that I disagree with that characterization of the amendment.

S The only thing this amendment provides is that visual esthetics and contours, insofar as they have nothing to do with the environment, water pollution, and so on, just the visual esthetics, are a matter for State and local governments to decide.

S The PRESIDING OFFICER. Do Senators yield back the remainder of their time?

S Mr. METCALF. I yield back the remainder of my time.

S Mr. DANFORTH. I yield back the remainder of my time.

S The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Missouri. On this question the yeas and nays have been ordered, and the clerk will call the roll.

S The second assistant legislative clerk called the roll.

S Mr. ROBERT C. BYRD. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Iowa (Mr. CLARK), the Senator from Delaware (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Rhode Island (Mr. PELL), the Senator from Mississippi (Mr. STENNIS), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

S I also announce that the Senator from Arizona (Mr. DECONCINT) is absent because of death in the family.

S I further announce that, if present and voting, the Senator from Iowa (Mr. CLARK), the Senator from Minnesota (Mr. ANDERSON), and the Senator from Rhode Island (Mr. PELL) would each vote "nay."

S Mr. BAKER. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator

from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from Vermont (Mr. STAFFORD), the Senator from Texas (Mr. TOWER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

S I also announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

S I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Alaska (Mr. STEVENS) would each vote "yea."

S The result was announced - yeas 35, nays 46, as follows:

S [Rollcall Vote No. 155 Leg.]

S YEAS - 35

S Allen

S Bartlett

S Bellmon

S Bentsen

S Byrd, Harry F., Jr.

S Chafee

S Curtis

S Danforth

S Dole

S Domenici

S Eastland

S Ford

S Garn

S Gravel

S Griefin

S Hatch

S Helms

S Huddleston

S Laxalt

S Long  
S Lugar  
S McClure  
S McIntyre  
S Morgan  
S Moynihan  
S Nunn  
S Packwood  
S Roth  
S Schmitt  
S Scott  
S Sparkman  
S Thurmond  
S Wallop  
S Young  
S Zorinsky  
S NAYS - 46  
S Abourezk  
S Baker  
S Bayh  
S Biden  
S Brooke  
S Bumpers  
S Burdick  
S Byrd, Robert C.  
S Cannon  
S Case  
S Chiles  
S Church

S Culver  
S Durkin  
S Glenn  
S Hansen  
S Hart  
S Haskell  
S Hathaway  
S Heinz  
S Hollings  
S Humphrey  
S Inouye  
S Jackson  
S Javits  
S Kennedy  
S Magnuson  
S Mathias  
S Matsunaga  
S Melcher  
S Metcalf  
S Metzenbaum  
S Muskie  
S Nelson  
S Pearson  
S Percy  
S Proximire  
S Randolph  
S Ribicoff  
S Riegie

S Sarbanes

S Sasser

S Schweiker

S Stevenson

S Stone

S Williams

S NOT VOTING - 19

S Anderson

S Clark

S Cranston

S DeConcini

S Eagleton

S Goldwater

S Hatfield

S Hayakawa

S Johnston

S Leahy

S McClellan

S McGovern

S Pell

S Stafford

S Stennis

S Stevens

S Talmadge

S Tower

S Weicker

S So Mr. DANFORTH'S amendment (No. 299) was rejected.

S The PRESIDING OFFICER. Is there a motion to reconsider?

S Mr. METCALF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

S Mr. BROOKE. 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 ask unanimous consent that two members of the staff of Senator THURMOND, Robert Lyon and Michael Mishoe, be given privileges of the floor during debate and vote on this legislation.

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

S UP AMENDMENT NO. 259

S The question now recurs on the amendment offered by the junior Senator from Ohio.

S Mr. METZENBAUM. Mr. President, is the Senator from Kentucky on the floor? I would like to offer a modification of my amendment, but I am not certain that the Senator from Kentucky is satisfied with the language of the modification which, I believe, is agreeable to him.

S The PRESIDING OFFICER. The Senator from Kentucky is not on the floor.

S Does the Senator yield?

S Mr. METZENBAUM. Mr. President, I yield for 10 minutes.

S The PRESIDING OFFICER. Without objection -

S Mr. METZENBAUM. The Senator from Kentucky has arrived.

S Is the Senator from Kentucky satisfied with the language of the amendment, as drafted?

S Mr. FORD. Mr. President, I might say to the Senator from Ohio I feel a little bit trampled on, but I am willing to accept the modification.

S Mr. METZENBAUM. Since the feeling is mutual -

S Mr. BUMPERS. Mr. President, will the Senator yield the floor before this mutual admiration society gets out of hand - I would like to ask if 93 percent of the operators of this country mine less than 200,000 tons a year?

S Mr. FORD. There are varying percentages, but that is right. This amendment takes it down to 100,000.

S Mr. BUMPERS. What percentage of the operators mine less than 100,000 tons a year?

S Mr. FORD. The Senator from Ohio has the figures.

S Mr. METZENBAUM. Eighty-six percent of the mines are exempt.

S Mr. FORD. I want to make the point that these are small mines.

S Mr. METZENBAUM. I make the answer in just that manner.

S Mr. BUMPERS. If the proponent of the amendment could answer this question: What percentage of the coal is mined by operators who mine less than 100,000 tons a year?

S Mr. METZENBAUM. Seventy-seven percent is mined by operators who mine less than - let me put it this way.

S Mr. FORD. Twenty-three percent of the coal production in this country is mined by those firms mining under 100,000 tons a year.

S Mr. BUMPERS. Why are we exempting 23 percent for 3 years?

S Mr. FORD. Nine months under the original bill, 24 months under this modification.

S Mr. BUMPERS. Why are we exempting that many operators and that much coal from a bill that is designed to reclaim the coal land for this country?

S Mr. METZENBAUM. I think the Senator from Arkansas asks a very appropriate question. The original amendment pending at the desk provided that we would eliminate entirely the exemption in the bill as provided in the committee report. There are those who have argued, as has the distinguished Senator from Kentucky, that it would place an undue burden on the small operator if he were required to comply with the terms of this legislation immediately.

S In an effort to resolve the matter we have compromised the issue by reducing the number of months for the exemption in the bill from 30 months to 24 months, and reducing the size of the mines exempted or the size of the operators exempted from 200,000 tons a year to 100,000 tons a year.

S I share with the Senator from Arkansas his feeling that we probably ought to try to cover all of the mines, but the fact is that sometimes half a loaf of bread is better than one at all, and I am concerned that were that not the case it is possible that the exemption would be an even broader one

than that which is provided for under this compromise as a resolution of the matter.

S Mr. BUMPERS. What does the House bill contain?

S Mr. METZENBAUM. The House bill contains no exemption whatsoever. That is the language of the amendment that I originally submitted to the Senate.

{S8123} Mr. FORD. I might say to the Senator from Arkansas that the House does have language to provide funds to various hydrologists and other professional needs for those operators of 100,000 tons or less. We have incorporated that language in the amendment, so the question might not be mooted when we go to conference.

S8123 Mr. BUMPERS. Will those operators be exempt from paying the fees?

S8123 Mr. FORD. No.

S8123 Mr. BUMPERS. They will continue to pay the fees.

S8123 Mr. FORD. Yes, they continue to pay all the fees; they are not exempt.

S8123 Mr. BUMPERS. But they are not required to reclaim the land?

S8123 Mr. FORD. Oh, yes. One of the amendments the Senator from Ohio, and I worked out in the committee, if you will recall, prevented spoil from being placed over the mountainside.

S8123 Mr. HART. Mr. President, may we have order in the Senate? There is no order in the Senate.

S8123 The PRESIDING OFFICER. The Senate will be in order.

S8123 Mr. FORD. We provided that no waste will be pushed over the mountainside. That would not be exempted. They could not do that. That was one of the main concerns of the Senator from Ohio, so it was incorporated in this part of the amendment. That exception is gone. That requirement starts now. They are not exempt from this provision of the bill. They have to comply with State law plus the provision that we put in this amendment as it relates to overburden.

S8123 Mr. BUMPERS. What are they being exempted from by the bill if they have to pay the fees and reclaim the land?

S8123 Mr. FORD. They reclaim it. The bill gives them the opportunity to continue under the

present operation, under the present State laws, plus the added provision that no overburden be allowed over the side of the mountain. We give them a few more months to comply because they are small and do not have the ability to hire hydrologists and do the other things that the major companies can do. It gives them an opportunity to get in position to comply or go out of business.

S8123 Mr. BUMPERS. I want both Senators to understand my concern. My home county is one of the major producers in my State, which is not very significant by Wyoming or Kentucky standards, but it is about 100,000 tons a year, and if Members of this body can see how much devastation is wreaked in that county in a year's time they could understand my apprehensions about this amendment because they are mining 80 feet deep to get to a 14-inch seam of coal.

S8123 Mr. METZENBAUM. Mr. President, I ask unanimous consent that the amendment at the desk be substituted for the amendment that was previously at the desk and that it be called up for immediate consideration.

S8123 The PRESIDING OFFICER. The amendment is so modified.

S8123 The amendment, as modified, is as follows:

S8123 1. On page 175, line 18, insert after the word "Act" the following:

S8123 ", issued to a person as defined in section 501(17) in existence prior to May 2, 1977"

S8123 2. On page 175, line 20, strike "two" and insert "one".

S8123 3. On page 175, line 23, strike "thirty" and insert "twenty-four".

S8123 4. On page 157, line 23, change the period to a colon and insert:

S8123 Provided, That an amount not to exceed 10 per centum of such reclamation fees collected for any calendar quarter shall be reserved beginning in the first calendar year in which the fee is imposed and continuing for the remainder of that fiscal year and for the period in which such fee is imposed by law, for the purpose of section 407(f), subject to appropriation pursuant to authorization under section 511: Provided further, That not more than \$10,000,000 shall be available for such purposes.

S8123 5. On page 199, after line 10, insert the following new subsection:

S8123 (f) If the regulatory authority finds that the probable total annual production at all locations of any coal surface mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences required by subsection (b) (11) and the statement of the result of test borings or core samplings required by subsection (b) (15) of this section shall, upon the written request of the operator be performed by a qualified public or private laboratory designated by the regulatory authority and the cost of the preparation of such determination and statement shall be assumed by the regulatory authority.

S8123 The PRESIDING OFFICER. The question is on agreeing to the amendment.

S8123 The amendment, as modified, was agreed to.

S8123 Mr. SCHMITT. I move to reconsider the vote by which the amendment was agreed to.

S8123 Mr. METZENBAUM. I move to lay that motion on the table.

S8123 The motion to lay on the table was agreed to.

S8123 UP AMENDMENT NO. 261

S8123 Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

S8123 The PRESIDING OFFICER. The amendment will be stated.

S8123 The legislative clerk read as follows:

S8123 The Senator from Arkansas (Mr. BUMPERS), for himself, Mr. JACKSON, and Mr. NELSON, proposes unprinted amendment No. 261.

S8123 Mr. BUMPERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

S8123 The PRESIDING OFFICER. Is there objection?

S8123 Mr. HANSEN. Mr. President, reserving the right to object and I do not intend to object -

S8123 The PRESIDING OFFICER. The Senator from Wyoming reserves the right to object.

S8123 Mr. HANSEN. Are there copies of the amendment that Senators may read? I am not familiar with the amendment.

S8123 Mr. BUMPERS. There are not. But let me make this point: This amendment tracks the amendment that was offered yesterday dealing with surface-owner consent, with three or four major exceptions which I will explain.

S8123 Mr. HANSEN. A parliamentary inquiry, Mr. President.

S8123 The PRESIDING OFFICER. The Senator will state it.

S8123 Mr. HANSEN. Are we bringing up for reconsideration a matter that has already been disposed of?

S8123 The PRESIDING OFFICER. If the amendment is substantively different from that previously offered, it is in order.

S8123 Mr. HANSEN. I have not read the amendment. A further parliamentary inquiry.

S8123 The PRESIDING OFFICER. The Senator will state it.

S8123 Mr. HANSEN. Will the Chair examine the amendment and make such a determination for the Senator from Wyoming?

S8123 The PRESIDING OFFICER. The Chair will examine the amendment to see whether there is a point of order to be made.

S8123 Is there objection to the reading of the amendment?

S8123 Mr. HANSEN. No. I thought the unanimous-consent request was that it not be read.

S8123 The PRESIDING OFFICER. Is there objection to dispensing with the reading?

S8123 Mr. HANSEN. Since the amendment is not printed and since I have not had a chance to read it, I do object to it not being read.

S8123 The PRESIDING OFFICER. Objection is heard.

S8123 The amendment will be stated.

S8123 The legislative clerk proceeded to read the amendment.

S8123 Mr. METCALF. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and we hear an explanation from the Senator from Arkansas.

S8123 The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

S8123 The amendment is as follows:

S8123 On page 303, line 21, strike all of section 515 and insert in lieu thereof a new section 515 as follows:

S8123 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.

S8123 (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.

S8123 (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 deposits under such land in a leasing tract.

S8123 (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.

S8123 (e) Tender of the appraised value of the surface owner's interest shall occur when -

{S8124} (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

S8124 (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.

S8124 (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 -

S8124 (1) twice 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;

S8124 (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;

S8124 (3) the cost to the surface owner for relocation or dislocation during the mining and reclamation process; and

S8124 (4) any other damage to the surface caused or reasonably anticipated to be caused by the surface mining and reclamation operations.

S8124 (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 -

S8124 (1) hold legal or equitable title to the land surface; and

S8124 (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;

S8124 (3) have met the conditions of paragraphs (1) and (2) for a period of at least three years

prior to the receipt of written notice from the Secretary provided for in this section. In computing the three-year period the Secretary may include periods during which title was owned by a relative or such person by blood or marriage during which period such relative would have met the requirements of this subsection.

S8124 (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.

S8124 (i) This section shall not apply to Indian lands.

S8124 Mr. BUMPERS. Mr. President, if I may have the attention of colleagues for a few moments, number one, this amendment is offered on behalf of Senator JACKSON, chairman of the Energy Committee, Senator NELSON, and myself.

S8124 I am not going to repeat all the arguments I made yesterday, because it would be redundant. But I hope that some Senators who are present who did not hear the arguments made yesterday will remain for at least a few moments, so that I can explain at least the difference between the amendment that was offered yesterday and the amendment today.

S8124 First, the bill now provides that a landowner must reside on the land 3 years prior to the enactment of this bill; is that correct?

S8124 Mr. HANSEN. Yes.

S8124 Mr. BUMPERS. We have changed that to provide that he only needs to live on the land 3 years prior to the time the Secretary of the Interior advises him of his plan to include that land in a lease.

S8124 Second, we have changed the amendment from yesterday to be similar to the bill. The surface owner only needs to receive a significant part of his income from this land.

S8124 But the most significant change, Mr. President, is that the bill as it is now written entitles the surface owner to twice the difference between the value of the land before it is mined and the value after it is mined, plus 2 years' loss of profits, plus all relocation costs, plus any other costs or expenses that he can conjure up and verify.

S8124 Finally, the surface owner gets the land regraded back to its approximate original contour

with its original production and returned to him.

S8124 In the interest of absolute fairness to the surface owners and those people out there who want to farm and ranch, we are going as far as I think it is possible to go - more generously and more charitably than any other statute that I know of in any State statute or in the Federal Code.

S8124 This amendment provides that he will receive twice the difference between the fair market value before the mining and the value immediately after the mining.

S8124 That may seem strange to a lot of people, that the United States Government, in all of its largess, would want to pay somebody twice the value, plus the relocation costs, plus 2 years' loss of profits, plus all other expenses, plus the land back in a comparable condition to what it was before the Government mined it.

S8124 But, Mr. President, that is not as charitable as it seems. Because I think the Government can do that and still save the people of the United States billions of dollars. But I do not know how we could be more charitable, more compassionate, or more considerate of those surface owners.

S8124 I have made a lot of speeches in my lifetime about the vision of certain people of this country. For example, whoever decided to reserve Central Park in New York City was certainly a visionary. Whoever gave the Common to Boston, and whoever took the time to preserve it in its present form, deserves the praise of everyone in Boston and everyone in the United States. One could go on and on. The people who sat in this body and at the other end of this building and had the vision to reserve the minerals under all of that Western land deserve the praise, not just of Members of Congress today, but of all the people of the United States, because it was on their behalf and in their interest that that mineral reservation was made.

S8124 I daresay there are a lot of people in this Chamber right now, and Senators who are not here right now, who own mineral interests in land. In the States of Wyoming, Montana, North Dakota, and all of the Western States, the United States was visionary enough to reserve the minerals, or reserve the coal only, or the oil and gas only, because they knew there would be a time when the United States would need and want it, and it was saved for that very simple reason.

S8124 Now that whole vision is being thwarted by this bill. When we say whoever bought those

surface rights - and, you know, they did not really buy them; they were virtually given to them under the patents they perfected. You got those surface rights for \$1 or \$2 an acre.

S8124 I am not quarreling with that. But when they got them, those mineral reservations were there like a red flag for everyone to see.

S8124 I have a Northern Great Plains Resource Report which says you cannot put together an economically minable package unless you put together a lot of contiguous land. I am going to come to this map back here in a minute, and point out the problems of finding land in contiguous ownership patterns. The obvious reason is that you cannot gerrymander a coalmine around various tractsof land owned by the surface owner only. You have to have roads. You have to have railroads. You have to have utility lines. You have to have access to all of those things. If you try to lease a hundred-acre tract of land, interspaced with various 40-acre tracts where the surface is owned by someone other than the United States, it is impossible to put it together.The Secretary cannot do it.

S8124 Would it not be an interesting anomaly if teh Burlington Railroad, for example, which owns all kinds of coal and mineral interests in the West, could walk in and mine their coal because they reserved the minerals? Everyone knows how the U.S. Government gave away all that land to the railroads out there. When they sold off the surface, they reserved the coal. They can go in there today and mine it, and pay the surface owner the fair market value. However, on the tract next to it where the minerals are owned by the U.S. Government, nothing could be mined without the surface owner's consent.

S8124 Mr. JACKSON. Mr. President, will the Senator yield?

S8124 Mr. BUMPERS. I am happy to yield to the Senator from Washington.

S8124 Mr. JACKSON. I wonder if we cannot sum up this problem in a few sentences.

S8124 Farmer A owns a thousand acres, and qualifies under this provision that requires residence on it so long. He is a rancher; he has a thousand acres; he owns the surface rights. The Federal Government owns the subsurface rights, the coal.

{S8125} Farmer B, adjoining him, owns the surface rights, but a private company owns the subsurface rights to the coal.

S8125 As I understand the legislation - so that everyone in this body will understand, because there is an issue here, in my view, of unjust enrichment; that is what is involved - in the case of farmer A, where the Federal Government owns the subsurface property, the coal, in that case the owner of the surface rights must give consent; he can demand any price as a payoff. Farmer B, right beside him, is in the situation where he mon law and under the laws of that State, because the subsurface rights are owned by a private company, and the property rights are protected under the Constitution.

S8125 What we are doing here, I will say to my colleagues, so that everyone knows, is giving away Federal property. It is that simple.

S8125 There it is. I think that is what the Senator was alluding to. It is not complicated at all. Because you get into these very unjust situations: Ranchers living by ranchers who are having the advantage of applying the giveaway provisions in this bill whereas the other one is not given that protection, because his coal is owned by a large company with the full protection of the law. But we are saying Uncle Sam will not be effectively protected; is that not what it is?

S8125 Mr. BUMPERS. That is exactly what it boils down to.

S8125 Mr. JACKSON. How else can anyone explain it?

S8125 Mr. BUMPERS. Mr. President, if I may pursue that point, I invite the attention of everyone in this Chamber to the map behind me. The colored portion of the map covers the Powder River Basin in Wyoming. That is probably the biggest, richest deposit of coal in the world. It is the deposit on which the United States is depending to solve this great moral war the President has declared. I want to call your attention to the colored portion of the map. Everything colored in gray on the map of the Powder River Basin indicates that the United States owns the coal, but someone else owns the surface.

S8125 Everything on the map shaded in purple designates the area where the United States owns all the minerals, and somebody else owns the surface.

S8125 That part of the map colored in blue is where the United States owns the oil and gas, and somebody else owns the surface.

S8125 That part of the map colored in red, which constitutes no more than 35 to 40 percent of the map, designates where the United States owns the minerals and the surface.

S8125 After looking at the map, a Senator can say, as the Senator from Wyoming undoubtedly will in a moment, that there is plenty of coal under the red part alone to keep this country rich in coal for the foreseeable future. There would be some merit to that argument, except for this one small flaw: There cannot be a lease in the red area when there are small dots of purple interspersed. If all the red was in a contiguous position, it could be leased, and the Government would lease it, and I probably would not be standing here. It will be virtually impossible to lease the coal where we own the surface and the minerals because interspersed throughout are these small tracts and some fairly large tracts where someone else owns the surface.

S8125 It is an outright prohibition.

S8125 If this bill passes, there will be nothing on which to go to conference because the Senate bill tracks the House bill. If we pass the bill in its present form there is nothing for debate with the House, and we have locked the gate. I can say that we have virtually turned our back on people of this country, and the visionaries of this body who preserved the coal in the 1870's and 1880's for the public interest. The coal will not only be mined, but in some instances it will produce more billionaires than this country ever dreamed of. It will make the Tideland Oil case look like peanuts.

S8125 Finally, Mr. President, I talked to the Secretary of Interior less than 3 hours ago. He said, "I cannot believe that that surface owner consent requirement is still in the bill."

S8125 I said, "It is in the bill, Mr. Secretary, and I do not see how you are going to develop a leasing program."

S8125 The Secretary said, "You can quote me as saying there will be no leasing program. We cannot develop a leasing program with the situation in that status."

S8125 Mr. President, I could talk on and on, and I could repeat all the arguments I made yesterday. I have said all I know to say. One of the reasons I brought this up again today is to double the compensation to which the surface owner is entitled. That will give him roughly three times the compensation any other surface owner in the United States will ever get through eminent domain

proceedings by a State or the United States.

S8125 In my State, as well as the other 49 States, utility companies can take land and give the owner the fair market value, and that is all. But here we are placing ourselves as third-class citizens and saying to all the people we are not going to mine this coal which belongs to them.

S8125 The Surface owners have leverage which will cost this country billions and billions of dollars. When the consumers of this country write to us complaining about their utility bills, I want Senators to be able to tell them that they helped raise their utility bills and helped raise the price of coal to an unconscionable price. That is exactly what we are doing.

S8125 The second reason I brought this amendment up again today, Mr. President, is because I want the Members of this body to vote with knowledge of the problem created by the bill in its present form.

S8125 I am not denigrating my colleagues as we are all guilty when we come in to vote and do not understand the issues. However, I want everybody to know what they are doing when they vote for this bill in its present form. I want everyone to look at this map and see if I have exaggerated my arguments.

S8125 Mr. McCLURE. Will the Senator yield for a question?

S8125 Mr. BUMPERS. I yield.

S8125 Mr. McCLURE. I just want to ask this brief question: Can the Senator from Arkansas tell us how much of the map, which is designated as being the surface owned by a private owner and the minerals owned by the Federal Government, is owned by someone who wants to mine the coal?

S8125 Mr. BUMPERS. I am not sure I follow the Senator's question. Is the Senator asking how many farmers want their coal mined?

S8125 Mr. McCLURE. In a number of cases, a mining company may have bought up minerals.

S8125 Mr. BUMPERS. I am sure that is true.

S8125 Mr. McCLURE. They can deal with the question of mining the Federal coal without having to deal with the surface owner. I just wonder if the Senator can tell us how much of that map is represented by lands in that classification which are not separately colored as such.

S8125 Mr. BUMPERS. I do not know. I cannot answer that question because that information is not provided.

S8125 I will give an answer to an unasked question. There is another type of ownership situation in which the United States owns the surface and somebody else owns the minerals. So far as I know, and owner of that land can go in and mine it any time they want to and pay the United States either what is provided under this proposal or the normal before-and-after value which our laws provide for now. In other words, the United States right now will not get as good a break as the surface owners will under this bill.

S8125 Mr. McCLURE. I do not know of any very large tracts of land in the West in which the Federal Government would own the surface.

S8125 Mr. BUMPERS. There are very few, I admit that. But there are some there.

S8125 Mr. McCLURE. I submit that that is almost totally negligible. I know of only a little and that has been acquired by the Federal Government in the Eastern United States subject to that kind of rule. I know of almost none, if any at all, in the Western United States.

S8125 The second question is this: Is there any way for us to know today how many of those lands in which there is a non-Federal surface owner and the Federal reservation of mineral rights in which the surface owner is very willing to make a deal with regard to allowing the mining company to remove the Federal coal?

S8125 Mr. BUMPERS. Of course, I have no way of knowing who is willing to sell and who is not.

S8125 Mr. McCLURE. The best we can say about that map, then, would be that that is the worst possible case.

S8125 Mr. BUMPERS. But it is one that, in my opinion, is an absolute certainty. One of the problems that I confront here, and I am reluctant to bring this up. The environmentalists do not favor this amendment. I think everyone ought to know that.

{S8126} Mr. HANSEN. Will the Senator yield on that point?

S8126 Mr. BUMPERS. Yes.

S8126 Mr. HANSEN. It happens that the Senator from Arkansas is exactly wrong. Katherine Fletcher, who is on the White House staff, has assured me within the last 30 minutes that the administration is perfectly happy - and maybe Secretary Andrus might be interested in this statement of fact - and satisfied with the language contained in the House bill and which, at this moment, subject to the actions of this body yesterday, is now contained in the Senate bill. The White House is perfectly happy with that situation. I challenge anyone -

S8126 Mr. BUMPERS. I was talking about environmentalists. Environmentalists and the White House are not synonymous.

S8126 Mr. HANSEN. I did want to make that point.

S8126 Mr. BUMPERS. Let me reiterate that the Secretary of the Interior told me less than 3 hours ago that there was no way to develop a leasing plan under this bill. He was under the impression that the old language put in 2 years ago, giving the surface owner the difference between the before and after market value, plus \$100 an acre, was still in the bill.

S8126 Secondly, the point I was about to make is that the environmentalists do not favor this amendment. My environmental credentials are probably as good as any other Senator's. But I think environmentalists are dead wrong on this issue because I believe they oppose it with the thought that it will keep the coal from being mined. Nothing could be further from the truth.

S8126 The coal will be mined. We are talking about the cost of the coal. The cost of the coal, over the next several years, is going to be billions and billions of dollars more than it would be if the surface owners were treated as generously as I am proposing to treat them in this amendment.

S8126 Mr. NELSON. I wonder if the Senator from Arkansas will yield for a couple of questions?

S8126 Mr. BUMPERS. Yes.

S8126 Mr. NELSON. I was not asking for the floor in my own right. I was asking the Senator from Arkansas to yield for a couple of questions for the RECORD.

S8126 In the debate yesterday, as I read it today, the Senator from Louisiana (Mr. JOHNSTON) and the Senator from Arkansas (Mr. BUMPERS) discussed the Rocky Mount Mineral Law Institute

paper. I was interested to read the RECORD this morning about some examples that were developed in the RECORD.

S8126 From looking at the RECORD, I see that the Rocky Mountain Mineral Law Institute said that in a typical area, one section of land, 640 acres, at 50 cents royalty per ton, would yield from that one section of land, a typical section, \$16 million in royalties, or about \$25,000 per acre.

S8126 Using the figures from the Rocky Mountain Mineral Law Institute - first, may I ask, is that understanding correct?

S8126 Mr. BUMPERS. The Senator is precisely correct.

S8126 Mr. NELSON. Using those figures, and quickly rounding out the numbers, I assume, then - or, rather, I extrapolated from that - that in the "typical area," if one owned 4,000 acres, at that price, at that 50-cent royalty per ton, that would produce royalties of a little over \$100 million. Four thousand acres is not a huge holding in the West. We even have a few people in my own State who own that much, though it is quite unusual there. If my multiplication is correct, that means that one 4,000-acre holding would cost the public, in royalties, for their own coal - they own the coal - it would cost every single American citizen, all 200 million, 50 cents each.

S8126 I think we ought to know what we are doing here. Senator JACKSON mentions unjust enrichment; that is the understatement of the year. I commend the Senator from Arkansas and the Senator from Louisiana for their contribution to the debate yesterday. But I am not going to be the one who is going back to my State and answer to my constituents when the first case shows up on the front page of somebody owning 4,000 acres and getting \$100 million paid by the taxpayers of this country, in order to extract the coal that the public owns from the land that was given on patent, with a specific reservation at the time that was understood by everybody. I think that is unconscionable.

S8126 Teapot Dome was mentioned in yesterday's debate. Why, in terms of dollars, that would be compared in size with a little tiny kid's lemonade stand on the corner. It is absolutely preposterous that we would leave in this kind of provision for this kind of unjust enrichment. I want to see the Member who will stand up on the floor, or stand up in any forum in his own State, and say to the taxpayers, "I think that is fair enough."

S8126 That is a ripoff that we should not endorse. And if it remains in the bill, I shall vote against it.

S8126 I might say that I have been involved in debates on this issue in the Interior Committee for about 13 years. I sat through all the hearings and the markup of two bills vetoed by the President, and have listened to this argument, time after time. I have not heard a single meritorious argument, from the environmentalists or anybody else, that justifies this incredible, unjust ripoff of the taxpayer. They know it is wrong. You know it. I know it.

S8126 I argued this issue at great length with representatives of several environmental groups. It was their position that anything that could conceivably be done that would make it impossible efficiently to mine the coal the public owns was good public policy. That is all there is to it.

S8126 It is a perfectly valid position to say, "I am opposed to all strip mining." In fact I do not like it myself. That is why I introduced legislation 13 or 14 years ago to control strip mining. But it is going to happen in any event. Therefore, we need good legislation to control it. But to use this kind of devious tactic which results in unconscionable enrichment which is indefensible. If this provision remains in the bill, I cannot, in good conscience, vote for the bill, much as we need this strip mining legislation.

S8126 I hope that when the President looks at it and sees us giving away this kind of money, he will veto it and send it back to the House and Senate.

S8126 As the Senator pointed out, even the public utilities in this have the right of condemnation. And when it is all over and they put in their power lines and take the farmer's land, wherever they may have gone and the farmer is only entitled to the market value of the land, no more.

S8126 This provision gives them much more than that. But if we leave it as it is in the bill, I do not see how anybody can live with it. And if the President takes the time to look, he cannot live with it, either, and this bill will be back here for our consideration again.

S8126 Mr. MELCHER. Will the Senator yield, Mr. President?

S8126 Mr. HASKELL. Will the Senator yield for a question?

S8126 Mr. BUMPERS. I yield to the Senator from Colorado.

S8126 Mr. HASKELL. I congratulate the Senator from Arkansas. We are creating the windfall profits that the Senator from Wisconsin has just referred to. The Senator from Washington, the distinguished Chairman of the Committee on Energy, has given a very clear example of what could happen. I wish to ask the Senator from Arkansas, if I may have his attention - specifically, I want to call his attention to the hit-and-miss people that may get this windfall.

S8126 It is not every surface - I am reading now from pages 305 of the bill, line 6 - various folks, but it is a sort of lottery as to who gets this windfall, which I think makes it even more absurd.

S8126 First, if you have your principal place of residence on the land. You could be H. L. Hunt and if you have your principal place of residence on the land, you can participate in this windfall. That is one example.

S8126 Another one, you do not have to live on the land, but if you conduct farming or ranching operations on the land. You can live in New York City and, presumably, supervise a farm and ranching operation.

S8126 Then there is a third category, separate and apart from the residence, separate and apart from conducting a ranching operation: if you happen to derive a significant portion of your income from it.

S8126 It is not all three of those. It is each separate category, and if, in the lottery, you happen to fall within one of those three categories, you get the windfall that the Senator from Washington, the Senator from Arkansas, and the Senator from Wisconsin have spoken of.

S8126 Would I be correct, I ask the Senator from Arkansas?

S8126 Mr. BUMPERS. The Senator is absolutely correct. That is a point that was not made either yesterday or today. It is well made by the Senator.

S8126 Mr. HASKELL. I feel the way the Senators from Wisconsin and Arkansas and Washington do. I think this is a very unfortunate thing to have in a strip mining bill. I do not think it was ever our intent to create instant millionaires, certainly not on a hit and miss basis. I congratulate the Senator.

{S8127} } Mr. MELCHER addressed the Chair.

S8127 The PRESIDING OFFICER (Mr. ABOUREZK). Does the Senator from Arkansas yield

the floor?

S8127 Mr. BUMPERS. Yes.

S8127 Mr. MELCHER. Mr. President, I think we ought to put this in the perspective of the world we are in today and respond to the rather dramatic presentation about the millions and millions of dollars that might be involved for a surface owner, and just say what the facts are.

S8127 I do not know how we acquired land in the United States but what we got it from the King or got it from the Government. Now, we are in the Louisiana Purchase in eastern Montana, this Powder River Basin, and that was purchased by the Government. If one was the Burlington Northern, which used to be the NP, if one was the Northern Pacific and got the land grant, he got the surface and the minerals and the Government gave that to him.

S8127 I think, perhaps if the Senator from Arkansas would listen to me and the Senator from Wisconsin, that the land and the subsurface derived from the Government in their States.

S8127 At what point did the surface become separated from the subsurface? I do not know.

S8127 But in this case in the early 1900's Congress said that the coal would be reserved in those lands that were being taken up for homestead in North Dakota and in Montana and in Wyoming, which is the Powder River Basin.

S8127 So it was in the early 1900's that Congress said that we will reserve the coal to the United States and prior to that time anyone who got the surface also got the subsurface and the coal.

S8127 It is true that some of the mineral reservations other than coal at various times were reserved by the United States prior to the amendments to the Homestead Act in the early 1900's which specifically reserved the coal.

S8127 Now, the homesteaders went out there. It was not easy, as was intimated by the Senator from Arkansas, to prove up on that land. But they went out there with a firm understanding that they would get the surface if they complied with the requirements of the law and also with the firm understanding that they did not own the coal underneath it. The coal was reserved for the United States.

S8127 The Congress said in amending the law regarding this, the colloquy demonstrates it, if one cares to look in the past RECORD, the colloquy was to the effect that those homesteaders would not be jeopardized their surface except to the extent it was necessary for a road, a railroad track, a shaft, or a tipple to get at the coal, deep mining, shaft mining. There was no thought, no thought at all, of strip mining the land away to get at that coal.

S8127 The homesteaders went out there, proved up their homesteads and then had their surface as theirs, subject only to the coal reservation on the basis, as Congress demonstrated in the colloquy and the passage of the act, that they would lose a portion of their surface, an insignificant portion of their surface if the coal were to be extracted because it would be extracted by shaft mining, deep mining, and they would retain 95 percent of their land and only use that 5 percent or 3 percent, whatever was necessary, for shaft mining.

S8127 The statement was made that if it were Burlington Northern in the State of Montana that owns the subsurface, the coal, because they sold the surface to a private party, but retained the coal, that the Burlington Northern would be in great shape to exercise eminent domain to remove that surface owner from the land.

S8127 Well, it does not work that way. It simply does not work that way because when we remove for purposes of strip mining, we remove all of the surface and the landowner loses all of that surface. Eminent domain is not used by the Burlington Northern for strip mining of coal in Montana. But if it were, the remedy would lie with the State legislature of that State, as it lies with the State legislature of every State to give a remedy in equity to the landowner.

S8127 But in this case, the equity must involve Congress. We are the ones that mentioned this situation. And looking back at the history of the Homestead Act and the modifications of it when coal was reserved and recognizing that when that law was enacted by Congress we said to the landowner, "The surface is yours when you have proved up on it and all that goes with it, you will only be jeopardized on that coal reserved to the United States to the extent it is necessary to have a railroad track, a road, tipple, shaft, whatever, a very small portion of your land."

S8127 Equity demands now, today, as it has demanded the last 4 years when we have considered

this issue on the strip mining bill, that, for those Western landowners, they be given the right of other landowners to say, "No, you can't strip my land, you can't take away my home, you can't take away my fields, until I have given you consent."

S8127 But what has giving the consent amounted to in terms of dollars? It is not that the map of the Powder River Basin or the portion of the Powder River Basin that is in northern Wyoming demonstrates who has gotten consent for mining the surface, who has gotten commingling the surface, who has gotten condos not show it. It cannot show it because in many instances coal companies have already dealt with the surface owner.

S8127 And what is the price? I know of no deal in the main. I do know, as the Senator from Wyoming knows, of some examples where the surface was valued at \$1,000 an acre, and \$1,000 an acre for rangeland in Montana or Wyoming is a big price. But it is not the ripoff as has been described here earlier. It is not the millions or the billions.

S8127 And what does it amount to the consumer? When we had this 4 years ago in the House and utility companies were touting a similar amendment as has been introduced here and we are now debating, the utility companies cried the same lament, "It will cost millions of dollars for consumers."

S8127 So we projected that figure. If the surface in the Powder River Valley overlying Federal coal was settled for on the basis of \$1,000 an acre - and we think that is a big price, that is far above the market because it is only the rare exception where it is \$1,000 an acre for the surface consent - but if it were \$1,000 an acre and we are talking about 55,000 tons of coal per acre, which is kind of a middling figure for coal production in the Powder River Basin, it would come to two-thirds of a cent per month for the utility company consumers, if they were using all of that coal purchased out of the Powder River Basin, having settled the surface owners' rights at \$1,000 an acre.

S8127 All those who feel \$1,000 an acre is an excessive price for rangeland in Montana or Wyoming should vote for the amendment offered by the Senator from Arkansas. But for those of us who believe that ownership is a property right that is not shrugged aside, where ownership of land and our home and livelihood is something we have some determination over, then he should vote "no," against the amendment.

S8127 You will not be sacrificing anything for the U.S. Government. There is nothing in the Mineral Leasing Act or in this bill that would ever suggest that a royalty on the Federal coal would be paid to the landowner. What the bill does say is that before the coal is mined, the landowner has a right to say no. If he does not want to accept what I consider a very high price for the land, at somewhere between, say, \$100 and \$1 ,000 an acre, he has that right as a property owner, and that is equity. It is an equity that can be given only by Congress, the State of Kentucky, the State of Arkansas, the State of Ohio. They can address what is equity for surface owners' rights where the mineral is separated from ownership of the surface owner.

S8127 However, only Congress can say what is equitable for those landowners who have gotten their land through this practice of homesteading, yet with the coal reserved, but got it on the basis that it would not be stripped, that it would not be deep shaft mined.

S8127 So I think Congress should repeat what we have twice repeated in the previous vetoed bills and say that the right of ownership comes first. You must get the written consent. That is the issue.

S8127 Mr. METZENBAUM. Mr. President, will the Senator yield?

S8127 Mr. MELCHER. I yield.

S8127 Mr. METZENBAUM. Will the Senator from Montana be good enough to explain where he gets the figure of \$100 to \$1 ,000 an acre? Is that not the real issue of the proposed amendment: that it may be \$1,000 or \$5,000 or \$20,000 or \$1 00,000, and if the owner does not want to accept, there is no standard in the legislation and therefore the owner can sit on the land and the coal as well?

{S8128} Mr. MELCHER. The place where the \$1 00, the \$500, the \$1 ,000 comes from is the marketplace. The marketplace has been long established.

S8128 We have been 4 years debating the bill in Congress, debating this issue in Congress. Prior to that time and all during those 4 years, there have been acquisitions of surface owners' rights over Federal coal. It has gone on. That is exactly what the marketplace has established.

S8128 Frankly, I think that \$1 ,000 an acre for rangeland is quite high in Montana or Wyoming. But I remember that what we are concerned about here, in Congress, is what is equity and does that

surface owner have the right to determine, "It's my land. I don't care to mine it. I'm going to hang onto it." That right, I think, should come first.

S8128 Mr. FORD. Mr. President, will the Senator yield?

S8128 Mr. MELCHER. I yield to the Senator from Kentucky.

S8128 Mr. FORD. The Senator from Montana made the statement that the surface owner was not entitled to a royalty. Will he repeat that and give me the reason why the surface owner would not be entitled to any royalty on the land?

S8128 Mr. MELCHER. There is nothing in the Mineral Leasing Act and nothing in this bill that would intimate that a surface owner was in any way entitled to a royalty on the Federal coal.

S8128 Mr. FORD. If he has the privilege of denying or accepting the severance of the coal, would he not then have the right to say, "In lieu of so much acre, I want 25 cents per ton royalty on the coal mined," or, "I want 50 cents per ton royalty"? Would he not have that privilege?

S8128 Mr. MELCHER. I say, in answer to the question, that the bill does not preclude it; but the bill does not suggest it, nor does the Mineral Leasing Act, under which these leases are let, suggest it.

S8128 I might add that it would be contrary to the public interest; and I am certain that the Secretary, under no circumstances, would favor it and, if he knew about it, would disallow it.

S8128 However, if the Senator from Kentucky or any other Senator cares to stipulate in the bill that no surface owner may be recompensed on the basis of royalty, I would be delighted to support the amendment. It simply is not the practice and it is not done, nor was it envisioned to be done. But I have no objection to prohibiting it by an outright ban.

S8128 Mr. FORD. The junior Senator from Kentucky is not a lawyer, but I would be hard pressed to think that the Secretary could disallow the agreement between the surface owner and mining company - if we are saying that he has the right of turndown or acceptance. Would the Secretary have the right to disallow the arrangement whereby they could sever the coal based on a 25-cent or 50-cent per ton royalty?

S8128 Mr. MELCHER. I think the marketplace has determined otherwise. It simply is not done.

The Secretary, in allowing the lease to a coal company, is going to look, first of all, at whether there is written consent. If he wishes to look into the circumstances as to how that written consent is arrived at, he certainly may - and in the public interest, probably would.

S8128 As to whether or not the administration views written consent as being essential, I refer to page 109 of the committee report and to the April 5 letter addressed to Representative UDALL, the chairman of the Interior Committee in the House, where it is stated:

S8128 The administration supports strong protection for surface owners. Surface owners' consent should be required for the entire area covered by a permit application. For Federal lands, this consent should be written and given before leasing.

S8128 Mr. FORD. It is a little strange to me, when the distinguished Senator from Wyoming uses a reference quite often to a print on representing the landowner in a mineral or surface lease or sales transaction. I do not know whether the Senator has it, but on page 461 it reads:

S8128 If the coal company will pay a surface owner royalty at the rate of five cents a ton on the coal leased by the coal miner from the United States, the landowner would receive \$2,500 an acre or \$1,632,000 a section.

S8128 So here is the legal advice that the people who are espousing this amendment are opposing, the amendment by the Senator from Arkansas. This is their bible, to which they referred us all the time. It lays out how they shall get the royalty. It tells them how to make a deal by ownership of the surface.

S8128 So I say to the Senator from Montana that we are placing ourselves in a position that I do not quite understand.

S8128 Can the Senator from Arkansas help us a little? He is a lawyer, and the Senator from Montana and I are not.

S8128 Mr. BUMPERS. That is open to debate.

S8128 Mr. FORD. The Senator from Arkansas is the best one I am talking to because the Senator from Montana (Mr. MELCHER) is not a lawyer, and I am just a country boy, but we are saying in this piece of legislation that the surface owner must give consent before the coal can be extracted.

S8128 On the other hand - and this is coal owned by the U.S. Government - the surface land was homesteaded, and everything was set out at the time the arrangement was made, and we are also saying under this piece of legislation we are not going to surface mine in the national forest; is that not correct?

S8128 Here is a Senator who was very much opposed to surface mining in a national forest.

S8128 Mr. METCALF. We have passed a bill in the last session about surface mining in the national parks.

S8128 Mr. FORD. Forests, not parks. If I said parks I apologize. But in our State I do not want to have a deed or any individual - contract that denies individuals rights - when the bill is passed gives, the surface owner out West had the right to reject. In Kentucky the Federal Government bought land at \$2.50 and \$3 an acre to make and encompass an area for a national-forest. But in that deed - and some of them are as long as 75 and 100 pages, I understand - they go into very minute detail that even though the U.S. Government owns the land, the previous owner reserves the right - and they spell out how the coal shall be extracted, how the timber shall be severed. I do not want those rights abrogated.

S8128 What happens to that individual when we say there is no surface mining in the national forest. We have a private owner who owns the mineral under the land owned by the Federal Government. What kind of position are we in? Is there a valid legal right to strip mine this coal?

S8128 Mr. BUMPERS. I am not sure I track the question. Is the Senator talking about a contractual right where the method of extraction has been set out in a mineral reservation?

S8128 Mr. FORD. Yes.

S8128 Mr. BUMPERS. That is a contractual right, that is not something we are legislating here.

S8128 Mr. FORD. But we are saying that the land that was purchased and then turned into a national forest, cannot be surface mined in a national forest under this bill.

S8128 Mr. BUMPERS. That is right.

S8128 Mr. FORD. Are we overriding the contract originally signed by that private citizen?

S8128 Mr. BUMPERS. Yes, the Senator is correct. That would override whatever reservation was there.

S8128 Mr. FORD. So, on the one hand, we are giving the citizen the right over coal owned by the U.S. Government.

S8128 Mr. METCALF. Mr. President, will the Senator from Kentucky yield?

S8128 Mr. FORD. Yes.

S8128 Mr. METCALF. We do not say that there shall be no surface mining in the national forests. There are already areas of the national forest in Ohio, in Pennsylvania, in some other areas, where there is surface mining. Now, those are inholdings. We say there shall be no surface mining on the Federal land, and I understand the Senator is saying, "Well, they sold this land to the Federal Government \$1 or \$2 an acre."

S8128 But I still want to call the attention of the Senator from Kentucky to a very recent case in his own State on a fairly narrow issue. It is called Commerce Union Bank against Kinkade in the Supreme Court of the State of Kentucky where the U.S. Supreme Court denied certiorari.

S8128 Mr. FORD. What does that mean? I am not a lawyer.

S8128 Mr. METCALF. Well, Supreme Court denied review of the case, so the decision of the lower court stands.

S8128 In that case, the lower court ruled that because strip mining was not a common practice when the rights under this broad-form deed - such as the Senator is suggesting - were sold, there could be no strip mining conducted against the wishes of the landowners.

S8128 Mr. FORD. Is this the broad-form deed I am talking about? I thought this was just a deed. The Senator is Uncle Sam and I am a private owner.

{S8129} } Mr. METCALF. I I am talking about the broad-form deed you have in Kentucky.

S8129 Mr. FORD. No, I am not talking about the broad-form deed.

S8129 Mr. METCALF. Which the Senator was suggesting was longer than from over here to the map there.

S8129 The only point I am making, I want to say to my friend from Kentucky, is that there is

serious question around the United States, even in the Senator's own State of Kentucky, whether or not strip mining was anticipated when these mineral rights were reserved.

S8129 Mr. FORD. But I say to the good Senator, who is very knowledgeable in the law -

S8129 Mr. METCALF.Thanks.When I retire I will quote the Senator.

S8129 Mr. FORD. I will come to the Senator for help. [Laughter.]

S8129 But what I am saying is that this is a recent contract. This is not one made back before strip mining was common practice. The one I am talking about, is not the broad-form deed. I am talking about a deed by you and me - you as the United States and I as a private citizen - made it in recent years. The broad-form deeds are in the 1800's.

S8129 I am talking about a deed made with the United States where the United States bought the surface, and we spelled out surface mining rights.

S8129 Mr. METCALF. The Senator from Kentucky knows that surface mining is an ongoing operation east of the 100th meridian. It is west of the 100th meridian that we have allowed some limited mining in the national forests except in the Custer National Forest, and Alaska national forests.

S8129 Mr. FORD. Is the Senator saying to me then if a private citizen has a contract whereby he retains the mineral rights with the Federal Government in a national forest he can go ahead and surface mine?

S8129 Mr. METCALF. In Kentucky or Ohio or Pennsylvania.

S8129 Mr. FORD. And it is not prohibited?

S8129 Mr. METCALF.Only on Federal lands.

S8129 Mr. FORD. In a national forest if you have a valid contract or deed?

S8129 Mr. METCALF. Yes.

S8129 Mr. FORD. That contract document sets out specifically what the owners should do in Kentucky, in West Virginia, in Ohio, in Pennsylvania, in Virginia. In those States, the national forest can be surface mined?

S8129 Mr. METCALF. Yes, and there is surface mining.

S8129 Mr. FORD. The Senator has answered my question, and I am sorry I delayed the junior Senator from Montana.

S8129 Mr. BUMPERS. Mr. President, will the Senator allow me to make one other observation?

S8129 Mr. FORD. Yes.

S8129 Mr. BUMPERS. This bill does indeed prohibit surface mining within the national forests, but there are certain exemptions to that.

S8129 Mr. FORD. West of the 100th meridian.

S8129 Mr. BUMPERS. First of all, the bill exempts those forests west of the 100th meridian, and I will read it to the Senator to clarify the point. It says that "surface mining will not take place on any Federal lands within the boundaries of any national forest; provided, however, that surface coal mining operations may be permitted on such lands which do not have significant forest cover within those national forests west of the 100th meridian, if the Secretary finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface," and et cetera.

S8129 It says that you may not mine the national forests east of the 100th meridian; you may mine west of the 100th meridian, if the Secretary finds that that particular national forest does not have any significant recreational, timber, et cetera, value.

S8129 Mr. FORD. In the deed I am referring to -

S8129 Mr. METCALF. The Senator is only referring, however, to Federal lands.

S8129 Mr. BUMPERS. That is correct.

S8129 Mr. METCALF. In the national forest.

S8129 Mr. BUMPERS. That is true.

S8129 Mr. METCALF. East of the 100th meridian.

S8129 Mr. BUMPERS. Let me say one other thing. Those inholdings, which the distinguished Senator from Montana mentioned a few moments ago, are not affected. Some of those holdings are within the national forest, but this would not prohibit surface mining on those lands, as I understand it.

S8129 Mr. METCALF. And they are being currently mined at the present time.

S8129 Mr. BUMPERS. So maybe that is the answer to the Senator's question.

S8129 Mr. FORD. Yes, to answer the calls I have been receiving, and I am pleased to have had the colloquy and I am delighted to have it resolve the question.

S8129 The PRESIDING OFFICER (Mr. RIBICOFF). The Senator from Ohio.

S8129 Mr. METZENBAUM. I do not think we ought to get ourselves lost on what the real issue is in this amendment because the issue does not actually pertain to the question of strip mining in the national forests. The issue comes down to exactly that which the Senator from Montana, the junior Senator from Montana, stated it was, and that is the question of whether ownership of land is a property right that should not be sacrificed. Only the question is not a question of the individual's rights; it is a question of the property right of the United States Government, and if you had this property owned by, the mineral rights reserved by, a private individual there would be no question whatsoever as to what the law is.

S8129 But what we are saying under this law is that we want to change it. We want to say because the Federal Government owns it that we are not going to allow you to exercise the right to take the minerals from that land. I understand the distinguished senior Senator from Monerals points out there may be a legal question as to whether it was ever contemplated that there would be a reservation of the right to mine on the surface. That is a legal question.

S8129 But the moral question that is before the Senate has to do with how should we treat those individuals who own the land but the Federal Government has reserved unto itself the mineral rights. Under the present proposal of this legislation that individual's rights are absolutely superior to any other rights and if he says no, and he wants \$10 million or \$1 million, or \$1,000, or \$1 00, he has to be paid it or else you cannot mine that land even though the Federal Government has reserved that right specifically.

S8129 The junior Senator from Louisiana, who is not present today, and he is unavoidably absent because of a prior commitment of the need to be in Louisiana, was concerned about this very subject while the measure was in the committee. So we worked together not to just take the land and say the

Federal Government will take the minerals and do nothing more under its legal right. But there was provided in the amendment that the title remain with the surface owner, pay the surface owner the difference between the market value before and after on a basis of an appraisal, give the surface owner the net income of the property that would be lost during the 2 years immediately following approval of the mining plan, in other words, the projected income, the future income, give the owner the cost of relocating or dislocating during the mining and reclamation process and, in addition to that, give the owner any other damage to the surface caused or reasonably anticipated to be caused by surface mining and reclamation.

S8129 What could be more fair?

S8129 The surface owner holds onto his property after the mining is completed, he is given the difference in the appraisal value, the relocation cost, the damage cost, and future earnings for the next 2 years, but the Senate did not accept that amendment.

S8129 Now the Senator from Arkansas comes forward with an amendment that is even more generous because he says give the surface owner twice the difference between the appraised value before and after the mining takes place. And the real issue is how much more should be done for the surface owner, who in many instances bought this land for a dollar or \$2 an acre, certainly not much more than that. Now he is going to be paid twice the appraised value. He is going to be paid relocation costs, damages, the income that he could expect for the next 2 years, and be given back the land when it is all over.

S8129 I think the amendment actually is overgenerous. I share with the Senator from Wisconsin his concern about whether it does not go too far. Certainly it moves in the right direction. If anything, it is much better than that which is in the legislation as it hits the floor of the Senate and is presented to this body today. I think we ought to support the proposal of the Senator from Arkansas.

S8129 Mr. BUMPERS. Mr. President, I ask for the yeas and nays.

S8129 The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

S8129 The yeas and nays were ordered.

S8129 Mr. METCALF. Mr. President, in 1974, I supported an amendment that was known as

the Mansfield amendment. And the Mansfield amendment said that when there is this divided ownership between the Federal Government and private citizens we will not mine the land; we will use it for conservation purposes, set it aside and not mine it at all.

{S8130} I have had so many people trotting into my office, parading back and forth, saying, "Well, we own the land, and the Mansfield amendment will take our surface rights as well as our subsurface rights. We have bought the land. We have bought it for mining purposes. We will give it back to anybody when we are through with it."

S8130 I still would have supported the Mansfield amendment in this Congress, but again we have this proposition that, as the Senator from Wyoming has suggested, we are going to close off mining in many areas where people have bought the surface rights for mining purposes. That map in the rear of the Chamber is not an accurate representation of where the ownership of the surface rights are concerned. It may have been an accurate representation 4 years ago before we put the Mansfield amendment in. But since then and in the years that have elapsed all sorts of mining companies and mining operators have gone out and purchased the surface rights of those lands. So there is not going to be the substantial ripoff that the Senator from Arkansas has suggested.

S8130 I talked about this in 1974. I recited to the people of the Senate that one of the great conservation victories at the turn of the century was the fact that President Theodore Roosevelt and his Cabinet took away from individuals who were sending out mining homesteaders to get oil and mining claims and saying, "Well, instead of that we will give you 320 acres instead of 160."

S8130 I probably did not talk as loudly, vehemently, or as forcefully as the Senator from Arkansas. But in the interim that has occurred since that period, a large percentage of this land has already been alienated, and some of the things that I and the Senator from Arkansas were concerned about have already been alleviated.

S8130 So when Secretary Andrus came up and testified before our committee at the beginning of our hearings on S. 7, he recommended that we protect the surface owner by a consent provision such as was contained in the House bill. That is exactly the provision we put in.

S8130 I suggest that hours and hours of conference have gone into argument and discussion on this, and hours and hours of discussion on the whole proposition have gone in. I hope that after last

night's debate and after the debate and many weeks of discussion we will solve this issue tonight.

S8130 Mr. BUMPERS. Vote.

S8130 The PRESIDING OFFICER (Mr. ABOUREZK). The question is on agreeing to the amendment. The yeas and nays have been ordered, and the clerk will call the roll.

S8130 The assistant legislative clerk proceeded to call the roll.

S8130 Mr. METCALF. Mr. President, may we have order?

S8130 The PRESIDING OFFICER. The Senate will be in order. The clerk will suspend until there is order in the Chamber. Will the Senators visiting down the middle aisle here kindly stop? The clerk will not proceed until order is restored.

S8130 The clerk may proceed.

S8130 The call of the roll was resumed and concluded.

S8130 Mr. ROBERT C. BYRD. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Iowa (Mr. CLARK), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), the Senator from Rhode Island (Mr. PELL), the Senator from Michigan (Mr. RIEGLE), the Senator from Mississippi (Mr. STENNIS), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

S8130 I also announce that the Senator from Arizona (Mr. DECONCINI) is absent because of death in the family.

S8130 I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON) would vote "yea."

S8130 Mr. BAKER. I announce that the Senator from Arizona (Mr. GOLDWATER), the the Senator from California (Mr. HAYAKAWA), the Senator from Vermont (Mr. STAFFORD), the Senator from Texas (Mr. TOWER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

S8130 I also announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

S8130 I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Alaska (Mr. STEVENS) would each vote "nay."

S8130 The result was announced - yeas 44, nays 32, as follows:

S8130 [Rollcall Vote No. 156 Leg.]

S8130 YEAS - 44

S8130 Abourezk

S8130 Allen

S8130 Bartlett

S8130 Bayh

S8130 Bellmon

S8130 Bentsen

S8130 Bumpers

S8130 Burdick

S8130 Byrd, Robert C.

S8130 Cannon

S8130 Case

S8130 Chiles

S8130 Culver

S8130 Curtis

S8130 Durkin

S8130 Griffin

S8130 Haskell

S8130 Hathaway

S8130 Heinz

S8130 Hollings

S8130 Humphrey

S8130 Inouye  
S8130 Jackson  
S8130 Javits  
S8130 Long  
S8130 Magnuson  
S8130 Mathias  
S8130 McIntyre  
S8130 Metzenbaum  
S8130 Morgan  
S8130 Moynihan  
S8130 Muskie  
S8130 Nelson  
S8130 Nunn  
S8130 Pearson  
S8130 Proxmire  
S8130 Randolph  
S8130 Ribicoff  
S8130 Roth  
S8130 Sarbanes  
S8130 Sasser  
S8130 Sparkman  
S8130 Stevenson  
S8130 Williams  
S8130 NAYS - 32  
S8130 Baker  
S8130 Brooke  
S8130 Byrd, Harry F., Jr.  
S8130 Chafee  
S8130 Church

S8130 Danforth  
S8130 Dole  
S8130 Domenici  
S8130 Eastland  
S8130 Ford  
S8130 Garn  
S8130 Glenn  
S8130 Hansen  
S8130 Hart  
S8130 Hatch  
S8130 Helms  
S8130 Huddleston  
S8130 Laxalt  
S8130 Lugar  
S8130 Matsunaga  
S8130 McClure  
S8130 Melcher  
S8130 Metcalf  
S8130 Packwood  
S8130 Percy  
S8130 Schmitt  
S8130 Schweiker  
S8130 Scott  
S8130 Thurmond  
S8130 Wallop  
S8130 Young  
S8130 Zorinsky  
S8130 NOT VOTING - 24

S8130 Anderson  
S8130 Biden  
S8130 Clark  
S8130 Cranston  
S8130 DeConcini  
S8130 Eagleton  
S8130 Stennis  
S8130 Stevens  
S8130 Goldwater  
S8130 Gravel  
S8130 Hatfield  
S8130 Hayakawa  
S8130 Johnston  
S8130 Kennedy  
S8130 Stone  
S8130 Talmadge  
S8130 Leahy  
S8130 McClellan  
S8130 McGovern  
S8130 Pell  
S8130 Riegle  
S8130 Stafford  
S8130 Tower  
S8130 Weicker

S8130 So Mr. BUMPERS' amendment was agreed to.

S8130 Mr. BUMPERS. Mr. President, I move to reconsider the vote by which  
the amendment  
was agreed to.

S8130 Mr. JACKSON. I move to lay that motion on the table.

S8130 The motion to lay on the table was agreed to.

S8130 Mr. ROBERT C. BYRD. I yield to the Senator from Wyoming.

S8130 Mr. HANSEN. Mr. President, I ask unanimous consent that I may yield to the distinguished leader without losing my right to the floor.

S8130 The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). May we have order?

S8130 TIME-LIMITATION AGREEMENT ON SPECIFIED AMENDMENTS

S8130 Mr. ROBERT C. BYRD. Mr. President, Mr. BAKER has three amendments. I understand he is agreeable to accepting a time limitation of 10 minutes to be equally divided on the three amendments, which will be accepted, probably. I ask unanimous consent that there be a time limitation of 10 minutes on the three Baker amendments.

S8130 The PRESIDING OFFICER. Without objection, it is so ordered.

S8130 Mr. ROBERT C. BYRD. Mr. President, Mr. DOLE has two amendments. I understand he is agreeable to a 30-minute time limitation on each of them. I ask unanimous consent that there be a time limitation for each of the two amendments by Mr. DOLE of 30 minutes each, to be divided in accordance with the usual form.

S8130 The PRESIDING OFFICER. Without objection, it is so ordered.

S8130 Mr. ROBERT C. BYRD. Mr. President, Mr. WALLOP has one amendment. I ask unanimous consent that there be a time limitation thereon of 30 minutes, to be equally divided in accordance with the usual form.

S8130 The PRESIDING OFFICER. Without objection, it is so ordered.

S8130 Mr. ROBERT C. BYRD. Mr. President, Mr. SCHMITT has one amendment. I ask unanimous consent that there be a time limitation thereon of 1 hour, and that the time be equally divided in accordance with the usual form.

S8130 The PRESIDING OFFICER. Without objection, it is so ordered.

S8130 Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limitation on the amendment of Mr. BAYH of 5 minutes, to be equally divided in accordance with the usual form.

S8130 The PRESIDING OFFICER. Without objection, it is so ordered.

S8130 Mr. ROBERT C. BYRD. Mr. President, I hope that the time that is set forth in the

agreements on amendments will not all be taken because it is the intention of the leadership to finish the bill tonight, unless Senators want to come in tomorrow. I stated the day before yesterday that the bill would be finished today or the next day, if it were to be finished tomorrow. I stated the same thing yesterday. The message went out on the hotlines to both cloakrooms. The same thing has been stated today and the message went to both cloakrooms. Senators will govern themselves accordingly.

{S8131} Several Senators addressed the Chair.

S8131 The PRESIDING OFFICER. The Senator from Indiana.

S8131 Mr. BAYH. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

S8131 The PRESIDING OFFICER. Does the Senator from Wyoming yield the floor?

S8131 Mr. HANSEN. No, Mr. President.

S8131 The PRESIDING OFFICER. The Senator from Wyoming has the floor. The Chair was in error in recognizing the Senator from Indiana.

S8131 Mr. HANSEN. Mr. President, I want to make an observation that might be helpful in putting the record into proper perspective.

S8131 Mr. President, the Committee on Energy and Natural Resources met April 27, 1977. I have a copy of the proceedings. It might be instructive to read what took place at that hearing in order to give some idea of the sort of pressure I suspect may have been generated to result in the turnaround that characterized the vote we have just concluded after what was done yesterday.

S8131 I refer to page 31 of that transcript of proceedings and read what Senator JOHNSTON had to say:

S8131 Senator JOHNSTON. The Powder River Basin where the Southwestern Electric Power Company generates electricity for my home town, they sensed they were running out of gas some time ago; they went out to Wyoming and made a deal to get some coal out of the Powder River Basin, subject to this kind of thing - they can't go off somewhere else and say we are going to lock up 50 or 60 per cent, so we will go someplace else they can't do that.

S8131 What you do in this amendment is to say you go buy that government coal from that surface owner out there. That is all this means. Let's don't kid ourselves. You have got seams out there 100 feet thick that are worth thousands an acre, a million dollars an acre, they tell me.

S8131 Cliff, you probably know about that. So you go to a surfaceowner on which he runs one cow for every 60 acres. It is pretty land. Maybe it is worth \$1 50 an acre, the surface. You are going to give him the right to sell that coal that is worth a million dollars an acre. So he is generous. He says, well, I will sell it for \$50,000 an acre.

S8131 Those are the words as recorded by the person charged with that responsibility at the hearing before the Energy and Public Resources Committee on April 27.

S8131 What we have just done is say to a lot of people in the West that, whether they want to sell or not, it is not a question of the availability of coal. There is absolutely no substance in fact at all to the contention that has been made here this afternoon that we have to have this coal and that if this surface owner consent provision had stayed in the bill, the Government would not have its coal.

S8131 That is pure bunk. There is enough coal under lease, as my colleague from Wyoming can point out - I wish to yield to him just to have him supply that part of the information for RECORD at this point.

S8131 I ask unanimous consent that he be permitted to do that without my losing my right to the floor.

S8131 The PRESIDING OFFICER. Without objection, it is so ordered.

S8131 Mr. WALLOP. I thank my colleague the senior Senator from Wyoming.

S8131 I think it is clear. I did not think the Senate would act so foolishly. I thought there were reasonable minds in here and did not bring this up, but I regret it now. There are 91 Federal leases in Wyoming today with landowners' consent that was given, because our State has that provision, despite what was said. Two-hundred thousand acres of Federal coal, 117,218 acres of private land that have been amalgamated into that. That is because of the inability to get a leasing plan with that.

S8131 Nine billion tons of coal; 40 years of production is out there, leased right now, permitted and leased - 22 1/2 percent of the President's call for 1.1 billion tons annually for 40 years, all done

with the landowners' consent as given.

S8131 I ask you, really, if this body acted wisely in suggesting that the people were going to lock it up.

S8131 The map was a fraud, the map contained deep coal as well as surface coal. It just misrepresented the whole thing.

S8131 I regret what has happened, but I yield back to my colleague from Wyoming.

S8131 Mr. HANSEN. I thank my colleague.

S8131 I point out, Mr. President, that not every rancher in the West has a price on his ranch. It just happens that there are a few people that have a very deep affection and strong sentimental ties to land. Some of those ranches have been in family ownerships that go back four or five generations.

S8131 When my colleague came to the Senate, I think he told me, if I recall correctly, that before his present term is concluded, his family will have owned the ranch on which he now lives for 100 years.

S8131 I think we have taken a very serious, a major step in condemning property rights, in putting people off the land without any regard to answering the basic question, "Do we need the coal?"

S8131 We do not need all of the coal right now and we will not be ready to use all of the coal for another 40 years. There is no question about that. But because - I suspect that the key may have been disclosed in the statement of my good friend from Louisiana, money talks.

S8131 It seems strange, indeed, to me that there would be as much interest in surface owner consent and alluvial valley floors as I have witnessed on this floor today by people far removed from the West.

S8131 I asked Senators if they might have stopped to think why it is that the push would have come from the sections of the country that it has come from. We have all kinds of people in the West. We have environmentalists.

S8131 I mentioned earlier this afternoon, and I stand on this statement, that the White House is perfectly happy with the language contained in the House bill. The language that we worked long

and hard on, and which was eventually incorporated into the Senate bill until we reversed the whole action this afternoon, coincided, word for word, with the language in the House bill.

S8131 Now, it is a pretty easy thing to say that the Government owns the coal and are we going to let a few greedy, ranchers take it? That language sells awfully good. It would be interesting to know who is behind some of the people who are saying these things. If we could understand what strings are being pulled, it might be rather interesting to know.

S8131 I can assure the Senate of one thing, that I do not know of one single instance in my State of Wyoming when the landowner has sold the whole outfit, fee simple title, to everything he owned, in some cases owning the coal as well as the surface - I do not know of one instance where more than \$1,000 an acre has been paid; \$5 00 an acre is pretty big money. And there are plenty of places out there that can be bought for that.

S8131 So it is not a case of the Government being unable to get its coal. I hope Senators thought about this as they switched around here this afternoon, reversing positions that they took only yesterday. because some arm twisting went on. I think it is going to be pretty interesting for them to reflect back and try to understand the deep sentiment that exists in the West.

S8131 There are lots of people, and as one rancher, I can tell you, for whom these have not been easy times. The average per capital farm income in the State of Wyoming, net income for the year, dropped for all farms and ranches in the State from about \$17,500 per operator, per ranch, in 1973, down to about \$1 ,750 in 1975. That is what it went down to.

S8131 But we do not find those people trying to sell out. A lot of them are being foreclosed. A lot of them cannot pay their bills. But those who can, those who love the land, as I love the land and as MALCOLM WALLOP loves the land, and as JOHN MELCHER loves the land, and a lot of other people, do not feel very kindly about the action the Senate has taken this afternoon, in saying, in effect, "To hell with you; we don't care if that land means something to you, if that home means something to you. Maybe your parents or your grandparents are buried on the ranches" - and that is not an uncommon situation, either.

S8131 If I am a little vehement, it is because I feel so deeply and I resent so strongly the action

that has taken place this afternoon, here, when we, in effect, told those people out there, "While the facts are that we do not need the coal right now, we are going to see that the interests that we represent roll over you, and say to hell with you; we will take these lands and we will pay you our price."

S8131 This amendment that was offered here this afternoon and that prevailed, in effect, does that. It says that they take an appraisal of the land now and figure what it is going to be worth at the end of the mining operation.

S8131 That was pretty beguiling, too. It is pretty beguiling until you stop to understand that it may be 40 years before they got through ripping up the last acre of land you have.

{S8132} } And I suspect some lawyer might write in an inflationary factor and say, "Well, we don't owe you anything, the land is going to have appreciated so much in value at the end of the operation that you won't have anything coming over what it is worth right now."

S8132 Now, these are some of the issues that I feel deeply about. I think I know something about ranchers. At one time I was president of the Wyoming Stock Growers Association, an association I have a deep regard and a deep respect for. I know how those people feel and they are not going to be very happy about having the Government of the United States say to them, "We don't care what this range means to you."

S8132 It sure makes great headlines for those who want to force people off their land - their homes - to say, "We won't make millionaires out of any Wyoming ranchers."

S8132 I can say, there are not many out there. The coal is there. The ranchers are there. There has been nothing to prevent the developers from buying those lands. As Senator WALLOP knows, they have bought a lot of land. There is no question about the availability of land.

S8132 I will conclude by saying that I think this is a sorry spectacle. I think a lot of people should have in their consciences a little concern and should meet face to face the people that they do not know who are going to be told, "Get off your land, get off your land."

S8132 That is what we have said to them. We have told them that it is not left up to them to decide whether they want to sell or not. We have said to them, "You are going to have to sell," and

here are going to be the term that we have offered to them.

S8132 That is exactly what has happened here this afternoon. Make no mistake about it. When we go home tonight and settle down into our nice beds and think that it is comfortable to own our home, I hope we might think a little bit about some people who just happen to like the way of life they have lived out there and who happen to think they would like to be able to pass that same privilege on along to their kids, and who, if the action we have taken here this afternoon prevails, had better make some other plans because they are not going to have that right.

S8132 I yield to my friend from Montana.

S8132 Mr. MELCHER. I thank the Senator for yielding.

S8132 Mr. President, I think the overdramatization of what the landowner might receive for his written consent has completely led the Senate away from the basic issue of property rights.

S8132 It should be a right of the property owner to say, "I choose to live here, it is my home, it is my livelihood."

S8132 It may not be much of a livelihood if a person is 50 or 60 years old and has a very tiny operation, but it ought to be his chance to say, "I like it this way."

S8132 If it is only a person's home and 100 acres where he lives, and makes his livelihood somewhere else, as a property owner it still ought to be his right to say, "This is my home and I like this yard, and I like this area, and I like these trees, and I want to keep it that way."

S8132 If there were a public purpose to be served by saying, "Well, we are so destitute for coal we have to grasp it wherever it is," that would be a different situation. But that is not the case at all. There are hundreds of millions of tons of western coal already where the written consent has been agreed to, where the surface owner has been satisfied in the marketplace with what has been offered for his rights.

S8132 The vote reversal this afternoon is extremely discouraging to most of us who have lived with this bill and fought for this bill for 4 years and longer. It darn near caused the defeat of the bill, in conference, not last Congress, but the Congress before that, because we stuck on this issue, Is it equitable to grant the property right to that owner? And we said "yes," it was equitable and only

Congress could do so; only Congress could make it equitable.

S8132 So we went through a provision that said the owner could say, "Yes," or "No," to the strip miner. If he said "Yes," that was the end of it. If he said "Yes," we set up a system for payments.

S8132 What the Senator from Arkansas has done in his amendment, which the Senate has adopted, has set up a system for payments, but has removed the basic property right of an individual to say, "No, it is my home and my lifetime, I am not selling anything, I want to live here, I want to use it for myself as land."

S8132 I think the Senate has been sold a bill of goods on western coal to be mined. There is plenty of it to be mined where this is not an issue. But now what we have done by adopting the amendment, we have taken away the right of a property owner no matter where he is. If it is Federal coal underneath him, and the Senator allows a lease, that property owner has no more rights except under the formula for the payment, but he has no right to maintain his home and his land as his own. That is the real issue.

S8132 There is no public purpose to be served to get coal signed up in huge quantities. We have already got it signed up in huge quantities. We have already got opportunity for Federal coal in the West where there is further surface owner's consent given.

S8132 But for those individuals who choose to keep their home, keep their land during their lifetime and live there on it as they want to, we are denying that opportunity, because if the lease is given under existing law and the Senator's amendment, there will be no right to make that determination as a property owner once the lease is given. The property owner can resign himself to losing the land, the use of the land. It makes no difference if the amendment says, "Well, it can be returned to him after mining." If they live 40, 50, 60 years more they will not be around to get the land back.

S8132 And would it be the same after 40 or 50 years?

S8132 If one were a young man, would he want to take it back when he was 60 or 70? If he was in his thirties, would he want to take it back when he was 70 or 80?

S8132 It is a preposterous situation of taking it back once he has lost the right to say "yes" or "no" to agreeing to the strip mining.

S8132 We only have the mechanics of taking at value. For those who want to live on the land, that is not what they are after. They were after the privilege of land ownership, of determining their own fate on their own land.

S8132 I think that is a serious issue. I think it is a basic issue of property rights.

S8132 I wish the amendment was not agreed to. I hope it is not agreed to in conference I suspect it will mean a long conference if the Senate would hold out for this provision. I suspect it would be a difficult thing, adopting the conference report on the House floor or on the Senate floor, if that amendment remains in the final version.

S8132 Who resists this amendment? People who live there, who have an interest in their land, environmental groups. All of the environmental groups that have looked at the issue for the past 4 years have said that the equity lies with the protection of the land owner's rights first.

S8132 Who opposes this amendment? The administration says, having reviewed it over the course of the years, that there is a basic issue involved and that written consent of the property owner should be recognized by the Government.

S8132 In the past, who opposed the amendment? Well, mining companies, some of them. Utility companies, some of them, not all of them, because they created the feeling or the fear that there would not be enough coal.

S8132 So we looked at it, and we have had 4 years to look at it and to demonstrate clearly that there are sufficient quantities of coal for this generation and the next generation already waiting in line, with the surface owner's consent given. We do not have that to worry about.

S8132 To some extent, the coal companies and the utility companies in the past 2 or 3 years have backed off from this issue and no longer make it a big issue, because they see the availability of coal.

S8132 If at any time the situation evolved to where some exorbitant profits were made by a reluctant landowner and the coal was seriously needed, Congress could then again readdress the problem. But in our generation and in the next generation, the issue is not and will not be the availability of western coal.

S8132 The equitable solution to this problem should be as the House has done and as we have done in previous bills passed by Congress and sent to the President but vetoed - to let the landowner say yes or no to strip mining. Let him or her have the opportunity to say, "My land is the way I like it. I am not interested in a \$500 or a \$1 ,000 an acre sale for my surface rights, even though that is a great price. What I am interested in is living on the land and living my lifetime here."

{S8133} I hope that before the final version of this bill is adopted and sent to the President, we will have corrected the inequity of the amendment just adopted.

S8133 UP AMENDMENT NO. 262

S8133 Mr. BAYH. Mr. President. I ask that the clerk reread the amendment.

S8133 The PRESIDING OFFICER. The amendment will be stated.

S8133 Mr. BAYH. Mr. President, I ask my colleagues to listen to the reading of the amendment. I have 5 minutes, and I think the reading of the amendment will explain it without further necessity of my doing so.

S8133 The legislative clerk read as follows:

S8133 Mr. BAYH proposes an unprinted amendment numbered 262:

S8133 On page 199, after line 10, add the following new subsection:

S8133 (G.) Each applicant for a surface coal mining and reclamation permit shall submit to the regulatory authority as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of section 415(b) (15)."

S8133 Mr. BAYH. Mr. President, strip mine blasting practices have become a major problem for people living near Appalachian and Midwestern coalfields. It is estimated that strip mine blasting caused damages of over \$200 million in these regions in 1975 alone.

S8133 In my own State of Indiana, blasting has caused serious difficulties for those who live near mining operations, particularly in Warrick County. A survey conducted by Jack Barnes, professor of geology at Indiana State University, indicated that there was structural damage caused by blasting to 89 percent of the buildings within a 2 1/2 mile radius of the Ayrshire mine in that country. In other areas, blasting has caused serious harm to health, property and the environment in the form of

dust and fly rock.

S8133 Certainly, Mr. President, we cannot ask neighboring residents to bear substantial risk to life and property for the sake of strip mining operations, and one of the most important features of S. 7 is that it will require strip miners to conduct their blasting operations in such a manner that there will not be damage outside of the permitted area. Noethless, S. 7 does not presently require the strip miner to set out his plans for blasting in his application, and I offer this amendment to add such a requirement.

S8133 The reasons that such a plan is necessary as part of the application are similar to the reasons for requiring a reclamation plan as part of the application. The regulatory authority needs to have this type of information at hand in order to insure that there is adequate protection of health, property, and the environment. Only with such information can potential problems be nipped in the bud.

S8133 Further, a blasting plan will enable the public to gain a fuller understanding of the mining operation at the outset. Without question, the citizens who will be most affected by mining operations deserve the right to know exactly what those operations will entail.

S8133 Mr. President, we cannot turn our backs on those who have suffered from strip mine blasting. This amendment will give them the protection they need, and I urge its passage.

S8133 Mr. President, in 60 seconds, I will say that this points to a very critical problem we have in some areas, one being in southern Indiana, where, within a 2.5 mile radius of a particular mine we have had about 89 percent of the homes damaged by blasting. We suggest that at the time the application for the permit is made, a plan specifying how blasting is to be handled to prohibit this kind of damage should be submitted, together with the application.

S8133 Mr. METCALF. Mr. President, out in the western areas that have been widely discussed for the last few minutes, this coal is picked up by dragline shovel, and we do not have the blasting process about which the Senator from Indiana is concerned. Nevertheless, he has a genuine concern. I can understand such a concern. The amendment he has suggested is beneficial, and I think we should put it into the bill.

S8133 I have talked to the Senator from Wyoming, and we have no objection to the amendment.

S8133 I yield back the remainder of my time.

S8133 Mr. BAYH. I yield back the remainder of my time.

S8133 The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment.

S8133 The amendment was agreed to.

S8133 Mr. DOLE. Mr. President, under the unanimous-consent agreement, the distinguished Senator from Tennessee is next in line, but I am wondering whether he might permit the Senator from Kansas to offer an amendment to the bill at this time.

S8133 The PRESIDING OFFICER. There is no order for a series of amendments.

S8133 Mr. BAKER. Mr. President, if the Senator will yield to me, I am aware of the Senator's amendment, and I think it would expedite the consideration of title 3 if the Senator from Kansas did go first.

S8133 UP AMENDMENT NO. 263

S8133 Mr. DOLE. Mr. President, I send an amendment to the desk.

S8133 The PRESIDING OFFICER. The amendment will be stated.

S8133 The second assistant legislative clerk read as follows:

S8133 The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 263.

S8133 Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

S8133 The PRESIDING OFFICER. Without objection, it is so ordered.

S8133 The amendment is as follows:

S8133 On page 163, line 12, after the period, add the following: "Provide, however, the Secretary of Agriculture may allow for land use and conservation treatment on such lands occupied by any such owner in excess of such one hundred and twenty acre limitation up to three hundred twenty acres, but in such event the amount of the grant to such landowner to carry out such reclamation on such lands shall be reduced proportionately.

S8133 The PRESIDING OFFICER. There is a time limitation of 30 minutes on this amendment, to be equally divided.

S8133 Mr. DOLE. I say to my colleagues that this may take 30 seconds, not 30 minutes, because it has been discussed with both the minority and majority floor readers.

S8133 Mr. President, the purpose of this amendment is to give the Secretary the authority to enter into a reclamation agreement with a landowner on an amount of land greater than specified in the bill presently, up to 320 acres, but at a cost-share less than specified.

S8133 As stated in section 304, reclamation of rural lands, the Secretary may presently enter into a reclamation agreement with landowners on not more than 120 acres of land. He can provide funds to landowners on a cost-share basis up to 80 percent of the reclamation cost.

S8133 Our problem is very simple. We have a large amount of land where reclamation is needed. It is generally owned in tracts greater than 120 acres. At the same time, the reclamation cost is lower.

S8133 In recent demonstration projects, the cost-share basis in projects in Missouri and Kansas were on the average about 30 or 31 percent. In these cases, the costshare basis could be less because the overall cost was lower than we would expect in other States and the expectation of returning the land to productivity after reclamation was greater.

S8133 The purpose of this amendment is to give the Secretary greater flexibility in making this program workable. Yet it retains an element of equity so that a landowner who receives help on a greater number of acres does not receive the same cost-share basis that an owner receiving help on fewer acres gets.

S8133 The amendment is not controversial, and I have cleared it with both the majority and the minority.

S8133 Mr. President, I ask unanimous consent to have two tables in connection with this matter printed in the RECORD.

S8133 There being no objection, the tables were ordered to be printed in the RECORD, as follows:

S8133

---

---

\*6\*TABLE 2. -  
 LAND STRIP  
 MINED FOR  
 COAL PRIOR TO  
 STATE  
 RECLAMATION  
 LAWS: KANSAS,  
 MISSOURI, AND  
 OKLAHOMA

County distribution	Acres			Percentage	
	Total	Land	Water	Land	Water
Kansas:					
Crawford	21,950	20,666	1,284	94	5
Cherokee	19,200	17,572	1,628	91	9
Bourbon	2,942	2,898	76	94	0
Labette	829	793	36	96	4
Total	44,921	41,927	3,024	93	3
Missouri: n1					
Barton	10,725	9,916	809	92	8
Bates	7,494	6,661	833	89	11
Cedar	36	36	1	97	3
Henry	16,404	14,423	1,981	88	12
St. Clair	2,514	2,224	290	99	12
Vernon	3,196	2,841	355	89	11
Total	40,369	36,100	4,269	89	11
Oklahoma: n2					
Atoka	95				
Coal	596				
Craig	3,991	3,828	163	96	4
Haskell	5,476	4,624	852	84	18
Latimer	850				
Leflore	2,705	2,290	415	85	15
Mayes	112				
McIntosh	702	618	94	88	12
Muskogee	903	789	114	87	13
Nowata	505				
Okmulgee	1,293				
Pittsburg	321				
Rogers	8,662	8,093	559	93	7
Sequoyah	1,434	1,166	268	81	19
Tulsa	1,443	1,339	104	93	7
Wagoner	2,836	2,642	193	93	7
Total	28,151	25,389	2,762	90	10

---

S8133 Total 31,922

S8133 n1 Missouri data from William J. Kovacic, Project Reuse, Final Report, Clinton, Mo., Kaysinger Basin Regional Planning Commission, December 1973.

S8133 n2 Data from Atoka, Coal, Latimer, Mayes, Nowata, Okmulgee, and Pittsburg Counties.

Oklahoma from Kenneth S. Jackson, "Maps and Description of Distrubed and Reclaimed Surface-Mined Coal Lands in Eastern Oklahoma." Norman, Upiversity of Oklahoma, 1973, table 7.

\*10\*  
 TABLE  
 8. -  
 RECLAMA  
 TION  
 COSTS  
 PER  
 ACRE  
 \*10\*  
 1973  
 GRASSLA  
 ND  
 DEMONST  
 RATION  
 SITES:  
 MISSOUR  
 I

Name	Acres	Seeding data	Cost per acre						
Cost			share						
percen			Seedbe						
of			d						
total			Fertili prepar						
			Grading	Lime	zer	ation	Seeding	Total	
Barton: Anderson	43	Spring 1973	\$115.00	\$22.68	\$10.48	\$1 1.58	\$3.47	\$163.22	28
Jones Marti	23	Fall 1973	180.00	18.82	11.42	26.36	12.25	249.85	28
Bros	27	do	225.00	45.89	27.13	41.04	12.35	351.41	21
Mills Peterso n	54	do	135.00	17.89	8.47	14.03	13.67	189.16	20
Rose Barton	21	Fall	160.00						
County	27	1973	177.23	30.51	15.54	24.37	14.59	282.24	28
Bates: Davis	195		184.39	25.00	22.20	20.31	10.20	227.38	28
Droz	8		200.00						
Hosper	2		248.00						
	16		200.00						

Jennings		Fall							
10	1973		160.00	11.35	13.17	17.47	14.12	216.06	35
Wheatley Bros		do							
27	do	Spring	151.00	39.04	10.99	8.96	16.81	226.80	33
Yarick Bates		17	1974		0	14.20	3.66	3.89	186.74
County Cedar:		35		175.25	23.72	12.38	8.29	11.72	232.16
Hama		17		150.00					
Henry:									
Batschelt		Spring							
27	1973		167.52	10.37	15.03	9.04	11.11	213.07	35
Braun		Fall							
27	1973		214.27	7.01	9.53	5.53	7.85	244.34	30
Dody		do							
28	do		175.00	0	9.85	33.21	6.57	226.63	32
Dunning		do							
23	do		225.00	0	8.10	8.48	13.56	266.19	29
Hendrich		Spring							
27	1973		149.67	0	8.26	24.07	10.74	192.74	38
Licher		Fall							
26	1973		165.00	0	6.65	5.42	4.91	181.98	38
Wilson		do							
18	do		155.48	0	0	4.89	11.63	172.01	38
Henry County		176		175.87	2.65	8.63	13.58	3.82	213.48
St. Clair:									
Crowder		Fall							
20	1973		150.00	8.42	16.88	23.00	9.85	208.25	36
McEwan		do							
23	do		160.00	0	9.86	17.44	21.06	208.46	36
Munseman		do							
35	do		200.00	8.00	8.44	34.28	15.29	267.01	21
St. Clair									
County		70		175.48	5.76	11.88	38.42	15.82	234.71
Vernon:									
Irwin		Fall							
18	1973		150.00	18.29	30.87	16.11	14.89	230.06	33
Wilson		do							
8	do		157.89	45.84	20.13	17.37	12.87	254.20	30
Vernon									
County		24		182.24	26.50	27.35	16.46	14.15	232.23
Missouri									
572			182.92	14.22	12.04	17.13	11.48	232.45	30

TABLE 7. - RECLAMATION COSTS PER ACRE

ALL GRASSLAND DEMONSTRATION SITES: KANSAS

Cherokee:

Barnes,

J.:

1		Fall							
22	1972		\$125.00	\$18.15	\$9.60	\$12.16	\$5.83	\$170.88	24
2		Fall							
n1 53	1973		150.00	0	15.65	12.00	14.01	191.68	22
Barnes, M		Fall							
27	1972		125.00	18.14	9.31	12.02	11.04	175.51	28
Bower:									
1		do							
22	do		325.93	17.38	6.74	8.52	8.23	388.78	19
		Fall							

2	n1	53	1973	235.11	5.23	4.35	16.00	9.96	270.65	16
3			Fall							
Cassidy		21	1971	125.00	41.75	5.37	3.50	8.13	183.75	42
Christi			Fall							
ansen,		16	1972	125.00	0	15.43	18.07	13.37	171.87	40
Christi										
ansen,										
T		19		124.68						
			Fall							
Emerson		9	1971	123.00	11.80	20.45	16.77	16.55	188.57	31
Epler:										
1		40	do	130.00	0	11.88	26.39	11.00	178.77	43
			Fall							
2		28	1972	161.90	0	4.45	15.05	4.40	191.04	25
Fowler:										
1		67	do	125.00	0	9.27	13.00	10.47	106.49	17
			Fall							
2	n1	22	1973	150.00	0	15.66	12.04	13.99	191.57	25
			Fall							
Gaither		30	1972	121.61	34.99	14.17	25.92	8.30	206.00	24
Galena	n2	24		125.00	0	0	0	0	125.77	42
			Fall							
Green		18	1972	125.00	12.51	10.18	4.78	8.85	161.33	47
Jones		10	do	125.00	12.72	13.32	4.42	8.53	163.59	46
			Spring							
Mullens		20	1972	155.00	9.60	8.03	3.55	8.60	182.78	42
			Fall							
Musse		40	1971	140.00	26.01	12.55	8.30	.70	196.56	43
O'Malle			Spring							
y		11	1974	125.11	13.30	18.23	5.13	12.23	173.00	43
			Spring							
Parsons		10	1973	237.26						
			Spring							
Potusek		24	1972	130.00	17.29	8.65	8.97	9.19	174.11	36
			Fall							
Poznack		12	1972	130.00	18.15	12.38	28.38	11.15	200.02	34
			Spring							
Rasta		65	1974	150.00	0	16.00	13.18	13.38	192.54	22
			Fall							
Resta		25	1973	175.00	0	20.53	17.34	12.17	225.04	23
Shindle										
r		8	do	120.00	0	11.65	14.95	18.39	164.98	36
			Fall							
Smith		9	1971	125.00	17.44	17.17	17.22	8.17	185.00	41
Staffor			Fall							
d		7	1973	142.52	0	12.40	3.24	8.83	166.90	36
Vandame										
nt:			Fall							
1		21	1972	130.00	0	6.46	4.76	8.31	149.53	44
			Fall							
2		20	1973	150.00	0	26.58	7.45	11.28	194.31	30
Wilkins			Fall							
on, C		20	1972	140.00	0	13.42	6.23	9.34	168.99	40

Wilkins on, W Cherokee County n3 Labette :	21 do	125.00	21.29	11.48	9.09	260.03	431.97	16
	747	150.50	8.53	66.67	12.00	17.59	999.99	99
	Fall							
Bradley Columbia a	12 1971	162.50	12.18	10.78	8.78	4.26	199.00	33
	27 1972	179.59	11.80	21.09	13.33	10.75	235.04	31
	Fall							
Davis	16 1971	165.00	2.40	15.79	28.14	10.16	221.49	32
	Fall							
Farris Monroe Labette County n3 Kansas n3	5 1972	125.00	0	8.93	20.88	8.08	162.87	43
	14	120.00						
	68	156.63	8.21	14.90	17.43	8.62	216.32	34
	1,868	157.24	2.25	12.01	14.38	12.93	206.28	31

[See Table in Original]

S8133 n1 Acres seeded differed from acres graded so weighted averages cannot be computed directly from the data in this table. All averages were weighted by the acres affected.

S8133 n2 Excluded from total and averages because site was nonagricultural

S8133 n3 Total costs are not equal to the sum of the parts.

{S8135} Mr. METCALF. Mr. President, as the Senator from Kansas has pointed out, this is a national bill. There are areas where there should be greater flexibility and greater opportunity for the regulatory agency to make additional decisions above and beyond what is incorporated in the bill. The Senator from Kansas knows his area. We happen to know ours. I feel that he has made a contribution in suggesting that we give the regulatory authority greater opportunity to carry out the provisions of this abandoned land program. I thank him for offering the amendment.

S8135 Mr. DOLE. Mr. President, I yield back the remainder of my time.

S8135 Mr. METCALF. I yield back the remainder of my time.

S8135 The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment.

S8135 The amendment was agreed to.

S8135 AMENDMENT NO. 306, AS MODIFIED

S8135 Mr. SCHWEIKER. Mr. President, I call up my amendment No. 306, as modified.

S8135 The PRESIDING OFFICER. The amendment will be stated.

S8135 The legislative clerk read as follows:

S8135 The Senator from Pennsylvania (Mr. SCHWEIKER) proposes an amendment numbered 306, as modified.

S8135 Mr. SCHWEIKER. Mr. President. I ask unanimous consent that reading of the amendment be dispensed with.

S8135 The PRESIDING OFFICER. Without objection, it is so ordered.

S8135 The amendment is as follows:

S8135 On page 264, line 25, after the word "occurs" insert: ": Provided, That any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the hearing".

S8135 Mr. SCHWEIKER. Mr. President, my proposed amendment No. 306 as modified is a simple one and a logical one. It insures that coal operators ordered to cease operations are entitled to the minimum due process protection of a hearing within 30 days to test the validity of the cessation order.

S8135 A cessation order is a very serious remedy with serious consequences for the operator as well as for vitally necessary coal production. Under the bill the cessation order is issued without any advance notice to the operator or opportunity for hearing, and the order can be based on the judgment of one mine inspector.

S8135 If the order is unnecessary or unsupported, this can be promptly determined by a hearing within 30 days at or near the site. If the order is necessary to protect safety or environmental interests, the order will and should be sustained. The required hearing, necessary to satisfy

minimum standards of due process and fundamental fairness, will not diminish the powers of the Secretary to act promptly to protect safety or environmental needs.

S8135 The bill as drafted does not provide a guaranteed right to a hearing on such an order. Thus, an improper order could be issued resulting in the financial ruin of vital coal production.

{S8136} I urge Senators to support this amendment so that S. 7 will meet minimum standards of due process of law and fundamental fairness, while still protecting the environment against violations. I stress that, under the House bill, a hearing must be held within 10 days. My amendment calls for a hearing within 30 days. I consider this absolutely fair and reasonable, and I urge its acceptance.

S8136 Mr. METCALF. Mr. President, the Senator from Pennsylvania has demonstrated that a person who has an ongoing operation might have his mine closed down for a considerable period without a hearing, without any opportunity for recourse, and it would perhaps bankrupt some of these smaller operators.

S8136 His amendment provides for a hearing within a reasonable time when a person has closed down the mine, and certain evidence is available to justify the mine closure, and I think he has provided for a reasonable time and a reasonable requirement.

S8136 I talked this amendment over with the minority manager, and we are prepared to accept the amendment.

S8136 Mr. SCHWEIKER. I thank the Senator very much.

S8136 The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania.

S8136 The amendment was agreed to.

S8136 Mr. CHAFEE. Mr. President, I ask unanimous consent that Mr. Lee Verstandig be granted the privileges of the floor during the debate and votes on this measure.

S8136 The PRESIDING OFFICER. Without objection, it is so ordered.

S8136 AMENDMENT NO. 294, AS MODIFIED

S8136 AMENDMENT NO. 295, AS MODIFIED

S8136 AMENDMENT NO. 296

S8136 Mr. BAKER. Mr. President, I might say, for the benefit of my colleagues, that I have a 10-minute time limitation, with the time equally divided, on three amendments, so I will not take very long. I call up amendments Nos. 294, as modified; 295, as modified; and 296.

S8136 The PRESIDING OFFICER. Does the Senator from Tennessee wish them to be considered en bloc?

S8136 Mr. BAKER. Mr. President, I ask unanimous consent that the amendments be considered en bloc, and I ask unanimous consent that the reading of the amendments be dispensed with.

S8136 The PRESIDING OFFICER. Without objection, it is so ordered.

S8136 The amendments are as follows:

S8136 Delete all of title III, from page 157, line 8, through page 172, line 16, and insert a new title III as follows:

S8136 TITLE III - ABANDONED MINE RECLAMATION

S8136 DECLARATION OF PUBLIC POLICY

S8136 SEC. 301. (a) It is hereby declared as a matter of public policy that -

S8136 (1) reclamation, restoration, and development of land and water resources in the United States, which have been adversely affected by past coal mining practices, are fundamental to the public health, safety, and general welfare;

S8136 (2) a fund should be created to reclaim, restore, and develop land and water resources in the United States which have been adversely affected by past coal mining practices; and

S8136 (3) the United States of America, the individual States, their political subdivisions, the mining industry, and individual property owners must cooperate and act to reclaim, restore, and develop land and water resources adversely affected by past coal mining practices.

S8136 SEC. 302. (A) Not later than the end of the one hundred and eighty-day period immediately following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering implementation of an abandoned mine reclamation

program incorporating the provisions of title III and establishing procedures and requirements for preparation, submission, and approval of State programs and development and implementation of Federal programs under this title.

S8136 (b) The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State either has an approved State regulatory program pursuant to section 403 of this Act or is diligently preparing its program plan for submittal to the Secretary for approval.

S8136 (c) If the Secretary determines that a State has developed a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this title, sections 304 and 309 excepted, the Secretary shall approve such State program and shall grant to the State exclusive responsibility and authority to implement the provisions of this title: Provided, That the Secretary shall withdraw such approval and authorization if he determines upon the basis of information provided under subsection (d) of this section that the State program is not in compliance with the procedures, guidelines, and requirements established under subsection 302(a).

S8136 (d) The Secretary shall grant to each qualified State, moneys from the fund to be used for the purposes of this title upon an annual application for grants by the State which shall provide the following information:

S8136 (1) a general description of the State's program for that year;

S8136 (2) a priority evaluation of each element of such State program;

S8136 (3) a statement of the estimated benefits in terms of acres restored, miles of stream improved, acres of surface protected from subsidence and population protected from air pollution and safety hazards of mine and coal refuse disposal area fires;

S8136 (4) an estimate of the cost for each element of such State program;

S8136 (5) in the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated, or objective to be attained; and

S8136 (6) a statement of any land to be acquired in conformity with section 307 and the estimated cost of such land;

S8136 (7) in each year after the first in which an application is filed under this title, an inventor of

each project funded under the previous year's grant; which inventory shall include details of financial expenditures on such projects together with a brief description of each such project, including project location, landowner's name, acreage, type of reclamation performed.

S8136 (e) The cost for each proposed program under this section shall include actual construction costs and actual operation and maintenance costs of permanent facilities. Planning and engineering costs, construction inspection costs, and other administrative expenses shall be included in the costs for each proposed project.

S8136 (f) Grants shall be made annually to the qualifying States on approval by the Secretary of the applications, or portions thereof, according to the priorities established in subsection (g) of section 303 and subject to the requirements of subsection (f) of section 303.

S8136 (g) The Secretary, through his designated agents, will monitor the progress and quality of the program. The States shall not be required at the start of any project to submit complete copies of plans and specifications.

S8136 SEC. 303. (A) There is created on the books of the Treasury of the United States a trust fund to be known as the Federal Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior. State abandoned mine reclamation funds (State funds) generated by grants from this title shall be established by each State pursuant to an approved State program.

S8136 (b) The fund shall consist of amounts deposited in the fund, from time to time derived from

-

S8136 (1) the reclamation fees levied under section 304 of this Act: Provided, That an amount not to exceed 10 per centum of such reclamation fees collected for any calendar quarter shall be reserved beginning in the first calendar year in which the fee is imposed and continuing for the remainder of that fiscal year and for the period in which such fee is imposed by law, for the purpose of section 407(f), subject to appropriation pursuant to authorization under section 511: Provided further, That not more than \$10,000,000 shall be available for such purposes.

S8136 (2) the sale, lease rental, or user charge for land acquired pursuant to this title;

S8136 (3) donations by persons, corporations, associations, and foundations for the purposes of this title; and

S8136 (4) recovered moneys as provided for in this title.

S8136 (c) Moneys in the fund may be used for the following purposes:

S8136 (1) reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and coal mine subsidence;

S8136 (2) acquisition of land as provided for in section 307;

S8136 (3) development of land acquired as provided for in subsection (d) of section 307;

S8136 (4) enforcement and collection of the reclamation fee provided for in section 304 of this Act;

S8136 (5) studies by the Department of the Interior by contract to such extent or in such amounts as are provided in advance in appropriation Acts with public and private organizations to provide information, advice, and technical assistance, including research and demonstration projects, conducted for the purposes of this title;

S8136 (6) restoration, reclamation, abatement, control, or prevention of adverse affects of coal mining whenever created which constitutes an emergency as provided for in section 308 of this title;

{S8137} (7) grants to the States to accomplish the purposes of this title;

S8137 (8) administrative expenses of the United States and each State to accomplish the purposes of this title; and

S8137 (9) all other necessary expenses to accomplish the purposes of this title.

S8137 (d) An amount not to exceed 20 per centum of the moneys deposited in the fund during the first calendar year this title is in force shall be reserved for the purposes specified in section 309 of this Act. As moneys are used for these purposes, this reserve shall be replenished by such portion of the quarterly deposits into the fund as shall be necessary.

S8137 (e) Moneys from the fund shall be available for the purposes of this title, only when appropriated therefor, and such appropriations shall be made without fiscal year limitations: Provided, That moneys from the fund reserve provided in subsection (d) of this section shall be immediately available without regard to appropriations, upon authority of the Secretary for the purposes provided for in section 308 of this title.

S8137 (f) The geographic allocation of expenditures from the fund shall reflect both the area from which the revenue was derived as well as the program needs for the funds. Fifty per centum of the funds collected annually in any State or Indian reservation shall be expended in that State or Indian reservation by the Secretary or State regulatory authority pursuant to any approved State abandoned mine reclamation program to accomplish the purposes of this title or, after the objectives of the fund set forth in sections 303 and 310 of this Act have been achieved, for programs for the construction of public facilities in communities impacted by coal development after receiving and considering the recommendations of the Governor of that State or the head of the governing body of that tribe having jurisdiction over that reservation, as the case may be: Provided, however, That if such funds have not been expended within three years after being paid into the fund, they shall be available for expenditure in any area. The balance of funds collected on an annual basis may be expended in any State at the discretion of the Secretary in order to meet the purposes of this title.

S8137 (g) Expenditure of moneys from the fund for the purposes of this title shall reflect the following priorities in the order stated:

S8137 (1) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;

S8137 (2) the protection of public health, safety, and general welfare from adverse effects of past coal mining practices;

S8137 (3) the restoration of land and water resources and the environment previously degraded

by adverse effects of past coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;

S8137 (4) research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;

S8137 (5) the protection, repair, replacement, construction, or enhancement of public facilities such as utilitles, roads, recreation, and conservation facilities adversely affected by coal mining practices;

S8137 (6) the development of publicly owned land adversely affected by past coal mining practices including land acquired as provided in this title for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

#### S8137 RECLAMATION FEE

S8137 SEC. 304. (a) All operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that there shall be no reclamation fee for lignite coal.

S8137 (b) Such fee shall be paid no later than thirty days after the end of each calendar quarter beginning with the first calendar quarter occurring after January 1, 1978, and ending fifteen years after the date of enactment of this Act unless extended by an Act of Congress.

S8137 (c) Together with such reclamation fee, all operators of coal mine operations shall submit a statement of the amount of coal produced during the calendar quarter, the method of coal removal and the type of coal, the accuracy of which shall be sworn to by the operator and notarized.

S8137 (d) Any person, corporate officer, agent, or director, on behalf of a coal mine operator, who knowingly makes any false statement, representation, or certification required in this section shall, upon conviction, be punished by a fine of not more than \$1 0,000, or by imprisonment for not more than one year, or both.

S8137 (e) Any portion of the reclamation fee not properly or promptly paid pursuant to this section shall be recoverable, with statutory interest and reasonable attorney's fees, from coal mine operators, in any court of competent jurisdiction in any action at law to compel payment of debts.

S8137 (f) All Federal and State agencies shall fully cooperate with the Secretary of the interior in the enforcement of this section.

#### S8137 ELIGIBLE AREAS

S8137 SEC. 305. (a) The only lands eligible for expenditures under this title are those which were mined for coal or which were abandoned and unreclaimed or unrestored prior to the date of enactment of this Act: Provided, however , That any lands adversely affected by coal mining which constitutes an extreme danger to the public health, safety, and general welfare shall be eligible for expenditures from the fund as provided for in section 309.

S8137 (b) Any water resources adversely affected by past coal mining practices shall be eligible for expenditures from the fund for reclamation and restoration purposes.

#### S8137 RECLAMATION OF RURAL LANDS

S8137 SEC. 306. (a) In order to provide for the control and prevention of erosion and sediment damages from unreclaimed mined lands, and to promote the conservation and development of soil and water resources of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements of not more than ten years with landowners (including owners of water rights), residents, and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of soil, water (excluding stream channelization), woodland, wildlife, and recreation resources, and agricultural productivity of such lands. Such agreements shall be made by the Secretary with the owners, including owners of water rights, residents, or tenants (collectively or individually) of the lands in question.

S8137 (b) The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of Agriculture a conservation and development plan setting forth the proposed land

uses and conservation treatment which shall be mutually agreed by the Secretary of Agriculture and the landowner, including owner of water rights, resident, or tenant to be needed on the lands for which the plan was prepared. In those instances where it is determined that the water rights or water supply of a tenant, landowner, including owner of water rights, residents, or tenant have been adversely affected by a surface or underground coal mine operation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance, such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected landowners, including owner of water rights, residents, or tenants in consultation with appropriate State and Federal agencies.

S8137 (c) Such plan shall be incorporated in an agreement under which the landowner, including owner of water rights, resident, or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided for in such plan on the lands described in the agreement in accordance with the terms and conditions thereof.

S8137 (d) In return for such agreement by the landowner, including owner of water rights, resident, or tenant the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner, including owner of water rights, resident, or tenant in such amounts and subject to such conditions as the Secretary of Agriculture determines are appropriate in the public interest for carrying out the land use and conservation treatment set forth in the agreement. Grants made under this section, depending on the income-producing potential of the land after reclaiming, shall provide up to 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred and twenty acres of land occupied by such owner including water rights owners, resident, or tenant, or on not more than one hundred and twenty acres of land which has been purchased jointly by such landowners including water rights owners, residents, or tenants under an agreement for the enhancement of water quality or quantity or on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement; except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving offsite water quality, offsite esthetic values, or other offsite benefits, and (2) the matching share requirement would place a burden on the

landowner which would probably prevent him from participating in the program:  
Provided, however  
, the Secretary of Agriculture may allow for land use and conservation  
treatment on such lands  
occupied by any such owner in excess of such one hundred and twenty acre  
limitation up to three  
hundred and twenty acres, out in such event the amount of the grant to such  
landowner to carry out  
such reclamation on such lands shall be reduced proportionately.

S8137 (e) The Secretary of Agriculture may terminate any agreement with a  
landowner including  
water rights owners, operator, or occupier by mutual agreement if the  
Secretary of Agriculture  
determines that such termination would be in the public interest, and may  
agree to such modification  
of agreements previously entered into hereunder as he deems desirable to  
carry out the purposes of  
this section or to facilitate the practical administration of the program  
authorized herein.

S8137 (f) Notwithstanding any other provision of law, the Secretary of  
Agriculture, to the extent  
he deems it desirable to carry out the purposes of this section, may provide  
in any agreement  
hereunder for (1) preservation for a period not to exceed the period covered  
by the agreement and an  
equal period thereafter of the cropland, crop acreage, and allotment history  
applicable to land  
covered by the agreement for the purpose of any Federal program under which  
such history is used  
as a basis for an allotment or other limitation on the production of such  
crop; or (2) surrender of any  
such history and allotments.

{S8138} (g) The Secretary of Agriculture shall be authorized to issue  
such rules and regulations  
as he determines are necessary to carry out the provisions of this section.

S8138 (h) In carrying out the provisions of this section, the Secretary  
of Agriculture shall utilize  
the services of the Soil Conservation Service.

S8138 (i) Funds shall be made available to the Secretary of Agriculture  
for the purposes of this  
section, as provided in section

#### S8138 ENTRY ON OR ACQUISITION OF LAND ADVERSELY AFFECTED BY PAST COAL MINING PRACTICES

S8138 SEC. 307. (a) In the absence of an approved State program pursuant  
to section 302, if the  
Secretary makes a finding of fact that -

S8138 (1) land or water resources have been adversely affected by past  
coal mining practices; and

S8138 (2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

S8138 (3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

S8138 (4) the owners will not give permission for the United States, the States, political subdivisions, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices. Then, upon giving notice by mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality in which the land lies, the Secretary, his agents, employees, or contractors, shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset set any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: Provided, however, That this provision is not intended to create new rights of action or eliminate existing immunities.

S8138 (b) The Secretary, his agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

S8138 (c) The Secretary may acquire any land, by purchase, donation, or condemnation, which is

adversely affected by past coal mining practices if the Secretary determines that acquisition of such land is necessary to successful reclamation and that -

S8138 (1) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; or

S8138 (2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

S8138 (3) acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purpose of this title or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

S8138 (d) Title to all lands acquired pursuant to this section shall be in the name of the United States or, if acquired by a State pursuant to an approved program, title shall be in the name of the State. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

S8138 (e) The Secretary, in formulating regulations for making grants to the States to acquire land pursuant to this section, shall specify that acquired land meet the criteria provided for in subsections (c) and (d) of this section. The Secretary may provide by regulation that money derived from the lease, rental, or user charges of such acquired land and facilities thereon will be deposited in the fund.

S8138 (f) (1) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the Secretary may sell or authorize the States to sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such other regulations promulgated to insure that such lands are put to proper use consistent with local and State land use plans, if any, as determined by the Secretary.

S8138 (2) The Secretary when requested after appropriate public notice shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired pursuant to this section are located. The hearings shall be held at a

time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use of disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse affects of past coal mining practices.

S8138 (g) In addition to the authority to acquire land under subsection (d) of this section the Secretary is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim, develop, and transfer acquired land to any State or to a political subdivision thereof, or to any person, firm, association, or corporation if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in section 309 or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the Secretary shall require, which may include transfers of land with or without monetary consideration: Provided, That, to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. Land development may include the construction of public facilities or other improvements including reasonable site work and offsite improvements such as sewer and water extensions which the Secretary determines necessary or appropriate to the economic feasibility of a project. No part of the funds provided under this title may be used to pay the actual construction costs of housing.

S8138 (h) The Secretary may carry out the purposes of this section directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State.

#### S8138 LIENS

S8138 SEC. 308. (a) In absence of an approved plan pursuant to section 302 the provisions of this section shall be applicable.

S8138 (b) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the Secretary shall itemize the moneys so expended and may file a statement thereof in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who neither participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

S8138 (c) The landowner may proceed as provided by local law to petition within sixty days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by local law.

S8138 (d) The lien provided in this section shall be entered in the county office in which the land lies which has responsibility under local law for the recording of judgments against land.

#### S8138 EMERGENCY POWERS

S8138 SEC. 309. (a) The provisions of this section shall be applicable only in the absence of an approved State program pursuant to section 302.

S8138 (b) The Secretary is authorized to expend moneys from the fund without specific legislative appropriation for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices, without regard to when the practices occurred, if the Secretary makes a finding of fact that -

S8138 (1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

S8138 (2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

S8138 (c) The Secretary, his agents, employees, and contractors shall have the right to enter upon any land where the emergency exists and any other land to have access to the and where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: Provided, however, That this provision is not intended to create new rights of action or eliminate existing immunities.

S8138 (d) All moneys expended under this section may be recovered in full from the landowner, or any other person, company, corporation, or organization if they were liable under law for restoring, reclaiming, abating, controlling, or preventing the adverse effects resulting in the emergency.

#### S8138 FILLING VOIDS AND SEALING TUNNELS

S8138 SEC. 310. (a) The Congress declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Secretary, at the request of the Governor of any State, or the chairman of any tribe, is authorized to fill such voids, seal such abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the Secretary determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment. State regulatory authorities are authorized to carry out such work pursuant to an approved abandoned mine reclamation program.

S8138 (b) Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be expended in the respective States or Indian reservations under the provisions of section 303.

S8138 (c) The Secretary may make expenditures and carry out the purposes of this section without regard to provisions of section 305 in such States or Indian reservations where requests are made by the Governor or tribal chairman and only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.

S8138 (d) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purposes of this section.

S8138 (e) The Secretary may acquire by purchase, donation, easement, or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

#### S8138 MISCELLANEOUS POWERS

S8138 SEC. 311. (a) In the absence of an approved State program pursuant to section 302

S8138 (b) The Secretary shall have the power and authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient to implement and administer the provisions of this title.

S8138 (c) The Secretary shall have the power and authority to engage in cooperative projects under this title with any other agency of the United States of America, any State and their governmental agencies.

S8138 (d) The Secretary may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this title, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter land or to conduct of any work provided in this title.

S8138 (e) The Secretary shall have the power and authority to construct and operate a plant or

plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: Provided. That the above provisions of this paragraph shall not be deemed in any way to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C. 1151, et seq as amended) and no control or treatment under this subsection shall in any way be less than that required under the Federal Water Pollution Control Act. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

#### S8138 INTERAGENCY COOPERATION

S8138 SEC. 312. (a) All department, boards, commissioners, and agencies of the United States of America shall cooperate with the Secretary by providing technical expertise, personnel, equipment, materials, and supplies to implement and administer the provisions of this title.

S8138 (b) The Secretary in development of guidelines and regulations under this title shall consult with appropriate Federal agencies including Department of Agriculture, Soil Conservation Service, Environmental Protection Administration, and the Tennessee Valley Authority.

#### S8138 FUND REPORT

S8138 SEC. 313. Not later than January 1, 1978, and annually thereafter, the Secretary shall report to the Congress on operations under the fund together with his recommendations as to future uses of the fund.

#### S8138 TRANSFER OF FUNDS

S8138 SEC. 314. The Secretary of the Interior may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this title.

#### S8138 CONTINUING LIABILITY

S8138 SEC. 315. Nothing in this title shall be construed as a waiver, release, or limitation of any liability of any person, created by any law, for the adverse effects of coal mining practices.

S8138 On page 287 delete the semicolon in line 2, and add the following: " : Provded, that for the purposes of this Act lands or mineral interests east of the 100th Meridan West longitude owned by

the United States and entrusted to or managed by the Tennessee Valley Authority shall not constitute Federal lands, and such lands or mineral interests shall not be subject to section 515 (Surface Owner Protection) and 512 (Federal Lessee Protection) of this Act."

S8138 On page 222 in line 1 after "(9)" insert: conducting any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete: and".

S8138 On page 222, line 6, delete the semicolon and add: ": Provided, That the permitting authority may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the solid fuel resources or to protect against adverse water quality impacts."

S8138 Mr. BAKER. Mr. President, I might say I am hopeful that all three of these amendments will be adopted, but before I proceed to briefly describe them, I would like to say that this a gratifying time to the Senator from Tennessee to see the Congress coming to the conclusion, I believe, of the long effort to obtain passage of a significant piece of surface mine control legislation.

S8138 The PRESIDING OFFICER. Will the Senator from Tennessee delay until we have order in the Chamber?

S8138 The Senator from Tennessee may proceed.

S8138 Mr. BAKER. Mr. President, I was about to say I introduced the Surface Mine Control Act of 1971, and the only cosponsor I had then was former Senator John Sherman Cooper of Kentucky. That was S. 3000. Many of the concepts in that bill are incorporated in this act, including the provision for the restoration to the original contour.

S8138 So I would like to take this brief opportunity to pay my respects to the distinguished managers of this bill on behalf of the majority and minority for their good work in this respect, and to say I will support it with enthusiasm.

S8138 Mr. President, my three amendments deal, first, with public lands related to the Tennessee Valley Authority.

S8138 S. 7 now provides for certain restrictions on the utilization of Federal lands.

S8138 The Tennessee Valley Authority owned certain lands, and while TVA is a corporation,

title to that land is held in the United States of America for the use of and in trust for the Tennessee Valley Authority, so technically, I suppose, Federal lands would include that land which has been purchased by TVA out of power revenues for the recovery of coal.

S8138 Amendment No. 295, as modified, Mr. President, simply provides that several of the provisions of S. 7 governing public lands shall not apply, to these lands located east of the 100th meridian.

S8138 This bill contains authority for the Secretary of the Interior to establish a program for control of mining activities on the extensive holdings of the Federal Government in the West. Additionally, it provides protections for surface owners where the Federal Government holds the patent to the minerals underlying his property and for Federal lessees holding agricultural or grazing leases overlying Federal mineral estates.

S8138 The Tennessee Valley Authority has over the past several years acquired a few tracts of land and the mineral interest underlying other tracts in the East as a part of its power operation. These properties were acquired with proceeds from the sale of power. But because of the statutory structure of the Tennessee Valley Authority, the interests are held by the United States and entrusted to the use of TVA.

S8138 Thus technically these properties constitute "Federal lands" as defined in section 501 of S. 7.

S8138 I believe this to be an oversight and would hope that the managers of the bill would accept this amendment as a clarification of the Federal lands provision of S. 7.

S8138 The amendment in no way diminishes the application of the reclamation, permit, bonding or critical area designation requirements of the bill to the TVA.

S8138 Mr. METCALF. Would this affect in any way the application of the reclamation bonding or permit requirements of the act to TVA?

{S8140} Mr. BAKER. The amendment in no way impairs the application of section 424 of the bill to TVA. This section assures that TVA is fully subject to the reclamation requirements of the bill including the requirement for obtaining a permit from the regulatory authority, either Department of Interior or the State, for mining on such lands.

S8140 Mr. METCALF. Would this exclude TVA from the provisions of section 422 (e), which deals with the designation of lands unsuitable for mining, where TVA owned minerals underlying lands owned by the Forest Service?

S8140 Mr. BAKER. It would not. The term "Federal lands" in section 422(e)(2) refers, I believe, to lands owned by the U.S. Forest Service. The fact that TVA owned mineral interests underlying such lands would in no way affect the applicability of that subsection.

S8140 Mr. President, the next amendment, No. 294, as modified, is the Interstate Mining Compact Commission's proposal regarding abandoned mine reclamation, which I offer as a substitute for title III of S. 7.

S8140 The Interstate Mining Compact Commission is an association of 12 States which coordinates and provides information regarding State mining and reclamation programs.

S8140 The amendment retains the provisions of title II of S. 7 specifying the establishment of the abandoned mine reclamation fund including the administration of such fund by the Secretary of the Interior, the amounts of the fees on coal which supply the fund, the formula for allotment of the fund to the States and the general purposes for which the fund may be used.

S8140 The amendment provides a mechanism through which the Secretary can approve State programs for abandoned mine reclamation and delegate the program to the States.

S8140 Additionally and most importantly the amendment provides more flexibility in the choice of reclamation techniques which the Secretary and the States can employ to repair the over 1 million acres of abandoned mines across the Nation.

S8140 Under S. 7 the emphasis in reclamation is on acquisition, reclamation, and resale of mined lands. The reclamation authority under the pressure of the resale requirement will, in my opinion, utilize reclamation techniques which restore the site to an equal or greater utility than before mining in order to facilitate resale.

S8140 While such restoration is a laudable goal, it is expensive and will result in a substantial investment of the abandoned mine reclamation effort in a relatively small proportion of the total problem.

S8140 The magnitude and nature of the abandoned mine problem must be understood in order to access properly the priorities for undertaking extensive reclamation. There are an estimated 600,000 to 1.5 million acres of abandoned mines needing reclamation, depending upon whose inventory is used. Almost two-thirds of these are in the Appalachian region.

S8140 These lands are contributing millions of tons of siltation in over 11,500 miles of streams, and they pose an esthetic problem which is most serious in the mountains.

S8140 In my opinion the priority in our reclamation effort should be addressing these problems.

S8140 A demonstration program begun in 1975 by the Tennessee Valley Authority has reclaimed abandoned lands through a program of "minimum disturbance reclamation" which consists of soil treatment, construction, and reconstruction of drainage through the site, and revegetation at a cost of about \$300 per acre.

S8140 If the reclamation technique addresses the problem of regrading to reconstruct original contour the costs per acre would increase to approximately \$2,000 to \$3,000 per acre. And a demonstration by the Appalachian Regional Commission several years ago indicated that extensive site restoration could cost \$5,000 to \$8,000 an acre.

S8140 While reestablishment of the contour or utility of abandoned lands is a desirable goal, the expense of such a program would result in long delays before any substantial portion of the lands needing reclamation were affected.

S8140 It is the purpose of my amendment to allow the States rather to choose a mix of reclamation techniques including "minimum disturbance reclamation," which will affect the largest number of acres and most quickly address the problems of water quality and esthetics.

S8140 Mr. RANDOLPH. Mr. President, it is my understanding that the Senator from Montana (Mr. METCALF) and the Senator from Wyoming (Mr. HANSEN) have agreed to accept the title III abandoned mine reclamation substitute being offered by the Senator from Tennessee (Mr. BAKER).

S8140 I commend the Senators for their diligent cooperative efforts in working out this matter.

S8140 I am pleased that the Senator from Tennessee (Mr. BAKER) has accepted two

modifications to his amendment which we suggested. Both of these modifications are designed to help people who have been impacted by natural disasters or catastrophic failures of any type. The Senator's amendment gives the Secretary of the Interior authority in certain cases to use money from the reclamation fund to acquire, reclaim, and develop land if he determines that such action is necessary for a project to construct or rehabilitate housing for several categories of persons, including persons disabled as a result of employment in the mines and persons dislocated as result of adverse effects of coal mining. The modification agreed to by the Senator at my urging adds to the above categories "persons dislocated as a result of natural disasters and catastrophic failure from any cause." This authority is essential in my judgment. It will enable the Secretary to aid citizens suffering from disasters. In two tragic instances in recent years in our State of West Virginia this authority could have been used - the 1972 Buffalo Creek disaster and the April 1977 floods. Both of these disasters occurred in coal mining areas where replacement housing has been an almost insurmountable problem due to the lack of suitable housing sites. This authority, Mr. President, will help alleviate such problems.

S8140 Secondly, Senator BAKER's amendment contains a provision allowing the Secretary more flexibility in the acquisition of land under section 307 and in carrying out the direction by title III to protect the public health and safety. This provision gives the Secretary authority to make grants and commitments for grants, and advance money under such terms and conditions as he may require to any State, or any department, agency, or instrumentality of a State, or any public body or nonprofit organization designated by a State to carry out this section.

S8140 Mr. President, both of these provisions in title III are critical in our effort to aid people in coal-mining areas and I believe that the Senate should insist on their retention in conference with the House.

S8140 Mr. METCALF. I assure the Senator from West Virginia that every effort will be made to retain the provisions he has described.

S8140 Mr. BAKER. The third amendment has to do with amendment No. 296, which is -

S8140 Mr. DOMENICI. Mr. President, will the Senator yield before he goes to the third amendment?

S8140 Mr. BAKER. I yield.

S8140 Mr. DOMENICI. Might I ask a question on the previous amendment. Did that have to do with the abandoned mine reclamation fund?

S8140 Mr. BAKER. Yes, it did, title III of the bill.

S8140 Mr. DOMENICI. Just one question: I ask my good friend from Tennessee, his amendment in no way seeks to alter the Domenici amendment agreed to earlier this afternoon?

S8140 Mr. BAKER. Mr. President, it does not. I might say amendment No. 294 at the desk now is modified to reflect the provisions of the Domenici amendment.

S8140 Mr. DOMENICI. I thank the Senator from Tennessee.

S8140 Mr. BAKER. Mr. President, the third amendment is the so-called augering amendment.

S8140 As some of my colleagues may know, further protection for the remaining reserves by denying permits for augering in certain cases where adequate provisions can not be made for the recovery of the balance of the coal.

S8140 Augering is practiced as part of steep contour mining. It involves the use of boring equipment to extract coal below the contour highwall. It is a low-over-head but inefficient method of mining, recovering only about 30 percent of the coal seam it affects. In the process it fractures the strata in which the coal is found making it impossible to deep mine remaining reserves.

S8140 Where remaining reserves are not suitable for deep-mining and where contour mining or mountaintop mining for such reserves is uneconomic or infeasible, augering may maximize mineral recovery and should be allowed. But where remaining minerals might be more efficiently recovered, the regulatory authority should assure that the mining plan retains access to such mineral and where necessary should disallow augering in order to maximize coal recovery.

{S8141} The amendment additionally clarifies statutory authority to prohibit augering where the practice would result in acid drainage adversely affecting water quality.

S8141 The PRESIDING OFFICER. The Senator's time has expired.

S8141 The Senator from Montana.

S8141 Mr. METCALF. Mr. President, I the discussed these amendments with the Senator from

Tennessee. The Senator from Tennessee is a cosponsor of this legislation. He has consistently followed this legislation, even though he is not a member of the committee, and has made appearances, provided statements, and so forth, on various provisions.

S8141 His statement about States' right I have already mentioned as one of the outstanding explanations of our position.

S8141 His amendment No. 294 on the abandoned mine reclamation was considered in the committee. In the course of the consideration certain provisions were adopted relative to liens and relative to fish and wildlife provisions, and so forth. In the course of the adoption of the amendment we did consider some of the provisions of the Interstate Mining Compact Commission suggestion which is composed of the mining States from his area.

S8141 He has now incorporated in his amendment many of the things that were included in the committee report. At the same time, he has provided for the Interstate Compact Commission, and adopted the suggestions that they made which, I believe, clean up the procedure involved and give us a little better understanding of the series of amendments which were handled separately.

S8141 The other amendment on TVA is one he frequently offered and frequently was accepted; and augering is an amendment in the highest traditions of conservation to try to recover just as much coal as possible.

S8141 I am very proud to associate myself with the Senator from Tennessee in his amendments and I hope we will accept them.

S8141 Mr. BAKER. I thank the Senator.

S8141 Mr. METCALF. I think my colleague from Wyoming has already expressed himself to that effect, and I yield back the remainder of my time.

S8141 The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing en bloc to the amendments of the Senator from Tennessee.

S8141 The amendments were agreed to en bloc.

S8141 Mr. BAKER. Mr. President, I move to reconsider the vote by which the amendments were adopted.

S8141 Mr. METCALF. I move to lay that motion on the table.

S8141 The motion to lay on the table was agreed to.

S8141 The PRESIDING OFFICER. What is the will of the Senate?

S8141 Mr. HANSEN. I suggest the absence of a quorum.

S8141 The PRESIDING OFFICER. The clerk will call the roll.

S8141 The second assistant legislative clerk proceeded to call the roll.

S8141 Mr. METCALF. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

S8141 The PRESIDING OFFICER. Without objection, it is so ordered.

S8141 UP AMENDMENT NO. 264

S8141 Mr. METCALF. Mr. President, while we are in this temporary period, unless there is objection, I send to the desk a series of technical amendments that have arisen as a result of some of the amendments that we have submitted and some of the amendments that were adopted, and ask that they be considered en bloc.

S8141 The PRESIDING OFFICER. The amendments will be stated.

S8141 The legislative clerk read as follows:

S8141 The Senator from Montana (Mr. METCALF) proposes unprinted amendment No. 264 containing certain technical amendments.

S8141 Mr. METCALF. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

S8141 The PRESIDING OFFICER. Without objection, it is so ordered.

S8141 The amendment are as follows:

S8141 Page 159, line 13-14: Strike the words "after being paid into the fund" and insert "after their allocation".

S8141 Page 167, line 25: Change "402" to "302".

S8141 Page 179, line 16: After the word "421" insert "and 423". (Federal lands).

S8141 Page 189, line 9: Strike the words "and shall be non-transferable."

S8141 Page 279, line 22: After "415" insert "416,".

S8141 Page 302, line 3: Strike "For" and insert after "(b)", the words "For the implementation

and funding of section 505 and for,"

S8141 Page 207, line 15: Strike "(2)" and on line 16 after the words "valley floors or" insert "(2)" and on line 19 after the word "or" insert "(3)".

S8141 Page 247, line 11: After the semicolon, insert "except for considerations of public safety whether immediate repair of the violation was prevented by conditions beyond the control of the operator including weather and soil conditions;"

S8141 Page 202, line 2: In paragraph (12) after the comma, insert: "or other equivalent information and data in a form satisfactory to the regulatory authority,"

S8141 Page 229, line 4: Strike the words "and where necessary" and insert "or where necessary to the reclamation process; and"

S8141 Mr. METCALF. I ask unanimous consent that all the amendments be considered en bloc and agreed to en bloc.

S8141 The PRESIDING OFFICER. Without objection, it is so ordered.

S8141 The amendments were agreed to en bloc.

S8141 Mr. METCALF. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

S8141 Mr. HANSEN. I move to lay that motion on the table.

S8141 The motion to lay on the table was agreed to.

S8141 UP AMENDMENT NO. 265

S8141 Mr. SCHMITT. Mr. President, I have an unprinted amendment at the desk that I call up at this time.

S8141 The PRESIDING OFFICER. The amendment will be stated.

S8141 The second assistant legislative clerk read as follows:

S8141 The Senator from New Mexico (Mr. SCHMITT) proposes unprinted amendment No. 265.

S8141 Mr. SCHMITT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

S8141 The PRESIDING OFFICER. Without objection, it is so ordered.

S8141 The amendment is as follows:

S8141 At the end of the bill, add the following:

S8141 SEC. 516. (a) Any operator, permittee, or any fee owner, lessor, or lessee of coal deposits is authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to construe any provisions of this Act.

S8141 (b) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

S8141 The PRESIDING OFFICER. The Chair states on this amendment there is a 1-hour time limitation to be equally divided.

S8141 Mr. SCHMITT. Mr. President, I presume it will not take the full extent of that time; however, the issue might be enjoined in debate and I feel it necessary to have that much leeway.

S8141 There has been much very eloquent discussion by numerous Members of this body, including the distinguished Senators from Wyoming, my distinguished colleague from New Mexico, the junior Senator from Montana, and others, that center around some very fundamental rights, at least what previously had been considered fundamental rights in this great country of ours, commonly referred to or thought to be constitutional rights. These rights have in the past been assumed to prohibit the usurpation of a person's property without due process or a State's rights to manage the affairs of the State within its boundaries.

S8141 It seems strange that the bill before us, S. 7, would include as its final purpose paragraph (k) on page 151, the following statement:

S8141 Wherever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.

S8141 It almost seems as if that purpose was added as an afterthought when it was realized by the drafters of the legislation that they were possibly treading on soft constitutional grounds in some areas of this bill.

{S8142} I do believe that it is the case with respect to the rights of individuals to manage their property and the rights of States to the jurisdictions and activities within their boundaries.

S8142 Mr. President, the amendment which is under consideration is designed principally to ease the process by which any operator, permittee or fee owner, lessor or lessee of coal deposits can institute actions for declaratory judgment or injunctive relief as appropriate to any provisions of the act.

S8142 The amendment would allow those persons to accomplish this without regard to whether or not all administrative or other legal remedies may have been exhausted prior to the time of seeking such relief.

S8142 In addition, it would state that it is the duty of the Federal judges hearing the case to do so at the earliest practicable date.

S8142 It think it is very important that we simplify the procedures by which the American people, in groups or as individuals, can, if they so desire, test the basic constitutionality of provisions of the bill that we are considering. This is a very fundamental and important piece of legislation. It may be one of the most fundamental we shall consider in this Congress insofar as it may reflect changes in the trends of individual and States' rights within this country.

S8142 Mr. President, I strongly recommend this amendment be adopted. It does not change the intent of scope of the act. It merely simplifies procedures by which the act can be tested in the courts.

S8142 I reserve the remainder of my time.

S8142 Mr. METCALF. Mr. President, it is with a great deal of regret that I feel I must resist the amendment offered by the Senator from New Mexico.

S8142 Mr. President, this substantially changes some of our rules of jurisdiction of courts, some of our rules for the urgency of hearing the courts' jurisdiction and directs the courts to provide for a three-judge Federal court and an immediate appeal to the U.S. Supreme Court.

S8142 I will certainly concede to the Senator from New Mexico that we have a clogged-up court system and we are trying to get some additional judges both at the district and circuit court level so we can hear these cases. But one of the reasons for the fact that we do not have prompt and orderly hearings is that every time anything comes up Congress says that the court has to give urgent hearings and put this ahead of a criminal action or maybe some other actions that we have said in the past are urgent.

S8142 I feel that an amendment as farreaching as the amendment that the Senator from New Mexico is proposingshould go to the Judiciary Committee for discussion, hearings, and determination as to what is going to be the impact on our court system and how it is going to fit in with the other jurisdictional propositions concerned.

S8142 As far as I remember, we have a whole body of law to determine the constitutionality of these various propositions. We have the three-judge courts that have been suggested by the Senator from New Mexico. We have hearings in the district court proposed. But I feel this so gravely affects the constitutionality of the whole jurisdictional proceeding that I think we should not put that on this bill, but we should carefully analyze it in the Judiciary Committee and, therefore, I must resist the amendment.

S8142 Mr. SCHMITT. Would the Senator from Montana acknowledge that there will probably be some constitutional tests of the act that is now under consideration?

S8142 Mr. METCALF. Certainly there will be constitutional tests. I am certain that those tests will be conducted under the orderly procedure by which we conduct constitutional tests on all sorts of statutes everywhere in the body of the law, and have done so for many, many years.

S8142 I do not think that in order to get a constitutional test such as the Senato from New Mexico is suggesting, we have to have a special procedure or a special jurisdictional statute.

S8142 Mr. SCHMITT. The procedure proposed is merely one to accelerate the process. I am much in sympathy with what the Senator has said about the backlog in the courts, some reasons for that backlong being the actions by this body.

S8142 However, I think it is important, when we take such very fundamental steps in new

directions affecting individual and State's rights, certainly extraordinary actions, to make sure that those steps are correct ones.

S8142 One action we can take is to provide that the individuals most affected have immediate recourse to the courts and obtain constitutional judgments as rapidly as possible.

S8142 Mr. METCALF. Every time we have legislation on this floor, we have questions involving the constitutionality, and every time someone thinks those questions should be accelerated. Sometimes we legislate accelerating such questions, without taking into consideration the impact on many other such questions that are also pending.

S8142 Again, rather than the floor of the Senate, it would seem that the appropriate place is not to write this kind of legislation relative to longstanding jurisdiction of the courts on constitutional matters, but to refer the question to the Judiciary Committee.

S8142 Mr. SCHMITT. Mr. President, will the Senator answer a question for the Senator from New Mexico? What was the the rationale in the committee for including paragraph (k) which I referred to, on page 151? Was there a concern within the committee that they may have overreached the constitutional grounds and, therefore, there needed to be justification for the apparent infringement of personal and States rights that are contained within this act?

S8142 Mr. METCALF. No. The reason for that is to be sure that we have ordinary, reasonable judicial review of these matters, in accordance with established constitutional provisions.

S8142 Mr. SCHMITT. What was the reason for including a statement of purpose, agreeing, wherever necessary, to exercise the full reach of Federal constitutional powers?

S8142 Mr. METCALF. That is established boilerplate language for judicial review of all these cases, to insure that established procedures for review of the constitutionality of those provisions of the statutes may be had in an orderly fashion, and in accordance with established procedures.

S8142 Mr. SCHMITT. Mr. I fully realize that all the precedents and ramifications of previous actions by this Congress throughout almost 200 years are not known to me.

S8142 However, I think in the actions we are now taking in this particular piece of legislation, as

already well articulated earlier, particularly and most recently by the senior Senator from Wyoming, actions that go directly to this fundamental issue of property rights and States rights, that we should acknowledge that there will be constitutional tests, and that those tests ought to proceed in as orderly and as rapid a manner as possible, so that these issues can be tested and decided before this bill has far-reaching effects on the society of this country, and particularly in the Western States.

S8142 I want very much that the Senate have an opportunity to express itself on this particular subject, so I request the yeas and nays on this amendment.

S8142 The PRESIDING OFFICER (Mr. HUDDLESTON). Is there a sufficient second? There is a sufficient second.

S8142 The yeas and nays. were ordered.

S8142 Mr. METCALF. May I say to the Senator from New Mexico that whether he wins on the yeas and nays or not, I feel that we can work out something in the language in which the final report is written to suggest that these are grave issues, that there are serious questions as to constitutional provisions and there are serious questions as to the interpretation of some of the statutory provisions that have been raised, and we would urge that the ordinary procedures be instituted as soon as possible.

S8142 Someone is going to bring a lawsuit. The Senator from New Mexico knows that as well as I. I would hope that the lawyers who have that lawsuit would have the same sense of urgency that the Senator from New Mexico has, and bring it to the attention of the courts as fast as possible.

S8142 But I urge my friend not to seek to change the jurisdictional proceedings, to change the judicial system that has grown up by case after case on the floor of the U.S. Senate, at this late hour in the afternoon.

S8142 Mr. SCHMITT. I appreciate the suggestion by the senior Senator from Montana that we might, in the legislative history, simply establish that this is a critical matter. The concern I have is that the normal administrative and judicial procedures can take so long for the average individual in the Powder River basin or in San Juan County or somewhere else in this country of ours to test the constitutionality of this law that they would have no recourse but to give up. Under normal judicial

procedures I think it is necessary that the full administrative or legal remedies have been exhausted, and that can take a great deal of time, in fact, often many years.

{S8143} That is the thing that concerns me. We are going to enact this legislation affecting the lives and rights of many, many individuals and groups in this country without giving them what only seems to be fair - timely and speedy recourse to the courts.

S8143 Mr. METCALF. Mr. President, if I have any time I am willing to yield it back at this time.

S8143 The PRESIDING OFFICER. Is all remaining time yielded back?

S8143 Mr. SCHMITT. Mr. President, in more general terms, I shall, for a variety of reasons, vote against the bill as it stands, not only because it goes contrary to national goals for increased coal production and for solving our basic, longer term energy crisis, but, as I have indicated in offering this amendment, it goes directly, I believe, against some very fundamental constitutional issues relative to States' rights and individual property rights.

S8143 I know many of my colleagues share some of these views. I hope they will consider very carefully before they enact this measure into law at this time. I think it is extremely important that through the actions of the States, through the actions of individuals, and, where necessary, through the actions of the Federal Government, we have a strong, effective national policy that protects the environment while promoting energy production and assures the restoration and reclamation of lands associated with coal mining and other appropriate, reasonable, related activities. However, I do not think we accomplish these ends in this measure.

S8143 I yield back the remainder of my time.

S8143 Mr. METCALF. I yield back the remainder of my time.

S8143 The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from New Mexico. The yeas and nays have been ordered, and the clerk will call the roll.

S8143 The assistant legislative clerk called the roll.

S8143 Mr. ROBERT C. BYRD. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Iowa (Mr. CLARK), the

Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), the Senator from Rhode Island (Mr. PELL), the Senator from Mississippi (Mr. STENNIS), the Senator from Florida (Mr. STONE), the Senator from Georgia (Mr. TALMADGE), the Senator from Mississippi (Mr. EASTLAND), the Senator from South Dakota (Mr. ASOUREZK), and the Senator from Iowa (Mr. CULVER) are necessarily absent.

S8143 I also announce that the Senator from Arizona (Mr. DECONCINI) is absent because of a death in the family.

S8143 I further announce that, if present, and voting, the Senator from Minnesota (Mr. ANDERSON), and the Senators from Iowa (Mr. CLARK and Mr. CULVER) would each vote "nay."

S8143 Mr. BAKER. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from Kansas (Mr. PEARSON), the Senator from Vermont (Mr. STAFFORD), the Senator from Texas (Mr. TOWER), the Senator from Connecticut (Mr. WEICKER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

S8143 I also announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

S8143 The result was announced - yeas 23, nays 46, as follows:

S8143 [Rollcall Vote No. 157 Leg.]

S8143 YEAS - 23

S8143 Allen

S8143 Baker

S8143 Bartlett

S8143 Bellmon

S8143 Byrd, Harry F., Jr.

S8143 Curtis

S8143 Danforth

S8143 Domenici

S8143 Garn

S8143 Hatch

S8143 Helms

S8143 Javits

S8143 Laxalt

S8143 Lugar

S8143 Mathias

S8143 McClure

S8143 Packwood

S8143 Roth

S8143 Schmitt

S8143 Scott

S8143 Sparkman

S8143 Thurmond

S8143 Wallop

S8143 NAYS - 46

S8143 Bayh

S8143 Bentsen

S8143 Bumpers

S8143 Burdick

S8143 Byrd, Robert C.

S8143 Cannon

S8143 Case

S8143 Chafee

S8143 Chiles

S8143 Church  
S8143 Durkin  
S8143 Ford  
S8143 Glenn  
S8143 Griffin  
S8143 Hart  
S8143 Haskell  
S8143 Hathaway  
S8143 Heinz  
S8143 Hollings  
S8143 Huddleston  
S8143 Humphrey  
S8143 Inouye  
S8143 Jackson  
S8143 Long  
S8143 Magnuson  
S8143 Matsunaga  
S8143 McIntyre  
S8143 Melcher  
S8143 Metcalf  
S8143 Metzenbaum  
S8143 Morgan  
S8143 Moynihan  
S8143 Muskie  
S8143 Nelson  
S8143 Nunn  
S8143 Percy  
S8143 Proxmire

S8143 Randolph  
S8143 Ribicoff  
S8143 Riegle  
S8143 Sarbanes  
S8143 Sasser  
S8143 Schweiker  
S8143 Stevenson  
S8143 Williams.  
S8143 Zorinsky  
S8143 NOT VOTING - 31  
S8143 Abourezk  
S8143 Anderson  
S8143 Biden  
S8143 Brooke  
S8143 Clark  
S8143 Cranston  
S8143 Culver  
S8143 DeConcini  
S8143 Dole  
S8143 Eagleton  
S8143 Eastland  
S8143 Goldwater  
S8143 Gravel  
S8143 Hansen  
S8143 Hatfield  
S8143 Hayakawa  
S8143 Johnston  
S8143 Kennedy  
S8143 Leahy

S8143 McClellan

S8143 McGovern

S8143 Pearson

S8143 Pell

S8143 Stafford

S8143 Stennis

S8143 Stevens

S8143 Stone

S8143 Talmadge

S8143 Tower

S8143 Weicker

S8143 Young

S8143 So the amendment was rejected.

S8143 The question is on agreeing to the motion to table.

S8143 Mr. METCALF. Mr. President, I move to reconsider the vote by which the amendment was rejected.

S8143 Mr. DURKIN. I move to lay that motion on the table.

S8143 The motion to lay on the table was agreed to.

S8143 AMENDMENT 292 AS MODIFIED

S8143 Mr. MELCHER. Mr. President, I call up my amendment No. 292 as modified.

S8143 The PRESIDING OFFICER. The amendment will be stated.

S8143 The assistant legislative clerk proceeded to read as follows:

S8143 The Senator from Montana (Mr. MELCHER) proposes amendment No. 292 as modified.

S8143 Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

S8143 The PRESIDING OFFICER. Without objection, it is so ordered.

S8143 The amendment, as modified, is as follows:

S8143 On page 207, beginning with line 1, strike out all through line 21 and insert in lieu thereof the following:

S8143 (5) the proposed surface coal mining operations, if located west of the one hundredth meridian west longitude, would -

S8143 (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

S8143 (B) not adversely affect the quantity or quality of water in surface or underground water systems that supply these valley floors in (A) of subsection (b) (5):

S8143 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 were located within or adjacent to alluvial valley floors or (2) had obtained specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors.

S8143 Mr. MELCHER. Mr. President, earlier this afternoon we had a vote on the alluvial valley floor section of the bill. That was Senator HART's amendment. I did not support it because I thought it went too far. Now we are confronted with what is in the bill which he tried to correct.

S8143 The bill has a couple of pitfalls in it, in this section. What we have sought to do all through these years is protect those valleys, like the Yellowstone and the Powder River and the Tongue and the Rosebud and Sarpy, where there was farming done that depended on irrigation. We sought to protect them.

S8143 The language in the committee's bill gest quite involved because it lays on, in that language, several qualifications for when you can or when you cannot strip mine for coal in a valley floor.

S8143 It has that defect. It would invite litigation. It would delay those mining plans any portion of which were on a valley floor. So I think it needs correction.

S8143 Furthermore, the committee bill grandfathers in any proposal for mining on a valley floor if there were a financial or legal commitment prior to the first of this year.

S8143 Were there any hearings to find out what financial or legal commitment there might have been prior to the first of the year on the Tongue River valley or the Yellowstone, or of the other valley floors? No; there were not.

S8143 Does the language in the bill say what is involved here on valley floors in this grandfathering clause? No; it does not.

S8143 There may be untold numbers of financial commitments or legal commitments involving the valley floors where farming can only be practiced if the water is there and available.

S8143 So there is a better course to follow, and that is the amendment I offer. It is not an amendment that was drafted in the last week or two. It is an amendment that was drafted last summer with the help of counsel from the Department of the Interior who at that time vigorously opposed the previous section on alluvial valley floors in the vetoed bills.

{S8144} We drafted this amendment with the help of environmental groups, with labor groups such as the United Mine Workers, the AFL-CIO, and we came up with what we believe is a balanced yet direct statement of where we want to deny any mining because it is on a valley floor that depends on irrigation.

S8144 But, in addition, we felt it wise to include some discretion to the regulatory authority, whether it is a State regulatory authority or the Secretary of the Interior, to say in a mining plan, for instance, that is a thousand acres, but a portion of it - let us use a figure of 60 acres - goes onto the valley floor. Should that entire mining plan be stricken? We say there should be some discretion. The regulatory authority should have that discretion to determine that the mining that would occur in that mining plan would not sufficiently damage the farming operation involved to make it necessary in the public interest to deny the permit application.

S8144 We took that balanced and reasoned position - and, mind, this is the portion worked out with the Environmental Policy Center, at that time endorsed it, the Northern Plains Resources Council in Montana endorsed it, and the labor groups involved in the mining of the coal endorsed it.

S8144 It is a language that has had the advantage of being before attorneys for the Department, attorneys for coal companies, attorneys for various individuals who owned their land on valley floors, and also before State regulatory authorities.

S8144 It has the advantage of having run the route, of having been examined, each word, and it has been accepted. It is far superior to the language that is before us in the committee bill and, in my judgment, is far superior to the amendment offered by Senator Hart and which is also in the House-passed bill.

S8144 It is a middle ground, I will grant, because it does retain the restrictions on keeping the alluvial valley floor farming operations intact. But it allows enough discretion through the regulatory authority to allow in those instances where the mining operation would not violently disturb a farming operation on a valley floor that was irrigated that the mining plan could be approved and could go forward.

S8144 It is the exact language that was advocated by Secretary Andus when he appeared before the Senate committee in discussing S. 7. He recommended this exact language.

S8144 What prompted the Secretary to shift his view and opt for the language that was offered earlier this afternoon by Senator HART. I do not know. But in light of the defeat of that amendment, the Secretary has sent this letter to all of us, also addressed each of us as Members of the Senate, but specifically addressed to Senator METCALF and Senator JACKSON, and I will read the Secretary's letter:

S8144 It is my understanding that you will introduce an amendment to S. 7, the surface Coal Mining Reclamation and Enforcement Act, which would protect farm lands on the alluvial valley floors by exempting them from mining, but which would also offer discretion to the regulatory authority by allowing some mining on the valley floors provided that such mining would not do damage to other operators or remove a substantial amount of land from farming. Also, I understand that your amendment would grandfather mines commercially producing coal and mines with state permits.

S8144 While we would have preferred adoption of the amendment offered by Senator Hart on behalf of the Administration, we believe your compromise is a reasonable and balanced approach.

We are also aware that you have spent much time with citizens of the West, various environmental groups, unions, and private industry constructing this approach. For these reasons, I would like to offer my encouragement and support on behalf of your amendment.

S8144 I am providing similar letters to Senators Jackson and Metcalf.

S8144 Sincerely, CECIL D. ANDRUS, Secretary.

S8144 I hope that we can resurrect in this particular section a balanced approach to a sensitive environmental question involved in the bill.

S8144 I suppose that of the unresolved issues we have had before the Senate concerning this bill, the two environmentally sensitive issues, or the most sensitive issues, were surface owner's rights and this one, the alluvial valley floor.

S8144 But I do not offer an amendment in this section that is only backed by environmental groups. I offer an amendment that has been looked at, examined thoroughly, and meets a test of what we are trying to do to protect these valleys that I have mentioned, such as the Tongue and Yellowstone, and also to permit the prudent mining of the coal in the area.

S8144 I ask that we consider that we are not grandfathering simply on behalf of talking to your attorney or having talked to a banking institution, the opportunity to have a mining permit simply because of the grandfather clause that is contained in this particular section. I think that goes too far in grandfathering.

S8144 I realize the time of the evening. I realize the sensitivities of the Senators in continually hearing technical discussions on various sections of this bill. But I hope Senators will consider favorably this amendment, because it will bring to this issue in the Senate bill a parity that is essential and a solution to a problem that is balanced and reasonable, one which has broad backing and which now includes the administration.

S8144 Mr. METCALF. Mr. President, we have talked about alluvial valley floors by the hour. We have discussed alluvial valley floors in committee by the hour. We discussed it in conference, hour after hour. The Senator from Montana had his amendment in the bill. It was rejected by the committee. It was rejected after hearings. It turned down by the Secretary of the Interior. Mr. Andrus. He takes a strange and ambivalent approach to this amendment. He says that he was for

the Hart amendment, which the Senator from Montana vehemently opposed, but that now he is in favor of the amendment of the Senator from Montana.

S8144 We have said that we are opposed to mining on the alluvial valley floors. The hearings say we are opposed to mining. Yet, the Senator from Montana comes in and says, "Well, there should be a little mining. We should be a little bit pregnant here. We should not be completely inflexible, and the Secretary should have an opportunity to allow some of the mining and some of the cutting of the aquifers and some of the cutting of the water courses."

S8144 The fair and the moderate amendment is the amendment that was adopted after long debate, long discussion, and long hearings in the committee. Then, after the Senator from New Mexico and the Senator from Montana had an extensive colloquy, we added to the definitions this morning, so that it would comply with the definition that the Senator from Montana agreed to when he was a member of the House of Representatives conference committee last year.

S8144 I say to my colleague that we have discussed this subject up and down and back and forth. The committee amendment is fair; it is moderate; it is an amendment that will take care of the proposal that the Senator from Montana wants and that the Senator from Colorado wanted, and it will take care of what the Secretary of the Interior testified about before the committee.

S8144 I urge Senators to pass this bill, send it forward to conference, and let us not discuss this matter up and down and back and forth even one more time.

S8144 I reserve the remainder of my time.

S8144 Mr. MELCHER. Mr. President. I hasten to say to my distinguished colleague, the senior Senator from Montana and the floor manager of this bill, that in no way am I advocating the opportunity to cut the aquifers in mining on valley floors. Indeed, my language in the amendment is explicit, because we make a reference in (B) to complying with the quality and quantity of water and surface, underground water systems that supply these valley floors, referred to in (a) of subsection (B).

S8144 This, in effect, reinforces what we have determined to do to prohibit the cutting of aquifers that would damage the irrigation potential, the irrigation possibility, of downstream users of water

on the valley floor. It is a significant point in the amendment and is explicit in the amendment that I propose, and I feel it is much more explicit than the committee version of the proposal on valley floors.

S8144 Mr. President, I ask for the yeas and nays on the amendment.

S8144 The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

S8144 The yeas and nays were ordered.

S8144 Mr. DOMENICI. Mr. President, I ask this of the junior Senaor from Montana in connection with his amendment: I note that a number of Senators on our side were here today and discussed this matter. I ask the distinguished chairman of the subcommittee: I believe there was an amendment with reference to this, was there not?

S8144 Mr. METCALF. Yes, there was an amendment that was suggested to clarify the definition of alluvial valley floors. which was offered at the suggestion of the Senator's colleague from New Mexico. It was a definition that was arrived at in the conference report, and the Senator from Montana was a part of the conference, as a Member of the House of Representatives, last year. So we have the definition of alluvial valley floors.

{S8145} Then we had a soil conservation sort of definition and an additional amendment that was entered at the request of the Senator from New Mexico, who was debating the bill along with the Senator from Montana.

S8145 Mr. DOMENICI. My question, in their absence, is this: Does this in any way significantly change the provisions in the amendment that was adopted earlier today with reference to this alluvial valley floor problem?

S8145 Mr. MELCHER. Mr. President, will the Senator yield?

S8145 Mr. DOMENICI. I yield.

S8145 Mr. MELCHER. No, it does not change what was accepted by the amendment offered by Senator SCHMITT. He offered an amendment on the definition of alluvial valley floors in that section of the bill that deals with definition.

S8145 My amendment then carries out the limitation on those valley floors that should be exercised under the terms of the bill. In one way, we are more explicit. In my amendment, which

amends a different section of the bill, we are more explicit in saying that you cannot damage the aquifers; you cannot damage the conditions of those valley floors. But we also recognize that in some mining plans there are going to be small areas that will meet the same criteria as in the definition on alluvial valley floors.

S8145 We grant to the regulatory authority some discretion in saying, "Yes, we can approve this mining plan because the portion of valley floors that is involved in it is not significant in the farming operation of that particular farmer, and we will therefore approve the permit."

S8145 Mr. METCALF. Mr. President, will the Senator yield?

S8145 Mr. DOMENICI. I am in no way questioning the response of the junior Senator from Montana. I just am not sufficiently informed to pass judgment on this. Shortly, I am going to suggest the absence of a quorum and try to find my colleague. It should not take more than 5 minutes. I would like him to look at the amendment. Since he worked on this specific section, I think it would be only fair.

S8145 Mr. METCALF. I have no objection.

S8145 Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

S8145 The PRESIDING OFFICER. The clerk will call the roll.

S8145 The assistant legislative clerk proceeded to call the roll.

S8145 Mr. DOMENICI. Mr. President. I ask unanimous consent that the order for the quorum call be rescinded.

S8145 The PRESIDING OFFICER (Mr. ZORINSKY). Without objection, it is so ordered.

S8145 The question is on agreeing to the amendment of the Senator from Montana (Mr. MELCHER).

S8145 The yeas and nays have been ordered, and the clerk will call the roll.

S8145 The legislative clerk called the roll.

S8145 Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Iowa (Mr. CLARK), the Senator from California (Mr. CRANSTON),

the Senator from Iowa (Mr. CULVER), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. McCLELLAN), the Senator from South Dakota (Mr. McGOVERN), the Senator from Rhode Island (Mr. PELL), the Senator from Mississippi (Mr. STENNIS), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

S8145 I also announce that the Senator from Arizona (Mr. DECONCINT) is absent because of death in the family.

S8145 I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON), the Senator from Iowa (Mr. CLARK), and the Senator from Iowa (Mr. CULVER) would vote "yea."

S8145 Mr. BAKER. I announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Kansas (Mr. DOLE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from Kansas (Mr. PEARSON), the Senator from Vermont (Mr. STAFFORD), the Senator from Texas (Mr. TOWER), the Senator from Connecticut (Mr. WEICKER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

S8145 I also announce that the Senator from Alaska (Mr. STEVENS) is absent on official business.

S8145 I further announce that, if present and voting, the Senator from Alaska (Mr. STEVENS) would vote "yea."

S8145 The result was announced - yeas 58, nays 13, as follows:

S8145 [Rollcall Vote No. 158 Leg.]

S8145 YEAS - 58

S8145 Allen

S8145 Baker

S8145 Bartlett

S8145 Bayh

S8145 Bellmon  
S8145 Bumpers  
S8145 Byrd, Harry F., Jr.  
S8145 Byrd, Robert C.  
S8145 Cannon  
S8145 Case  
S8145 Chafee  
S8145 Chiles  
S8145 Church  
S8145 Danforth  
S8145 Domenici  
S8145 Durkin  
S8145 Eastland  
S8145 Ford  
S8145 Garn  
S8145 Griffin  
S8145 Hansen  
S8145 Hart  
S8145 Hatch  
S8145 Hathaway  
S8145 Heinz  
S8145 Helms  
S8145 Hollings  
S8145 Huddleston  
S8145 Humphrey  
S8145 Inouye  
S8145 Javits  
S8145 Laxalt  
S8145 Long

S8145 Lugar  
S8145 Mathias  
S8145 Matsunaga  
S8145 McClure  
S8145 McIntyre  
S8145 Melcher  
S8145 Metzenbaum  
S8145 Morgan  
S8145 Muskie  
S8145 Nelson  
S8145 Nunn  
S8145 Packwood  
S8145 Percy  
S8145 Proxmire  
S8145 Riegle  
S8145 Sarbanes  
S8145 Sasser  
S8145 Schmitt  
S8145 Schweiker  
S8145 Sparkman  
S8145 Stevenson  
S8145 Thurmond  
S8145 Wallop  
S8145 Williams  
S8145 Zorinsky  
S8145 NAYS - 13  
S8145 Bentsen  
S8145 Burdick

S8145 Curtis  
S8145 Glenn  
S8145 Haskell  
S8145 Jackson  
S8145 Magnuson  
S8145 Metcalf  
S8145 Moynihan  
S8145 Randolph  
S8145 Ribicoff  
S8145 Roth  
S8145 Scott  
S8145 NOT VOTING - 29  
S8145 Abourezk  
S8145 Anderson  
S8145 Biden  
S8145 Brooke  
S8145 Clark  
S8145 Cranston  
S8145 Culver  
S8145 DeConcini  
S8145 Dole  
S8145 Eagleton  
S8145 Goldwater  
S8145 Gravel  
S8145 Hatfield  
S8145 Hayakawa  
S8145 Johnston  
S8145 Kennedy  
S8145 Leahy

S8145 McClellan

S8145 McGovern

S8145 Pearson

S8145 Pell

S8145 Stafford

S8145 Stennis

S8145 Stevens

S8145 Stone

S8145 Talmadge

S8145 Tower

S8145 Weicker

S8145 Young

S8145 So Mr. MELCHER's amendment was agreed to.

S8145 Mr. LONG. Mr. President, I am rather concerned about -

S8145 Mr. CURTIS. Mr. President, may we have order?

S8145 Mr. SCHMITT. Mr. President, will the Senator yield?

S8145 Mr. LONG. I yield for a question.

S8145 The PRESIDING OFFICER. The Senate will be in order.

S8145 Mr. SCHMITT. Oh, let it go.

S8145 Mr. LONG. Mr. President, I ask unanimous consent that, without prejudice to my right to the floor, I may yield to the Senator from Montana.

S8145 The PRESIDING OFFICER. Without objection, it is so ordered.

S8145 Mr. MELCHER. Mr. President, I move to reconsider the vote by which the last amendment was agreed to.

S8145 Mr. DURKIN. I move to lay that motion on the table.

S8145 The motion to lay on the table was agreed to.

S8145 Mr. LONG. Mr. President, after this bill was called up for consideration in the Senate, it came to my attention that title III, which commences on page 157, levies a so-called fee, which,

from my point of view, is completely indistinguishable from a severance tax on a natural resource.

S8145 I ask that the Senator from Washington (Mr. JACKSON) be notified that we are discussing this matter.

S8145 Mr. CURTIS. Mr. President, will the Senator yield?

S8145 Mr. LONG. Mr. President, a tax does not fail to be a tax just because you call it a fee or a premium, or call it something else. Under the Constitution, revenue bills must originate in the House of Representatives. Furthermore, under the Senate rules revenue bills fall within the jurisdiction of the Committee on Finance.

S8145 It concerns me, Mr. President, that this fee, which is clearly a revenue measure, in my judgment - it is the same thing we in Louisiana call a severance tax - works out to be a billion dollar tax. While I find no great quarrel with this matter on the merits, as a matter of jurisdiction it seems to me that the committee which has responsibility with regard to a tax measure should have been consulted. It would seem to me that the bill should have been referred to the Committee on Finance to pass judgment on title III.

S8145 I can fully appreciate the attitude of some of those on the committee that we have an expensive program and the program ought to be financed, but I would like to ask the distinguished chairman of the committee if he would agree that this bill has revenue aspects to it, and that this fee levied in the bill would amount to about \$1 billion in revenue to the Government.

S8145 Mr. JACKSON. Mr. President, I do not think there is any question that the 35-cent tax, which goes into the reclamation fund, is a tax, and that it is a matter that should be considered by the Committee on Finance. I do not think there is any question about that aspect of the bill.

S8145 I am prepared to have it rereferred. We have, of course, worked long and hard on this bill, as the Senator knows, and this is the result of many years' effort, with the obvious hope of being able, at long last, to tell the industry that we are going to be in a position to have a clear-cut policy on surface mining control.

{S8146} Mr. LONG. Mr. President, I feel that this measure should have been referred to the Committee on Finance, as the distinguished chairman has said. But the Senate has worked on this

bill for several days now, and in view of that fact, I would be inclined to waive jurisdiction of the matter so that the Senate, in this case, could go ahead and act on the measure.

S8146 I yield to the distinguished Senator from Montana.

S8146 Mr. METCALF. Mr. President, the distinguished chairman of the Finance Committee knows, of course, that several members of his committee who also serve on the Energy Committee raised that question, and we are all in accord that if the Senator should insist, it would be referred. But members on both sides of the Finance Committee did participate in this discussion, and the only way to get this money is to put it in this kind of legislation.

S8146 Mr. LONG. I suspect that if the bill were referred to the Finance Committee, we would recommend the same financing provision.

S8146 I yield to the Senator from Nebraska.

S8146 Mr. CURTIS. Mr. President, I commend the distinguished chairman of the Finance Committee for raising this issue. A tax is a tax, whether it is called a fee or something else. The Government can compel its collection, and Congress has provided what would happen with the proceeds.

S8146 I am not unaware that the legislation we are working on has had a lot of attention for a long time, and there is anxiety on the part of many to finish it up now.

S8146 Therefore, it seems to me if we could have a clear understanding that it was a matter belonging to the jurisdiction of the Finance Committee, I would be willing to waive that jurisdiction, provided, of course, that we are making the record, as we are, so that we would not be parties to having the permanent jurisdiction of the Finance Committee eroded away.

S8146 I commend the approval of the procedure that the distinguished chairman has suggested.

S8146 Mr. DOMENICI. Mr. President, will the Senator yield?

S8146 Mr. LONG. I yield.

S8146 Mr. DOMENICI. Mr. President, I rise to make this statement: It is this Senator's opinion, and if the distinguished chairman of the Finance Committee desires I will ask for a parliamentary ruling, but it is this Senator's opinion that the Finance Committee did not have jurisdiction over this

bill, and from my standpoint we can talk all we want about who is waiving what in terms of an individual Senator here on the floor saying that he is waiving some committee's jurisdiction.

S8146 It is my understanding this bill was referred to the Committee on Energy and Natural Resources under a rule of this Senate which says that this bill is predominantly not a tax bill. Therefore, it was referred to the Committee on Energy and Natural Resources.

S8146 If no one wants to object to the request that it be referred, which has been waived by a chairman of the committee, this Senator is not going to get into that argument. But I certainly do not want the legislative history here to indicate that this institution, the Senate, has, by motion or action of the institution, ruled that this 35 cent levy on coal indeed renders this entire bill subject to the jurisdiction of the Finance Committee.

S8146 Mr. LONG. Let me ask a simple parliamentary inquiry. Look at page 157, title III, and look particularly at subparagraph C:

S8146 (c) All operators of coal mining operations subject to the provisions of this Act shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 35 cents per ton of coal produced from mines.

S8146 That is \$1 billion a year.

S8146 I would like to ask a parliamentary inquiry.

S8146 The PRESIDING OFFICER. The Senator will state it.

S8146 Mr. LONG. Is that a revenue measure or not? There is \$1 billion in taxes. Is that a revenue measure or not?

S8146 The PRESIDING OFFICER. The Chair would first state that the whole title has been amended by the Senator from Tennessee so it is all new language.

S8146 Mr. LONG. Is 35 cents a ton still there?

S8146 The PRESIDING OFFICER. The Chair is studying the issue.

S8146 The 35-cent-a-ton fee is still in the bill.

S8146 Mr. LONG. Does that make it a revenue bill or not?

S8146 The PRESIDING OFFICER. In light of the fact that there is a series of Supreme Court cases differentiating fees and tolls from taxes, the Chair, without further study of those cases as well

as the precedents of the Senate, would not want to pass judgment. Of course, if a point of order were raised that this measure must originate in the House, the chair under the precedence would have to submit the question to the Senate for its decision ab initio.

S8146 Mr. LONG. So it is \$1 billion in revenue to the Government. If it is not called a revenue bill, I do not know what it would be called.

S8146 The PRESIDING OFFICER. The Supreme Court has held such cases as not revenue -

S8146 Mr. LONG. The Supreme Court has held in certain cases that when such a thing as a fee to join a bar association is on a law regulating a bar association, that is one thing. But when we talk about \$1 billion in taxes just calling that a fee, that does not keep it from being a tax.

S8146 Mr. President, whatever was said about that in that respect, there is no doubt about it. If we send a \$1 billion tax bill initiated by the Senate to the House, the House is not going to consider the bill for the simple reason: They will send us back that bill with a blue slip on it to say this is a revenue bill, in their opinion, that should originate in the House of Representatives. Only one House Member needs to make the point of order and back comes the bill.

S8146 In this case the plan is, as I understand it, to substitute this bill for a House bill, so that when the bill goes back it would be substituted for a House bill that had a similar tax in it. But as the bill stands here it is a bill that the House would not accept and they would send it back with the blue slip.

S8146 Mr. President, as to the proposal of the Senator from New Mexico about his tax on waterways, I am perfectly prepared to state my side of the argument when we meet that issue. The point I have in mind here is that I just do not want to be waiving the right of the Finance Committee with regard to revenue matters, when we are with regard acting on a matter that to me is not the subject of controversy. I do not oppose this particular act, but I would like to make it clear to the Senator from New Mexico that when he brings up his tax I expect to oppose it.

S8146 What I think is not important. What the Senator thinks is not important. But what the Senate thinks is important, and what the Congress thinks is important. The Senate will have its opportunity to decide what it wants to do.

S8146 I am not asking for an advantage one way or another. I just do not want to be prejudiced. I want the Senator to understand that. As far as this particular bill is concerned, I am willing to waive jurisdiction on this matter even though the manager of the bill feels we do have a right to claim jurisdiction of this matter insofar as the tax applies.

S8146 We have had this same type of thing occur in the Commerce Committee, of which I am proud to be a member.

S8146 We will consider a measure for airway safety in the Commerce Committee. That committee will pass on the aspects of it which deal with safety and with airports. Then the Commerce Committee will refer the bill to the Finance Committee with regard to the financing provisions. It all works very well. I think that type of mutual respect for jurisdiction should be Senate procedure.

S8146 I want to assure the Senator that insofar as his proposal of tolls on the waterways is concerned, he will have the opportunity to offer it. If he cannot find the right opportunity, I will show him some opportunities to present his proposal for tolls on the waterways. He will have that chance.

S8146 All I want to make clear is that when a revenue measure involving \$1 billion comes before the Senate, we on the Finance Committee feel that we have jurisdiction of that matter. In this case, as far as I am concerned, I will not insist on the bill being referred to the committee because I have no objection to this matter. I would be willing to waive jurisdiction. But if the Senator wants to make a big issue of it, then we can have a vote on it.

S8146 Mr. DOMENICI. I will say to the good Senator from Louisiana that I do not want to make a big issue of it. He was he [wanting, as he indicated, to protect [\*] sition. I think I would be remiss in not protecting mine. I also would thank the Senator for his offer to help me get a vote on my user fees on commercial users of the inland waterways.

{S8147} If I cannot find a way to get a vote on it, I will come and ask the good Senator how to do that.

S8147 On the other hand, I think I would be remiss in not saying that, from what I can read, the amount collected by a toll or user charge is not the entire test as to whether or not it is a tax.

S8147 Having said that, I thank the Senator for stating his position. If I understand it correctly, it has nothing whatsoever to do with the Senator's position whatever it will be when he takes it on Senate bill 790 or any user fees sought to be imposed upon the commercial users of the inland waterways. I thank him for his generosity.

S8147 UP AMENDMENT NO. 266

S8147 Mr. WALLOP. Mr. President, I ask an unprinted amendment and ask to have it considered.

S8147 The PRESIDING OFFICER. The amendment will be stated.

S8147 The legislative clerk proceeded to read as follows:

S8147 The Senator from Wyoming (Mr. WALLOP) proposed unprinted amendment No. 266.

S8147 Mr. WALLOP. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

S8147 The PRESIDING OFFICER. Without [ tion, it is so ordered.

S8147 The amendment is as follows:

S8147 On page 207, add the following before line 22:

S8147 "With respect to such surface mining operations which would have been within the purview of the foregoing proviso but for the fact that no coal was so produced in commercial quantities and no such specific permit approval was so received, the Secretary, if he determines that such substantial financial and legal commitments were made by an operation prior to January 1, 1977, in connection with any such operation, is authorized, in accordance with such regulations as the Secretary may prescribe, to enter into an agreement with that operator pursuant to which the Secretary may, notwithstanding any other provision of law, lease other Federal coal deposits to such operator in exchange for the relinquishment by such operator of his Federal lease covering coal deposits involving such mining operations, or convey to the fee holder of any such coal deposits involving such mining operations the fee title to other available Federal coal deposits in exchange for the fee title to such deposits so involving such mining operations. The interests so leased or conveyed in fee by the Secretary shall be of comparable value to those received by the Secretary in return therefor."

S8147 Mr. WALLOP. Mr. President, what this does is add to the end of the language that was successfully inserted by Senator MELCHER a provision that I think will take care of some lawsuits. It will take care of the concerns that were expressed by Senator BURDICK this morning, that, [\*] ect. the Government is saying "you cannot mine in alluvial valley floors, even though that is mostly the fee coal in the West" - those were the first settled and the first patented areas. It would empower the Secretary to say, "You cannot mine here, but we will take title to your coal, your fee coal, and provide you with coal outside the boundaries of the alluvial valley in exchange."

S8147 All it does is go one step further from the very good protections of the alluvial valleys that we have now gotten completely entrenched in this bill. It takes care of the private interests of those people who do, in fact, have a property which they will never be able to develop under the terms of this bill.

S8147 The Government itself will take title to that coal in the course of time because of the grandfather provisions that are in the bill. We do find that we can, in fact, mine in alluvial valleys without harming them, without harming the riparian communities; the Government has the coal and it has not gone anywhere; and rights of private citizens have been protected by this.

S8147 In the river that runs down from our State into the State of Montana, the Tongue River, there are approximately 57 miles of fee coal lands which have the provided-for substantial legal or financial commitments. They have been bought, they have been leased by companies, or people have entered into arrangements. There are 57 miles of that. Almost without exception, that is all fee coal. This amendment will do nothing more than say to those people who own that -

S8147 Your Government is not taking it from you without providing you something in return for what it is taking.

S8147 It is the reverse of the argument on the landowners' consent. In this case, it is the Government itself which is giving consent to those people to a property right which they long ago were afforded by this Government, which it now seeks to take away.

S8147 Mr. President, I reserve the remainder of my time.

S8147 The PRESIDING OFFICER. Who yields time.

S8147 Mr. METCALF. Do I have time on this amendment?

S8147 The PRESIDING OFFICER. There are 15 minutes to a side.

S8147 Mr. METCALF. This is an amendment to the Melcher amendment. I opposed the Melcher amendment. I do not know - I am willing to take it to conference.

S8147 Mr. WALLOP. I did not understand the Senator.

S8147 Mr. METCALF. I said I do not know how that affects the Melcher amendment. I opposed the Melcher amendment. I have not seen the amendment of the Senator from Wyoming. I am certainly willing to take it to conference.

S8147 Mr. WALLOP. It is the same amendment we were talking about earlier.

S8147 Mr. METCALF. I do not know how it affects the Melcher amendment, which the Senator said it is an amendment to. However, I think it will be a part of the consideration that we have of this whole alluvial valley floor.

S8147 I was delighted to be able to participate in a colloquy with the Senator from North Dakota on the exchange of land and the constitutionality. Perhaps the Senator from Wyoming has come up with a proposal that would be more equitable and more just to the people there than mere taking of the land under a land-use program.

S8147 Mr. ALLEN. Will the Senator yield?

S8147 Mr. METCALF. Surely.

S8147 Mr. ALLEN. I wonder if the Senator would mind requesting a short quorum call, inasmuch as this does affect the Melcher amendment. Senator MELCHER has stepped out of the Chamber.

S8147 Mr. METCALF. I was waiting for Senator MELCHER to come up and respond.

S8147 Do I have time for a quorum call, Mr. President?

S8147 The PRESIDING OFFICER. The Senator does have time for a quorum call.

S8147 Mr. METCALF. I see Mr. MELCHER is present.

S8147 Mr. ALLEN. Could the Senator suggest the absence of a quorum for a moment?

S8147 Mr. METCALF. Mr. President, I suggest the absence of a quorum.

S8147 The PRESIDING OFFICER. The clerk will call the roll.

S8147 The second assistant legislative clerk proceeded to call the roll.

S8147 Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

S8147 The PRESIDING OFFICER. Without objection, it is so ordered.