

**CONGRESSIONAL RECORD, JULY 22, 1977**  
**Legislative History**

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**CONGRESSIONAL RECORD**  
**123 CONG.REC. H7673**

July 22, 1977

{H7673} Mr. UDALL. Mr. Speaker, I ask unanimous consent to correct an error which occurred at page H7587 of the House RECORD of yesterday in connection with the conference report on H.R. 2.

H7673 In colloquy between the gentleman from Ohio and myself, my answer was omitted; certain material of his was omitted; and I ask unanimous consent that the correction of the colloquy appear in today's RECORD and in the permanent RECORD.

H7673 Mr. SEIBERLING. Mr. Speaker, I join in the gentleman's request.

H7673 The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

H7673 There was no objection.

H7673 The correction referred to is as follows:

H7673 Mr. UDALL. Mr. Speaker, I yield to the distinguished gentleman from Ohio (Mr. SEIBERLING) 2 minutes.

H7673 Mr. SEIBERLING. Mr. Speaker, I thank the gentleman from Arizona for yielding.

H7673 Mr. Speaker, I would like to congratulate the chairman of the Interior and Insular Affairs Committee, who also acted as chairman of the conference on this bill. It has been a real privilege to work with him over the long years it took to get a meaningful, workable strip mining law. His leadership, skill, and patience through numerous hearings, markup sessions, two Presidential vetoes, and three House-Senate conferences are finally bearing fruit in an outstanding piece of legislation. While it represents the collective effort of many people,

if it is a monument to any one person, that person is the gentleman from Arizona, our distinguished colleague, Mo UDALL.

{H7674} Mr. Speaker, I would like to address a question to the gentleman from Arizona to clarify what I believe could be a misleading impression created by the explanatory statement accompanying the conference report.

H7674 Subsection 510(b)(6) of the bill contains an important provision covering situations where land is in private ownership but the surface is owned by one person and the subsurface coal is owned by another. In many cases, subsurface rights were purchased for a pittance, generations ago, when strip mining of coal was hardly known. The result has been much injustice, hardship, and inequity to the owners of the surface, who have been ousted from their farms or homes and their land laid waste by huge earthmovers. Many others have found themselves unable to sell land on which they have paid taxes over the years.

H7674 Let me quote from a letter I received from a resident of Stoney Fork, Ky., shortly after the conference committee completed its work. It graphically illustrates the kind of situation that has arisen for hundreds of small property owners:

H7674 DEAR SIR: I wholeheartedly applaud your stand in the "Broad-Form" deed issue.

H7674 We have some property in Harland Co. Ky. that's been in my family since 1853, through grants from the then governor. Unfortunately, great grandfather sold the mineral rights around 1897.

H7674 That old deed didn't mean much up until recently and now we find ourselves in the strange position of owning a few hundred acres of land that we've paid our taxes on (I don't think the mineral owners have ever paid any) and yet we find that we don't really "own" it; we are afraid to improve any part of the land or build a house since you never know which way the bulldozer might come.

H7674 We have a housing shortage in Harlan Co. but I can't sell anybody a house seat, they too are afraid of the uncertain future under the broad-form deed.

H7674 I just hope and pray that enough of your honorable colleagues will understand the logic you are trying to establish. We will in the meantime continue to pay our property taxes and hope that the rights of the surface owner are made equal to the rights of the mineral owner prior to the coming of the bulldozer. Best regards.

H7674 To remedy this kind of situation, I offered the amendment that was incorporated in the House version of section 510(v)(6), the purpose being to require the owner of the subsurface coal, before he could get a permit to strip mine, to show that he had the express written consent of the surface owner or an instrument clearly evidencing that the deed under which he owned the coal was intended to permit mining of it by the strip-mining method.

H7674 In the conference, I agreed, after considerable debate, to modify subparagraph (C) of this subsection to incorporate the language shown on page 42 of the conference report which reads as follows:

H7674 (c) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with State law.

H7674 I understand this to mean that conveyance will be construed in accordance with State law. However, the explanatory statement on page 106 of the conference report does not follow the terminology of the bill. Rather, it states that in such cases, "the determination of whether or not the private mineral estate owner or a successor-in-interest has the right to mine the coal by surface methods shall be made in accordance with applicable State law."

H7674 By not mentioning the word "conveyance," the explanatory statement places an unfortunate gloss on the language of the bill and implies that the right to mine by the subsurface method need not be based on the construction of the conveyance but only on the general law of the State. While the conferees did not intend to override State law as to the effect of such instruments, I believe that they did intend to require a showing that there is a deed or other instrument of conveyance and that, under the applicable State law, it is construed to authorize surface mining.

H7674 Does the chairman agree with my statement of the intention of the conferees on this point?

H7674 Mr. UDALL. Yes, the gentleman has made a correct interpretation and, while it may not make any practical difference in many cases, the language of the explanatory statement does lend itself to an interpretation different from the intent of the conferees on this one point.

H7674 Mr. SEIBERLING. I thank the Chairman, and am gratified that his understanding accords with my own on this point. I would like to note, however, that the language in question could make a significant difference. In the case of Commerce Union Bank v. Kinkade, 540 S.W.2d 861 (1976), the Supreme Court of

Kentucky concluded that conveyances which granted the right to mine coal under the land and gave grantees the right to such surface space as necessary for mining did not grant the right to mine by the surface mining method nor did they indicate that it was intended by the parties to the conveyance that the mineral owner's right to use the surface would be superior to any competing rights of the surface owner.

H7674 As pointed out by Justice Stephenson in a concurring opinion, the court's decision constituted a basic departure from an earlier Kentucky Supreme Court ruling, *Buchanan v. Watson*, 290 S.W.2d 40 (1956), even though the decision did not formally overrule the *Buchanan* case. Justice Stephenson states that *Buchanan* was part of a line of cases basing the right to surface mine on a doctrine of dominance of the subsurface or mineral estate. He states, "*Buchanan* clearly holds that if strip mining is the only feasible means of removing the coal, then the mineral owner has the right to strip unless the mineral deed prohibits strip mining," 540 S.W.2d 861 at page 865.

H7674 It is apparent, in view of the conflicting approaches exemplified in these Kentucky Supreme Court opinions, that the language on page 106 of the explanatory statements, if construed so as to refer to general State law rather than to the State law governing mineral conveyances, might, in some cases, make a significant difference. That is why I feel it important to point out that the intent of the conferees was more precise than the language of the explanatory statement seems to imply.

H7674 (Mr. SEIBERLING asked and was given permission to revise and extend his remarks.)