OVERSIGHT—IMPLEMENTATION OF FEDERAL COAL LEASING AMENDMENTS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

THE IMPLEMENTATION OF FEDERAL COAL LEASING AMENDMENTS ACT

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OVERSIGHT—IMPLEMENTATION OF FEDERAL COAL LEASING AMENDMENTS ACT

THURSDAY, DECEMBER 2, 1976

U.S. SENATE,
SUBCOMMITTEE ON MINERALS, MATERIALS, AND FUELS,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. Lee Metcalf, presiding.

Present: Senator Metcalf.

Also present: D. Michael Harvey, deputy chief counsel, Norman R. Williams, professional staff member.

OPENING STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. The subcommittee will be in order. I have an opening statement that is not very long so I will read it.

This is a hearing of the Subcommittee on Minerals, Materials and Fuels on implementation of the Federal Coal Amendments Act, Public Law 94–377, which became law on August 4 when Congress overrode the President's veto.

Our last oversight hearing held on February 16, 1976, was called shortly after Secretary of the Interior Kleppe announced a new coal leasing policy. The new policy included adoption of the energy mineral activity recommendation system.

I understand Jack Horton is going to tell us all about EMARS, the placing of all future leasing of Federal coal under a competitive leasing system, and the publication of new regulations governing reclamation of surface and mined land.

Since that time, a number of additional regulations, pertaining to diligent development and continuous operation, definition of commercial quantities, and the EMARS program, have been issued by the Department.

Some are in the process of being revised to conform to the Federal Coal Leasing Amendments Act of 1975.

Another significant event was a decision of the U.S. Supreme Court in the case *Sierra Club* v. *Kleppe*. The suit would have required the Department to prepare a development plan for coal in advance of leasing in the Northern Great Plains region.

The Court's ruling against the Sierra Club essentially removed what might have been a costly and time-consuming roadblock to continued leasing of Federal coal.

However, the most important development has without a doubt been enactment of S. 391, the Federal Coal Leasing Amendments Act, which provided new guidelines for Federal coal leasing. The new law recognizes the need to develop Federal coal to meet our Nation's energy requirements.

Among other things, it would end the speculative holding of Federal coal leases, prevent the domination of Federal coal development by giant energy corporations, and augment revenues to the Federal Treasury.

Just before the President vetoed the bill, Secretary Kleppe was reported to have told the National Coal Association that S. 391 would not seriously hamper the Department's schedule for coal leasing.

Mr. Kleppe said, with what was shown to be admirable foresight and forthrightness: "* * * 75 Senators are asking for it to be signed. Congress is not going to accept not passing a leasing bill."

Since Congress did override the veto, one of the Secretary's prognostications proved absolutely correct. Today, we are getting a report on the progress of the coal leasing program over the last 4 months.

Let me also comment in passing that I deeply regret that Congress was not equally successful in enacting the sister bill to S. 391, the Surface Mining Control and Reclamation Act. However, I am confident that the 95th Congress will finally achieve that goal.

Be that as it may, we are here today to review the implementation of the Federal Coal Leasing Amendments Act, Public Law 94–377.

We have asked the Secretary of the Interior to tell us what actions the Department has taken, and we have asked the National Coal Association and the Sierra Club to comment on those actions.

Inasmuch as one of the early and urgent priorities in the next Congress would be the consideration of a surface mining bill and of necessary amendments, if they are shown to be necessary to the Federal Coal Leasing Act, the full purpose to be provided here is not only to find in what direction we are going, but to give us some guidance in the first days of the new Congress.

I am very pleased to greet an old friend of this committee and an expert in his special area, Mr. Jack Horton, Assistant Secretary for Land and Water Resources of the Department of the Interior, who will be the first witness this morning.

Mr. Horton, we are delighted to have you here.

Mr. HORTON. Thank you, sir.

STATEMENT OF HON. JACK O. HORTON, ASSISTANT SECRETARY FOR LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR

Mr. HORTON. Thank you very much indeed for your kind introduction. I have with me at the table two familiar friends of the committee, Mr. Fred Ferguson, who is a walking encyclopedia on the Mineral Leasing Act of 1920 and to the extent possible at the present time, nearly a walking encyclopedia on the amendments thereto.

On my right is Mr. George Turcott, Associate Director of the BLM, in whose very capable hands we leave the responsibilities of implementing this and other laws relating to coal.

With your permission, there are a number of people from the Department here that have worked extensively on sections of our coal program, if I might just list a few of these: Mr. Bruce Powers, Chief, Branch of Upland Environmental Assessment of the BLM; Dave Russell, Mineral Economist; and Mr. Dan Dick, also a Mineral Economist in the BLM. There are three gentlemen from the Geological Survey: Dr. Radlinsky, whom you know, the Deputy Director; Mr. Wright Shelton, mining engineer in the Mining Branch of the Conservation Division; and Mr. Gary Horton, no relation, also a geologist.

All of us appreciate the opportunity to appear before the subcommittee this morning to discuss with you the progress of the Department's Federal coal leasing program. Many changes have taken place since the Department last appeared before you on this matter last February.

At that time, Secretary Kleppe provided you a statement on the new coal leasing policy, explained the components of that policy for you and discussed some of the specific matters that were of concern to the subcommittee and various segments of the public.

During the following months a number of significant actions were taken:

Regulations concerning issuance of preference right leases and defining commercial quantities were published on May 7 of this year;

Coal mining operating regulations were finalized on May 17;

Regulations concerning testing of mineral deposits were proposed on May 24;

Regulations requiring diligent development of coal leases were finalized on May 28;

The energy minerals activity recommendation system, known as EMARS, was published in the Federal Register in final form on June 1;

On June 1 a nationwide call for nomination of specific Federal coal leasing tracts and a request for information on areas considered suitable or unsuitable for such leasing was issued, and finally;

A revised schedule covering preparation of seven regional coal environmental impact statements in five States was issued in early July.

Then on August 4 the Federal Coal Leasing Amendments Act of 1975 became law. While the act and the coal leasing program share common objectives and a number of basic concepts, such as land use planning and an all competitive coal leasing system, the specific requirements of the act have necessitated a reexamination of the actions already taken and revision of various regulations as well as projected schedules and time frames.

This morning I want to highlight for you the impact of the act and discuss the steps we have taken to fulfill these new requirements within the framework of our ongoing coal leasing program.

The heart of the coal leasing program continues to be implementation of a coal leasing process called the energy minerals activity recommendation system or EMARS. Its purpose is to tell us if, where, when, and under what conditions coal should be offered to meet national needs.

The four basic steps in the EMARS process are land use planning, nomination of tracts for lease and identification of tracts which should not be leased, environmental analysis and review, and coal resource evaluation.

As I stated previously final rulemaking establishing EMARS was published last June. After reviewing the Federal Coal Leasing Amendments Act, it was determined that EMARS with certain modification is compatible with the act.

A proposal of rulemaking to so modify EMARS was published in the Federal Register of October 28. I might add here that the comment period concludes on December 13. Thus EMARS, in accordance with the act, will continue to call for competitive bidding, compatibility with land use planning, consideration of impacts on communities, and diligent development.

The specific areas of modification correspond to provisions of the act requiring use of a deferred bonus payment system, reservation of lease tracts for public bodies and comment by the Attorney General, a 12½-percent minimum royalty for leases authorizing surface mining and opportunity for public comment on fair market value of lands to be leased.

We believe that the comprehensive approach of EMARS is still the most appropriate and effective means to permit timely and efficient development of our most abundant energy resource while providing for maintenance of a proper balance between coal production and environmental preservation. Thus we are proceeding with the program under the system described above.

Consistent with the act, the Bureau of Land Management is preparing land use plans, called management framework plans, that identify not only the minerals, but other resource values as well.

The Bureau's land use planning system, which was recognized in the act, has now been formally mandated as an integral part of all management activities and programs under the new BLM organic legislation cited as the Federal Land Policy and Management Act of 1976.

This will further encourage coordination of the coal leasing program with other Bureau programs.

The call for nominations issued on June 1 pursuant to the requirements in EMARS resulted in nomination of 3.1 million acres in eight States and numerous comments specifying areas that should not be leased due to environmental or resource conflicts.

Most of the interest centered in the States of Montana, North Dakota, and Wyoming. After analyses of the nominations, State maps showing areas nominated for and areas to be withheld from leasing were published and made available on September 10.

To highlight the results, with respect to Wyoming, 86 nominators favored leasing on 300 tracts totaling 578,000 acres, with 7 nominators against leasing on 44 tracts; 187 tracts in Montana totaling 989,000 acres were nominated by 48 nominators while 28 tracts comprising 69,000 acres were identified as unsuitable for leasing.

Nine nominators favored leasing on 39 tracts totaling 428,000 acres in North Dakota where 39 tracts comprising 16,000 acres were nomi-

nated as unsuitable. Altogether, about 1,000 separate tracts covering more than 3.1 million acres were specified as desirable for leasing.

It is well understood by this time that this does not mean in fact that the tracts will be offered.

Of course further analysis is ongoing and will be incorporated through the land use planning process along with EIS's other information and considerations prior to tract selections.

In accordance with our belief that mining coal from one or more leases may have broader significance than the direct impact of the particular lease operation and may set a course of development for entire geographic areas, we are pursuing our decision to prepare regional environmental impact statements.

Based on the information received through the nominations procedures we have made some revisions in the boundaries and scheduling of regional environmental impact statements, which we now refer to as our EIS's.

Our most recent schedule calls for completion of the statement covering northwest Colorado by December 1976, though a supplemental EIS will have to be completed prior to any lease sale under EMARS.

The four to be completed during the last quarter of 1977 include those covering the northern Powder River basin, Montana, west central North Dakota, Hanna basin/Atlantic rim, Wyoming, and Kemmerer/Sweetwater, Wyo.

In May 1978, we plan to complete the statement covering Star Lake-Bisti, N. Mex., and in July 1978, those covering central and southern Utah. We also plan a supplemental EIS covering lease proposals in the eastern Power River region of Wyoming.

This supplemental statement is estimated to be completed in mid-1978.

I would also like to mention at this point that identification of impacts through the coal leasing process will be useful in implementation of section 317 of the Federal Land Policy and Management Act of 1976 which authorizes the Secretary of the Interior to make loans to States and their subdivisions in connection with Federal mineral leasing impacts.

Discussions on implementation of this provision, which we consider to be intimately related to the coal leasing program and our entire planning system are already underway in the Department.

The final step in the EMARS process is the calculation of the economic value of the individual coal deposits which are being considered for lease. The Geological Survey has devised methods of valuing coal that will continue to be used in the EMARS system to assist in determining the adequacy of bids received at a competitive sale.

One aspect of the Federal Coal Leasing Amendments Act that will require continuing action is the Federal exploration program mandated by section 7 of the act. By letter of June 24, 1976, from Congresswoman Mink and yourself, it is clear that section 7, which requires a comprehensive Federal exploration program, was not intended to further delay resumption of coal leasing but that it was intended to codify and extend the Geological Survey's existing program.

The Department plans to present a detailed description of the exploration program in February 1977, as mandated by the act.

At that same time, we recognize the emphasis placed by the act on obtaining more extensive knowledge concerning coal resource distribution and quality than currently exists. The act requires submission to Congress of a plan within 6 months for an exploratory program covering those regions in areas to be explored during the first 5 years after enactment of the act.

We have determined that the present level of activity and funding by the Geological Survey is adequate to meet the exploration requirements of the act. The June 24 letter to the President supports this conclusion.

Just summarizing, the types of data and findings now developed by the Geological Survey and utilized in the leasing process include: regional geologic maps depicting surface and near surface geologic data, coal resource assessment investigations in selected areas, incorporation of information in a national coal data system, classification of lands as "Known Recoverable Coal Resource Areas," necessary before leasing can occur, mineral and water power classification maps used in our land use planning process, and coal resources occurrence and coal development potential maps.

I have already mentioned that the Survey conducts a presale evaluation of all coal tracts and we are continually considering ways to improve the existing evaluation program conducted by the Geological Survey.

This concludes my discussion of EMARS.

Perhaps the second most important elements of the coal program involves regulations governing mine operations and mined land reclamation. As I mentioned before, final regulations were published in the Federal Register of May 17.

These regulations are now in the process of being revised to incorporate the requirements of the Federal Coal Leasing Amendments Act. We will address ourselves first to those regulations concerning lease issuance. We hope that a proposal will be published in the near future.

As you will recall, these regulations allow us, in a rulemaking proceeding, to determine that in those States where reclamation laws are at least as environmentally stringent as the Federal regulations, the appropriate State laws will be applied with respect to Federal coal so long as the State law does not actually obstruct development of the Federal resource.

Pursuant to this approach, on August 24, the Secretary proposed adoption of Wyoming's coal reclamation laws and on September 14, proposed adoption of Montana's coal reclamation laws.

The diligent development regulations published in final form on May 28, also require some revision in light of the requirements of the act. A proposal of rulemaking incorporating these requirements was published in the Federal Register of October 15.

Generally the act requires production in commercial quantities of coal by the end of the 10th year of the lease. We have now proposed proposed defining "commercial quantity" as an amount equal to 1 percent of the LMU reserves associated with the lease.

Under the new act, a lessee must engage in continued operations, but he may, for not more than 10 years, pay advance royalties in lieu of continued operations. Continued operations are defined in the proposed regulations as annual production of an average of 1 percent of the LMU reserves; the average is computed over a 3-year period.

The existing regulations would be amended by the proposal so that they no longer require payment of advance royalties, but allow them to be used at the lessee's request, subject to the approval of the mining supervisor.

Under the new law, a lease is issued for 20 years and as long thereafter as there is production in commercial quantities. For this purpose "production in commercial quantities" is defined in the regulations as being the same as "continued operation." The comment period for the proposal closed on November 29.

The Federal Coal Leasing Amendments Act has also necessitated separate regulations concerning coal exploration activities. In accordance with the act, the proposal specifies that an exploration license can be issued for not more than 2 years and would confer no preference right to a lease.

An environmental analysis and a technical examination would have to be made prior to issuance of the lease to determine the potential effect of exploration on the resources and the environment, but there could be no substantial disturbance to the natural land surface.

Identification of the tract to be explored and submission of an exploration plan would be required. Finally, a compliance bond of of not less than $5,000 would be required. A proposal to this effect was published on November 5, with a comment period closing December 20.

Up to this point, we have been discussing a coal program based on an all-competitive leasing system. However, as you know, there are some 185 preference right lease applications which must be acted on.

For some time, the Department has felt the need to define more precisely a realistic basis on which to accept or reject preference right lease applications. Heretofore many have believed the definition of "commercial quantities" applied under the Mineral Leasing Act was simply whether the coal existed in the proposed lease area and whether it was suitable for mining under current technology.

However, there never was a regulation defining "commercial quantities."

In undertaking the development of a new coal mine, any prudent businessman would consider the costs of actual mining, of transporting his coal to market, and the cost of meeting the environmental protection requirements.

These cost considerations would have to be weighed against the value of the coal itself. The Mineral Lease Act requires this test and we have now issued a new definition of the term "commercial quantities" which clearly includes the environmental and other factors which any prudent businessman would consider.

These regulations went into effect on May 7 of this year. They enable us to determine which preference right lease applications now pending must be granted based on practical or prudent business criteria.

In summary, we believe that the Federal Coal Leasing Act Amendments Act mandates and affirms the basic program and policy set forth in Secretary Kleppe's coal policy statement of January 26, 1976. The act does restrict the Department's use of economic incentives such as advance royalties and eliminates flexibility with respect to due diligence requirements. But in all other ways we believe the programs and policies we were pursuing were basically consistent with the act.

We now are amending our regulations to conform with the particular requirements of the act. These amended regulations have now been published in the Federal Register as proposed rulemakings, and we are awaiting public and, obviously, advice from the committee and staff prior to their being issued as final rulemaking.

This concludes my prepared remarks. We are prepared to answer whatever questions the committee might have.

Senator METCALF. Thank you very much. In preparation for your appearance here and for the appearance of the other witnesses, I have asked Mr. Harvey to prepare some questions and he is going to ask them.

Before I turn it over to Mr. Harvey, however, I would like to ask you two or three questions on my own. There have been rather vehement oppositions to the provisions of S. 391, The Federal Coal Leasing Amendments Act, especially to the provision of 12½ percent royalty.

As you know, that 12½ percent was put in by the House of Representatives; inasmuch as the bill did not go to conference, we did not have a great deal of opportunity to discuss the provision between the two Houses.

There have been many complaints that this is a rather extreme increase in royalties. This puts some companies in competitive positions that they cannot sustain because they operate under leases in the present program.

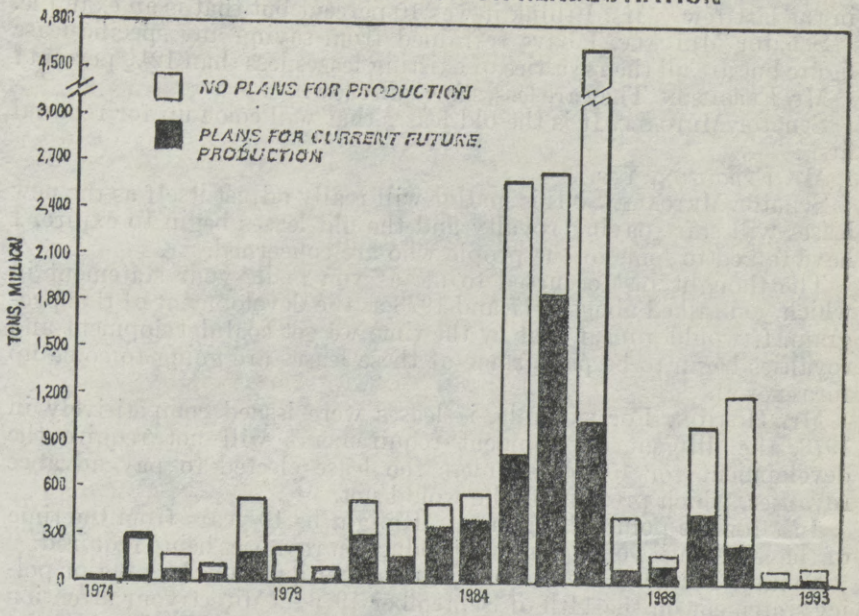
In order to get this in perspective, about when do these old leases terminate and do we begin to have a renewal of some leases under the previous royalty program?

Mr. HORTON. They would expire over a sliding timeframe. A list of those could be made available to the committee. I am not sure that either myself or Mr. Turcott has the dates on which existing leases were actually approved and the times that the renewal periods would come forward.

Mr. TURCOTT. It is readily available. We can furnish it for the record. The big top of the curve comes in the mid-eighties.

[The information referred to follows:]

FEDERAL COAL RESERVES WITH THE ASSOCIATED YEAR IN WHICH LEASES ARE UP FOR RENEGOTIATION



Senator METCALF. I asked that question because in the course of the discussion here you have indicated it is going to be some time before this program is implemented—1978, 1977 and so forth.

There may not be as great a conflict between the existing leases and the new royalty payment as is apparent if we look at it just from the point of view of 1976. Am I right in that?

Mr. HORTON. That is our general conclusion. The impact is mitigated because the new royalty would not apply to existing leases until such time as they would come up for renewal. Out of the 16 million under lease——

Senator METCALF. The new leases would not come into effect requiring payment of the royalty of 12½ percent for several years?

Mr. HORTON. More than several years.

Senator METCALF. At about the time the old leases have come up for renewal?

Mr. HORTON. That is essentially true.

Senator METCALF. I am just groping here for an answer to that. It seems to me that the competitive problem of new leases as against existing leases is not really as great as it looks to us if you just take the point of view of 1976.

It is going to be several years before 12½ percent royalty will be paid.

Mr. HORTON. It certainly does not present an immediate conflict in the present timeframe.

Mr. FERGUSON. If I may add a word here?

Senator METCALF. Surely.

Mr. FERGUSON. Existing leases do not have all the same royalties. We have put higher royalties on those few leases which we have issued in the last few years. I think it was 10 percent but that is an example.

Senator METCALF. I have refrained from saying any specific lease figure but are all the royalties of existing leases less than 12½ percent?

Mr. FERGUSON. They are less, some quite low.

Senator METCALF. It is the old leases that will come up for renewal first?

Mr. FERGUSON. Yes.

Senator METCALF. So this matter will really adjust itself as the new leases will start paying royalty and the old leases begin to expire. I have talked to some of the people who are concerned.

The thought just occurred to me as you made your statement in which you talked about 1977 and 1978 as the development of this program. It would appear that by the time we get coal development and royalties begin to be paid, some of these leases are going to come up for renewal.

Mr. HORTON. For example, if leases were issued competitively in 1978, the diligent development requirements will not require the development for 10 years unless the lease elected to pay advance royalties, which presumably he would not.

Just for the point of argument, it might be 10 years from the time of the lease until you had actual production royalties being required.

Senator METCALF. Let me ask you another question. In a major policy statement on the 14th of September 1976—I direct your attention to this too, Mr. Ferguson—Secretary Kleppe said, "The Department will adopt State regulation requirements where they are as stringent as those of the Federal Government." "We are pleased to determine that Montana law qualifies for adoption." After examination, it would appear that the Secretary's decision applies only to Montana's reclamation performance standards for surface mining of coal.

Under the Department rules 211–40, important provisions of Montana law are to be excluded, apparently. Taken as a whole, these provisions may prove to be of greater significance for the protection of the Montana environment in our estimation than those which were included.

Portions of the law which I am told will not be allowed to apply in Federal coal lands are all part of section 50 of the Montana Code 1042, lands unsuitable for surface mining (1044, paragraph 6), various provisions for in bond release (1079, paragraph 5), performance bonds (1050, paragraph 2), sanctions, and of section 26–210, water supply and protection, and back to section 1045, citizen enforcement.

Can you tell me why these Montana requirements which are significant and necessary—at least the Montana legislature and Governor felt were necessary to protect Montana environment and landowners—are going to be excluded?

Mr. HORTON. The specific answer is that we do not intend to exclude it. Let me go back and review generally the intention and objectives of the Department. We looked not only at Montana but indeed at the nine other coalbearing Western Rocky Mountain States also.

These States have great variances between the stringency of the environmental reclamation standards and indeed on the efficiency in the operation of administration and enforcement.

We divided the proposal into two parts. The first was an analysis by the USGS and the BLM to compare the reclamation standards themselves, the standards that actually protect the surface, protect the environment and what not.

We rated those because we thought that we could do that analytically. We came out, as we have indicated, with the conclusion that reclamation standards of Montana and Wyoming equaled or indeed exceeded ours. We said we will adopt it.

We did not think it best for all 10 States that by Federal edict that we adopt each States administration or enforcement program until we had given them the opportunity to meet with us.

The announcement indicated clearly that we wanted to sit down with each State, State by State, to talk about bonding, about enforcement, about inspection, the mining planning process.

Each State has different requirements for what I will call the administrative process. They have different budgets and manpowers. We thought the prudent way to approach was to sit down with each State and say how can we measure administrative and enforcement programs to meet our Federal responsibilities.

In no sense did we attempt to exclude the administrative enforcesteps at the State level, we simply thought we had to meet with them, man to man, shoulder to shoulder, to discuss their requirements, the process, with Federal responsibilities.

We have invitations open to Montana, Wyoming and all of the other States to do that. We have completed a meeting now with New Mexico and North Dakota. We have a letter from Governor Judge indicating that he would prefer to await the new administration to determine whether there will be a strip mining bill or whether in fact the new administration would sort of honor our request or proposal to adopt Montana's process.

It was an honest effort, made in good faith. It has received a good deal of controversy. When we sat down with all of the States after the election and went through the proposal with their professionals, I think it was understood that we intended to meet our commitment with each State that would like to sit down and reach an agreement on the administrative enforcement end as well as on the reclamation standard end.

Senator METCALF. It is not your plan to insist on uniform enforcement requirements or uniform administrative requirements from the various States?

Mr. HORTON. Absolutely not. That is the reason we thought we had to break it down State by State, that we had to meet individually with each State to determine what their desires and programs were rather than have us propose an overall requirement that would have been a blanket across all 10 States.

We wanted, as Secretary Kleppe said time and time again, to make a maximum effort to adopt the State standards and the State process. This simply was the way we intended to get there.

Senator METCALF. As you will recall, or at least some of your staff will recall who were present at the markup and conference and discussion on this legislation, we always have emphasized the fact that there are such a diversity of conditions in the various States.

We hoped that the State laws and the State regulations would be applied wherever they could be applied. One of the things we thought was most advantageous in the passage of the legislation was the delegation to the State to prepare its administrative requirements consistent with its needs and the geographic and geologic conditions within the State.

I would hope that we never have such a straightlaced and arbitrary standard that we would impose upon the State of Montana the same conditions that you would impose upon the State of New Mexico or upon the Midwestern States where conditions are greatly different.

Mr. HORTON. If we had the luxury of only looking at your State and mine, Montana and Wyoming, which truly have good environmental regulations, regulation and enforcement, we could have put both ends together in a lump offer.

Frankly, there are States that do not want to assume responsibilities on Federal lands, they do not want to assume responsibilities for the budget, or for the manpower. They would prefer to have the Federal Government do it.

We thought we would discuss it with each State. That was the intent of the proposal we made.

Senator METCALF. I am not quarreling with that at all, Mr. Secretary. I am just wanting an explanation of some of the thinking down in the Department and some of planning and programing that you have for development of the State-Federal relationship.

I think you have given me a very satisfactory answer. However does it follow—Montana designation says unsuitable for surface mining—that we have a review of that at the Federal level?

Mr. HORTON. That point is not as clear. That point our Solicitor advises us might constitute a conflict of Federal law. For example, in the Federal Register on September 29, I signed a Federal Register notice which in fact establishes criteria for designating what is unsuitable for mining and for leasing.

In my opinion, that document, a statement of Federal policy, on determining lands which should be withdrawn against leasing, is in prinicple compatible with the Montana law. I would think if we had discussions going with the State of Montana, one issue could be resolved rather handily.

After deciding upon a requirement to segregate certain lands from the possibility of mining and leasing, then it is a matter of looking at the character of the restriction, and this has been Secretary Kleppe's point all along, if the Montana law would establish an absolute blanket provision for prohibition against developing Federal coal, then this would constitute a requirement which we could not accept given our responsibilities. Short of that, it has been his philosophy and policy to adopt State measures, processes, to the maximum extent.

Senator METCALF. Thank you very much. Those are satisfactory answers. Mike, do you have a series of questions?

Mr. HARVEY. Going back to Senator Metcalf's first question, there are a number of outstanding coal leases that had already passed the 20 year mark. Is it the Department's position that you can readjust to those terms now or can it only be done at each 20-year period?

Mr. HORTON. This is why we have Mr. Ferguson here.

Mr. FERGUSON. It is our position that we can readjust. If we do readjust, I would think probably we would have to apply the conditions in the statute. We do not believe that we can readjust retroactively. We cannot very well say to a lessee whose lease has been outstanding, subject to readjustment for 6 years, that he has to go back and pay a new royalty. We could only make that applicable at this point.

Our regulations provide that at the time the lease becomes subject to readjustment, at the end of 20 years, we will either inform him of the new terms that are going to be imposed or else we will inform him that there will be no changes in terms.

We have done with the other which remain subject to readjustment. Through the years there has been no statement to these that the changes were made. Consequently we think we could impose the new terms at this time.

Mr. HARVEY. Secretary Horton, you mentioned several sets of proposed regulations. Does the Department have a deadline or a target date for adopting those as final? Most specifically, do you intend to do it before the administration changes?

Mr. HORTON. We can provide the committee staff right now with a list of the outstanding proposed regulations in the Federal Register. These concern five areas: diligent development, EMARS, and miscellaneous others, exploration licenses, and the amendment to the 211–30, 211–40 main regulations.

We can give you the date they were promised and the date the comment period ends. Your question goes to when a final decision can be made. In general, if as we think the comment period generally supports the proposed regulations, it would be generally the intent of the administration to complete those before the end of the administration.

If however there were areas of major controversy, it would appear to me to be sensible to leave them pending. If you would like to denote any specific area——

Mr. HARVEY. No.

Mr. HORTON. Generally that is what we intend to do.

Mr. HARVEY. Is the Department going to require that each lease be a logical mining unit even if that lessee has no interest in mining any coal other than to hold his lease?

Mr. HORTON. By definition, we have that in our proposed regulations. The thinking there is a very straightforward one. The act, as you know, requires diligent development, not of the lease, but diligent development on the LMU.

If we did not define a lease as an LMU, there might be an escape hatch for the requirements of diligent development applying to that lease. We thought it would be sensible to insist that the diligent development requirement apply both to the LMU and to an individual lease.

As you and the chairman appreciate, we are completely open. We have gone out to request comments and advice. That was the initial thinking when the proposal went out.

Mr. HARVEY. Do you have any idea when and where you will hold the first competitive lease sale?

Mr. HORTON. I would think this obviously, subject to the policies of the new administration, looking at the EMARS process and far along the BLM is, it would be probable in northwest Colorado in the third to fourth quarter of 1977.

Mr. HARVEY. Calendar 1977?

Mr. HORTON. That is right. Mr. Turcott has varying estimations here.

Mr. TURCOTT. We have two things facing us here. We do have some leases that we put on a priority basis that we feel we could process under the new act and regulations if promulgated.

These are leases that in effect pretty much come under the previous short term leasing criteria we used in the interim. If we have to use the new act, and I insist that the record indicate that we do, I think the earliest one of those might be in Montana under an application by the Western Energy Co., and we might be able to do that by early to mid-1977, in that on a competitive basis.

But what I think your question was directed toward, a series of original environmental impact statements and I believe that the northwest Colorado sale will probably be in the first quarter of 1978.

I have a schedule here if you wish to see it. It is our best guess on it. The next one, as a result of a reasonable EIS, would probably come in latter 1978 calendar year and the East Powder River area of Wyoming.

Mr. HARVEY. Could you submit that for the record?

Mr. TURCOTT. Yes, sir.

[The schedule follows:]

Reis schedule	*Completion date*
Northwest Colorado	December 1976.
Northern Powder River Basin, Mont	October 1977.
Star Lake-Bisti, N. Mex	May 1978.
Westcentral North Dakota	December 1977.
Central Utah	July 1978.
Southern Utah	July 1978.
Eastern Powder River Basin, Wyo	To be decided.
Hanna Basin/Atlantic Rim, Wyo	December 1977.
Kemmerer/Sweetwater, Wyo	December 1977.

Mr. HORTON. We have already lost control over governmental slippage.

Mr. HARVEY. Does the Department have any estimates as to the tonnage or acreage that would be leased in 1977, 1978, 1979?

Mr. HORTON. No, and indeed by a very basic principle, EMARS, those types of allocated decisions will not be made or entered into process as an assumption in the beginning. You would appreciate it to be a termination of the conclusion of the EMARS process, not an assumption put into it at the beginning.

For example, we are not instructing the State directors to lease any specific amount of acreage or specific amount of tons in their state-

ment. There is no projected figure other than the number of more or less hypothetical projections that go between 200 million and 250 million tons in the Western States in 1985.

That is a very general projection, not one that we are using to allocate coal by State.

Mr. HARVEY. You do not regard that as a target?

Mr. HORTON. We do not regard that as a target.

Mr. HARVEY. Can you give us for for the record the extent of activity on existing leases? I am talking about the general statement on what the current production is, the planned production, the number of mines that have approved mining plans, the number of mining plans in the process of approval and when they might be approved?

Mr. HORTON. We can provide that. As you know, the USGS does that on an annual basis by means of a report. I am not sure. I might ask Dr. Radlinsky. I believe that comes out something like March.

Dr. RADLINSKY. We can provide that for the record. I can give you this statistic for fiscal year 1976 for coal lands under lease, 33 million tons were produced for a value of $264 million. It averages out about $8 a ton.

Total statistics we can provide for the record.

Senator METCALF. If you would, please.

[The statistics follow:]

MINE PLAN PROPOSALS FOR FEDERAL COAL ON FILE IN GEOLOGICAL SURVEY NOV. 30, 1976, THAT WILL LIKELY BE PROCESSED FISCAL YEARS 1977 AND 1978

State/county	Lessee/operator	Mine name	Surface mine (S), underground mine (UG)	Federal acres to be mined	Decision anticipated (fiscal year)
Colorado:					
1. Routt	Ruby Construction Co	Sun	UG	146	1977
2. Routt	Peabody Coal Co	Seneca 2 W	S	4,840	1977
3. Moffat	Colowyo Coal Co	Red Wing	S	2,565	1977
4. Moffat	Empire Energy Co	Wise Hill 5, 6, and 7	UG	600	1977
5. Delta, Pitkin, and Gunnison	Atlantic Richfield	Bear	UG	7,460	1977
6. Delta, Pitkin, and Gunnison	Garland Coal & Mining Co., and Thompson Creek Coal Co	Anchutz Corp	UG	640	1977
7. Garfield	Industrial Resources	Not named	S	640	1978
8. Las Animas	Albert Martinez	Albert's	UG	6	1977
Montana:					
1. Big Horn	Decker Coal Co	East Decker	S	2,175	1977
2. Big Horn	do	North Decker	S	1,340	1977
3. Big Horn	Pacific Power & Light Co	Spring Creek	S	2,290	1977
4. Rosebud	Peabody Coal Co	Big Sky	S	390	1977
Oklahoma: 1. Le Flore	Lone Star Steel Co	Milton	S	40	1977
Utah:					
1. Carbon and Emery	Malcolm McKinnon, et al	Belina No. 1	UG	1,700	1977
2. Kane	Mono Power Co., Resources Co., and New Albion Resources Co	No. 1	UG	4,700	1978
3. Kane	do	No. 2	UG	5,800	1978
4. Kane	do	No. 3	UG	9,080	1978
5. Kane	do	No. 4	UG	6,000	1978
6. Emery	Swisher Coal Co	Huntington Canyon No. 4	UG	160	1977
7. Emery	Intermountain Exploration Co., and Swisher Coal Co	Huntington Canyon No. 5	UG	137	1977
8. Carbon	Franklin Real Estate and Braztah Corp	Braztah Nos. 3, 4, 5, 6, and 7	UG	11,430	1977
9. Sevier	Energy Reserves Corp	Skumpah	UG	2,460	1977
10. Carbon and Emery	Malcolm McKinnon, et al	McKinnon No. 1	UG	6,120	1977
11. Carbon	Centennial Resources Co	Not named	UG	1,840	1977

12. Emery	John T. Bell	Trail Mountain	UG	20	1978
13. Carbon	Kennecott Coal Co., et. al	Sage Canyon-Dugout Canyon	UG	(1)	(2)
14. Kane	Caesar Fulton	Shakespear	UG	(1)	(2)
15. Emery	John F. Sanders	Tip Top	UG	(1)	(2)
16. Kane	Hiko Bell Mining & Oil Co	South Nipple Bench	UG	(1)	(2)
17. Kane	Mono Power Co., Resources Co., and New Albion Resources Co	No. 5	UG	(1)	(2)
18. Garfield	Woods Petroleum Corp	White Mountain Coal	S	(1)	(2)
19. Carbon	Valley Camp of Utah, Inc	O'Conner Complex	UG	(1)	(2)
20. Sevier	Mountain States Resources Corp	Nos. 1, 2, 3, 4, 5, and 6	UG	(1)	(2)
21. Emery	Malcolm L. McKinnon Estate	Rilda Canyon	UG	(1)	(2)
22. Kane	El Paso Energy Resources Co	Red	UG	(1)	(2)
23. Kane	do	Blue Mine	UG	(1)	(2)
24. Emery	R. J. Hollberg, Jr., Emery Coal Co	No. 1	UG	(1)	(2)
25. Carbon	Malcolm McKinnon, et. al	McKinnon No. 2	UG	(1)	(2)
26. Carbon	Malcolm McKinnon & Routt County Development Co	McKinnon No. 3	UG	(1)	(2)
27. Emery	United States Steel Corp	"B" Canyon	UG	(1)	(2)
28. Kane	Utah International, Inc	Alton East and Alton West	S	(1)	(2)
Wyoming:					
1. Campbell	Peabody Coal Co	Rochelle	S	3,200	1977
2. Campbell	Carter Oil Co	Caballo	S	4,600	1977
3. Campbell	Kerr-McGee	East Gillette	S	4,350	1977
4. Campbell	Atlantic Richfield	Coal Creek	S	5,550	1977
5. Campbell	Wyodak Resources Development Corp	North Wyodak	S	1,020	1977
6. Campbell	Consol Coal Co	Not named	S	900	1978
7. Campbell	Amax Coal Co	North Belle Ayr (Eagle Butte)	S	2,960	1977
8. Lincoln	Kemmerer Coal Co	North Block	S	1,950	1977
9. Lincoln	do	Twin Creek	S	320	1977
10. Sweetwater	Black Butte Coal Co	Black Butte	S	2,820	1978
11. Sweetwater	Sunoco Energy Development Co	Long Canyon	UG	5,040	1978
12. Uinta	F.M.C. Corp	South Haystack	S	1,280	1978
13. Carbon	Pacific Power & Light Co	Cherokee	S	(1)	(3)
14. Carbon	Kemmerer Coal Co	Savery	S	(1)	(3)
15. Carbon	Arch Minerals Corp	Hanna South	S & UG	(1)	(3)
16. Converse	Eugene Stevens-Western Fuels	PRLA	S	(1)	(3)

[1] Acres to be mined not known at this time.

[2] Lessees have indicated intent to file plans. If plans are eventually filed, processing will take place after fiscal year 1978.

[3] Lessees have indicated intent to file plans. If plans are eventually filed, processing will take place late fiscal year 1977 or early fiscal year 1978.

Mr. HARVEY. In your statement, Secretary Horton, you mentioned the loan program that was part of the Federal Land Policy and Management Act. Can you tell me if the present budget includes any dollars for that program?

Mr. HORTON. As you know much better than I, Mr. Counsel, I cannot possibly reveal that, even if I knew. I suspect there are several alternatives at which the OMB is looking but I would not prejudice by coming out with a figure before the President announces his budget.

I will say, however, that we have an active task force under the Assistant Secretary of PDB in the Department. He is joining in an effort with Mr. Turcott and other in BLM on the steps that will be taken to implement that, in other words, implement our responsibilities.

Mr. HARVEY. If I made the statement that OMB does not intend to put any money in the President's budget, would that upset you greatly? Would you differ with me?

Mr. HORTON. I do not know if that is a correct assumption or not.

Senator METCALF. But you are trying to get some budgeting in this area are you not?

Mr. HORTON. It would seem to me a highly prudent thing to recommend it to the OMB.

Mr. HARVEY. One final question and this may be for Mr. Ferguson: The new law has a couple of new requirements as to people who are eligible to get leases. I do not have the words right in front of me but there is one that is a 100,000-acre national limitation on leases and there is the requirement that you not be holding the lease for 10 years without production.

The proposed regulations simply repeat those admonitions as prohibitions. Does the Department have any plan to enforce those provisions?

Mr. FERGUSON. We intend to enforce them but are you asking——

Mr. HARVEY. How will you do it?

Mr. FERGUSON. You were discussing this just before we came up.

Mr. HORTON. Clearly the Director of BLM will have the responsibility. It will be up to him to advise the Secretary as to what companies might hold tonnages that would exceed that—correction, acres that would exceed that.

Mr. FERGUSON. I would think the same procedures would follow. It is true up to now we never did have any nationwide invitation on coal, it was only State by State. Now we have both State limitation and nationwide limitation but that certainly cannot be done—certainly can be done.

Mr. TURCOTT. Counsel, basically it is a process of, for instance, in the oil and gas analogy we write and ask, for the interest in the leases, if they are corporations or partnerships, who owns what. It is a record-keeping process.

It is difficult, as you know from your experience in the Department. I do think that this act and now the enforcement provisions of violating the laws under which the Bureau of Land Management operates and the BLM Organic Act makes it a little bit tougher to be devious.

Mr. HARVEY. In terms of Mr. Turcott's professional judgment, the word "allegations," prior to the override of the Federal Coal Leasing

Amendments Act, has been described—does it appear to you that the law and what the Department is doing to make those requirements will result in delay?

Mr. HORTON. I think it will result in delay. I think we would revise our former assessment. We are indicating today that we are promulgating the regulations to bring our basic process into compliance.

Then you get down to a discussion of what "greatly delay" entails. It will delay but if we are looking at a great delay of 5 years, that is obviously not the case, excuse me.

Mr. HARVEY. As I see it, the schedule has changed by about 3 months from late 1977 to what Mr. Turcott said was early 1978. I am not aware that even that 3-month slippage has to do with the requirements of the new law. Maybe it does.

Mr. TURCOTT. Not necessarily. I do not want to contradict the Secretary of the Interior in terms of the words and the compliment that the Senator gave him earlier in the opening. It is just a matter of time.

We have assessed the new act, assessed our approaches under NEPA as a result of the Sierra Club court suit that had an effect on us in terms of our scheduling. That is the whole triggering of the EIS process.

In most cases we are going to have to have five hearings or public meetings or at least opportunities for public comment. Most of these are over and above the comments that we have through our normal planning process and the EIS process.

We have to review things with Governors. We are going to work closely with the State Governors even more tightly than the law requires. Based on that, our best program projections for coal sales coming out of a reasonable environmental impact statement and the schedule for a decision after that process is early 1978 in northwest Colorado, North Dakota, Montana, and Wyoming.

All I can say is we are a little bit smarter than we were and we advised the Secretary earlier.

Senator METCALF. Mr. Turcott, we have continued to hear from many people about this need for five hearings and a multiplicity of hearings and so forth. As one person who participated in the drafting and enactment of the act, I would hope that we would not have this sort of obstacle.

I want full, complete, and thorough hearings but I do not want you to have to go through a needless hearing process. I would like to sit down with you; this is an offer to try to work out some way. If you need legislation, we will provide it so that we have fewer hearings and shorten the time for participation of the various people who want to get into the hearings, and get started on a leasing of coal under a fair program.

I never thought you needed five hearings. Mr. Bagge will testify a little later and he has held that as one of the bases for veto and disapproval of this whole program, that is, how many hearings are going to take place.

We want to help you work out a program so that the hearing process is complete and thorough but is not multiplied.

Mr. TURCOTT. Believe me, maybe I was being a little more facetious than I should be. I did not mean to criticize the new act but we did feel that, in terms of our own internal public meeting, public involvement, and even public hearing process that is required by regulation under the CEQ and the Department under the National Environmental Policy Act, two or three of the hearings were a little bit redundant.

I do not see anything in the act particularly, unless I am advised differently by an attorney to indicate that some of these healings cannot be consolidated. For example, perhaps the hearing and/or public meeting or public comment at least on fair market value can be coupled with one wherein we discuss tentative tract selection through the planning process.

Mr. HORTON. As we reflect now on the hearing requirements in all honesty, we had a rather firm requirement for at least two and possibly three. We had required hearing and/or hearings on the land use, planning stage.

We had the requirement under law of a hearing and a preparation of the EIS as we had in our former regulation. The specific decision by Mr. Kleppe that he would entertain comments directly before he leased any coal after the EIS was completely but which was never done before.

The new act, as I read it, requires a public hearing if anyone wants it before coal is actually leased. It requires, under some conditions, a hearing to test the fair market value. We are only looking now at a difference between one or one and a half which we would have imposed on ourselves otherwise.

I am sure that if companies got together with Mr. Turcott the areas of disagreement could be substantially narrowed.

Mr. TURCOTT. I would welcome the opportunity for myself and staff to work with you and the staff of the committee to look at, for instance, an idealized process under the act on EMARS including the hearing to see if there is anyplace that requires statutory amendment, if that is necessary.

I will, as soon as I hear from staff, make the arrangements.

Senator METCALF. The invitation is open. We are in about the same situation as you. We are confronting a problem of the reorganization of the jurisdiction of the committees of Congress as you are confronting the problem of the reorganization of the administrative branch of the Government.

I just cannot tell you where we would stand after that reorganization takes place. As soon as it is over and if the present chairman is in the same position as I am now, we will make that of high urgency and high priority and get together with you and work out the necessary amendments that need to be made.

One of the innovations in S. 391 was the passage of a provision analogous to the provisions we had in the Hydroelectric Act. As I remember, there was a preference clause for public-owned and consumer-owned, especially, electric utilities.

The process and language is a little different than that contained in the public preference clause in acts providing for public power nationally. The intent essentially was the same.

It would seem to me that from a very cursory and superficial examination of what you have done, you have not implemented this preference clause in accordance with the intent of the Congress.

I think you put some regulations on your preference customers that are known to your other customers. You have not given the preference customers an opportunity to nominate or notice to participate in accordance with what was the intent of Congress in the preference clause.

Would you comment on that, Mr. Horton?

Mr. HORTON. Mr. Chairman, I would be happy to comment on that. As you appreciate, our regulations are still being drafted and indeed we need the concerns and comments of the committee itself as well as the comments of others.

Our thinking was that we have to comply with two sections of the act, the one to which you have just referred where we provide a reasonable number of tracts to be reserved and offered for public bodies and second, we are still under the requirements to conduct competitive lease sales.

What we tentatively tried to do was to offer what we called a special leasing opportunity in which we would ask for the nominations from the public bodies, the REA's and others, and conduct a sale for them but then still insist on the competitive bidding process.

What we have not defined is the word reasonable. What is a reasonable number of tracts? I think we will have to go along with the committee and work on this perhaps on a pragmatic basis.

Our intent is to ask for nominations from the public bodies and couduct what would be called a public body coal lease sale. Then of course, we still have to achieve fair market value. We have to do it on a competitive basis.

I think what might be desirable is to ask the BLM, with the approval of the new administration, to conduct a public body coal lease, then work from that. Then refine the process.

We were uncertain as to the wisdom now of defining "reasonable" when, in fact, we did not know at the time of enactment of the bill and still do not yet know what public bodies or what the committee considers "reasonable" in terms of the frequency of sale, what acreage tonnage or what might offered in such sales.

I think our tentative position is to allow the BLM to go ahead and take a crack at it and come back to you with the results of the first effort.

Senator METCALF. As you will recall this was originally put in the House bill in which Congressman Pickle, in his special situation in Texas, came over and testified before the Senate committee and at his request, we had language drawn and tried to make it general instead of some special legislation.

Has Congressman Pickle's situation been resolved?

Mr. TURCOTT. No. The situation has not been resolved. We have had considerable correspondence with the proponent, with the utility in Texas that wishes to acquire the coal on the military reservation.

They write to me every month explaining that they do feel that they are qualified. They have met with our New Mexico State director who manages the resources in that area and in essence, we have told them that we think basically we have to use the same process for

this special situation as called for in the act and that there is no special way to speed it up.

I will have to admit that they are not happy with this but they are being very polite. We are working with them on it. It is going to be some time, frankly before it is all done.

Senator METCALF. Your proposed regulations on special leasing opportunities indicate you will designate and reserve these tracts for preference bidders. You say that designation of these tracts has to meet all of these other provisions of the law. Apparently, in your opinion, perhaps, Mr. Ferguson, it is a matter of thrashing out a conflict with that and the other provisions of the law.

Have you tried to reconcile this with what was obviously the origin of this special preference provision, the Federal Hydroelectric Act?

Mr. HORTON. I think the problem has been as the Solicitor and his staff have looked at it that we have a rather clouded understanding of the legislative history. As Mr. Turcott indicated, just in looking at the new act, our tentative decision is that we do not have the authority to disregard the competitive leasing requirement due diligence, fair market value and other requirements.

I think Mr. Ferguson may want to comment on that but we feel constrained by the new requirements. That is not to say we are not trying to implement the reasonable number of tracts of the public body provision.

We are just uncertain as to what the latitude of our opportunity is.

Senator METCALF. I am uncertain too. We started from a proposition that we would try to put directly into the new act, or at least I started from that proposition, the same language with preference clause wherein we give the preference customers the first right on certain areas of Federal coal.

My memory of the legislative history is inexact too. I came up with some other language that is not significantly from the Federal Hydroelectric Act. I would hope that under the system preference clause, we would finally come out with a program where preference customers are given the same rights to fulfill needs before other customers are sold power.

Again, it may be that we will have to have some consultation and discussion. Mr. Ferguson, maybe we will have to talk about that for amendment because I guess the act is stating something in there.

Mr. FERGUSON. I think if we are going to do anything very different from what is specified in the draft proposed regulations, we would probably have to discuss the legislation.

Senator METCALF. That does not clarify the law but clarifies our problems. At least we recognize that we have a difference of opinion as to where it is going. We have to do something about that.

Thank you very much, Mr. Secretary. Thank you, gentlemen, for coming. I do not know whether it is going to be your last appearance here or not. I just do not know what the situation is.

I want to say if there are those I have been grateful to, it is to all of you for your testimony over the years before this committee. I think you have been helpful, I think your administration has been helpful and I compliment you on a good job well done.

Mr. HORTON. Mr. Chairman, thank you very much. I might say personally that the exigencies of the November election left a few of us with less than guaranteed longevity in our present positions.

I want to say personally that I have valued highly the opportunity to appear before this committee and indeed very much appreciate the warm reception, accord and courtesy that you show us here in your subcommittee.

I regret very much that those days will not continue. If they could continue, we would be prepared to talk with staff on that past January 20. Thank you very much.

Senator METCALF. We always look forward to seeing you and look forward to your continued assistance and cooperation.

Mr. HORTON. Thank you.

Senator METCALF. The next witness is Mr. William Haring, of the Sierra Club Legal Defense Fund. We welcome you to the committee, Mr. Haring. We are delighted to have you here. I would ask that you summarize your statement here because you do present many things with which I am familiar. Your statement will go into the record.

STATEMENT OF WILLIAM HARING, ON BEHALF OF THE SIERRA CLUB

Mr. HARING. Thank you, Senator Metcalf. I wish to thank you very much for inviting me here today to testify on behalf of the Sierra Club. Since my statement will go into the record, I can be very brief.

The statement centers around three general concerns which we have. First of all, the question of whether the regulations as presented in the Federal Register, volume 41209 of Thursday, October 28, 1976, present a comprehensive land use basis for going ahead with a comprehensive land use plan which is contemplated in section 3 of the new act.

We previously advised the Secretary of the Interior of our view that the June EMARS regulations were incompatible with the new act. Primarily it is on the basis that the way the things seem to be going the Government, the Secretary is not contemplating the Government taking an active role in the planning process.

The nominations which were the heart of the planning process were in essence another way to react to the private interest by the Government to be totally circumscribed by those statements and supposedly formulating a plan.

We do not believe that is the formulation of a plan. What specifically constitutes a land use planning, based upon my review of the proposed regulations, is still not clear. It may be that the Department is saying that the MFP process when completed would constitute a land use plan. I am not sure of that.

There is some suggestion in the regulations that is true. We understand the MFP process. It is essentially an inventoring process. Of course an inventory does not make a plan but inventory is certainly essential to the plan, a logical starting point.

We believe that the new exploration plan is a mandated starting point. The next basic concern area is that of the way that the exploration program is going to be carried out. Perhaps it is premature to say very much about this considering the fact the Secretary, by the

new law, is going to have to present a comprehensive plan as to how he is going to do that in the next couple of months.

In view of the violent opposition of this aspect of the act, as well as every other aspect of the act which the Secretary of the Interior Department had raised when legislation was going through, we wish to be emphatic in our view that any exploration program is not going to have an integrity and confidence of everybody if we are going to have a situation which is analogous to the prospecting permit.

I think you said in some of your comments on legislative history, the Government was essentially at the mercy of the validity of debt which it could not or was not willing to test in having certain rights flow.

If our exploration program is simply going to be a series of contracts out to people who would essentially have conflicts of interest concerning the results, then we are not going to have a very good exploration program.

A third point is the area of public involvement. We believe that the statute very clearly contemplates that public involvement, the opportunity for a hearing is a key item here. I believe that the regulations promulgated in October suggesting that a "meeting" can satisfy those requirements of the law does violate the language of the statute, and defies the intent of Congress.

I do not think that is going to go. I was in the back row this morning, but if I understood the words of Mr. Horton, he stated that the Department recognizes the requirement of a hearing. I may be wrong but that is how I heard Mr. Horton.

We are certainly going to proceed prior to the December 13 deadline with a number of specific questions and registrations of concern to the Department. I suppose of the use of my previewing them right now would not be very great so at that, I will make myself available to anyone who wishes to ask me some questions.

[The prepared statement of Mr. Haring follows:]

STATEMENT OF WILLIAM HARING ON BEHALF OF THE SIERRA CLUB

Senator Metcalf, members of the Subcommittee, thank you very much for inviting me to testify here today on behalf of the Sierra Club regarding the implementation of the Federal Coal Leasing Amendments Act of 1975. My name is William Haring; I am a staff attorney in the Denver Regional Office of the Sierra Club Legal Defense Fund, Inc., which represents the Sierra Club. The Sierra Club as a national conservation organization is deeply concerned and vitally interested in the evolution of an environmentally sound federal coal leasing program.

My remarks today will focus primarily on selected portions of the response of the Interior Department to the new law in the form of its proposed regulations published in the Federal Register, Vol. 41, No. 209, of Thursday, October 28, 1976.

Before getting into the regulations, it is instructive to recite the setting within which the recent legislation was passed. Among the disturbing circumstances existing were the lack of a coal-energy program, the lack of a specific and stringent federal strip-mine law, in spite of heroic efforts by some members of Congress to achieve that vital objective, the historical inability of the Department of the Interior to implement a meaningful coal leasing program aside from the giveaway of "leases upon request", and finally, the fact of some estimated 16 billion tons of coal lying under existing leases with no strong evidence that a substantial amount of that coal is to be produced in the near future. Unfortunately, judging from a review of the proposed regulations, we are compelled to conclude that they reflect neither the ability nor the inclination of the Department to at last take

bold and creative steps necessary to achieve a good start in formulating an environmentally sound and meaningful coal leasing program.

Historically, the Congressional mandate to the Secretary in administering the broad program required by the Mineral Leasing Act has been accompanied by a wide degree of discretion with regard to specific decision-making functions. However, it is noteworthy that the recent coal leasing amendments represent a recognition by the Congress that the subject of coal policy will require more periodic legislative oversight and potential intervention and the recognition of the need for a process whereby the reasons for decisions must be recorded and developed as they are in the process of being made, with the Secretary accountable for discharging that function.

We believe the statute requires of the Secretary an active and affirmative role in achieving the land-use plan contemplated by sec. 3 since the language states that "the Secretary shall prepare such land-use plans . . ."

We have previously advised the Secretary of our belief that the EMARS program as was reflected in 41 F.R. 22051, of June 1, 1976 was inconsistent with and frustrating to the mandate placed upon him by the new Coal Leasing Amendments Act, primarily on the basis that EMARS perpetuated the reactive posture by the Department which has been previously condemned as grossly wasteful in permitting basic questions of needs and other issues to be determined through the dominant nominations process. Our review of the modified EMARS regulations of 41 F.R. 209 of October 28, 1976 leaves no assurance that the basic incompatibility between the Act and the regulations has been to any degree diminished.

EMARS has always been vague in description and suspect as to usefulness. Typically, the Department of the Interior accompanied the promulgation of the EMARS regulations in June with an empty pronouncement of what EMARS would do:

"Nominated areas both for and against leasing and information describing the rationale of these nominations will be used by the Department of the Interior's Bureau of Land Management to determine in large measure the selection of specific lease tracts and where and when future competitive coal lease sales will be held . . ."

Under the modified EMARS regulations, proposed sec. 3525.2 is no more revealing:

". . . Nominations provide the first indication of tracts which should or should not be leased . . ."

The proposed regulations are distinguished by what they don't say. Consistent with the previous EMARS regulations, the most essential issue of need is ignored. Without that input, any planning system results in no plan at all. The end product of the regulations as now proposed promises to involve a barrage of paper, nothing more than guesswork as to how decisions were made, and no record upon which to judge past decisions and plan on improving upon those techniques in arriving at future ones. My conversations to date with Department officials have resulted only in statements by them that an undefined "market mechanism" is the exclusive means by which the need questions will be determined. While the phrase sounds impressive, there is apparently no substance to it. Consequently. Interior's planning system is now captive to the frequency and volume of the bald outcry by private interests for more leases. Of course, it is absurd that the many issues of need can be rationally resolved in this manner. Obviously, industry will desire more leases for the traditional business reasons—to allow itself as many options as possible with the fewest attendant risks. It is inconceivable that a "comprehensive" planning scheme can ignore the question of need or be accomplished through essentially a process of default whereby the basic assumption is made that all national coal-energy needs objectives are simply congruent with responses to the profit motive.

Numerous other basic questions remain unaddressed by the proposed regulations. How and to what degree will the Department exercise control over federal leasing policies remains a mystery. On what basis will resource conflicts be defined and by what weighing process they will be resolved and through what criteria is undisclosed and is likely unknown at this time. Assuming that the vague descriptions of what processes are involved can be crystalized, how these processes will mesh, in what sequence, and what objectives will be served specifically through each aspect of the program is anyone's guess.

One illustration of the meaninglessness of these regulations is found in proposed sec. 3525.10(b)(1) which requires only that industry nominations include "as appropriate, statements describing why the tracts should or should not be leased . . ." Assuming no other deficiencies, here is where Interior's timid attitude and lack of creative initiative is graphic. No substantial demand for concrete evidence of an intention to lease exists and because of that Interior has missed a good opportunity of challenging industry through a set of specific criteria to provide minimal data in justification of its position. Included among such criteria could be the need question, to what extent might environmental damage be caused and mitigable, and whether reclamation is possible and if so at what costs. Without such challenge, the nominations of industry will predictably consist of a motley parade of self-serving statements, platitudes, and value judgments, and very little substance. The same section suggests that the Department will "incorporate the information it receives (from the nominations) into its internal planning processes for federal coal leasing tract selections." What does this mean? If the coordination of these elements constitutes a system, then how it operates should be readily explainable. We understand the MFP (Management Framework Plan) to be nothing more than an inventory of resources within a specific area, which invites a definite bias of favoring identification of the coal resource as economically preferable. The combination of these two items will assure nothing more than wide-spread, unchecked and unjustifiable new coal leasing.

In summary, there is simply no assurance or indication that the so-called new leasing program will control the number of new leases, the location of new leases, and the timing of new leases, to any degree and in any manner appreciably different than under the old discredited program.

The exploration program required by sec. 8(A) of the new Act deserves special consideration since it is both the logical starting point for a leasing program and is mandated as a starting point. Exploration must be complete so as to provide a "basis" for a particular land-use plan. We are anticipating reviewing the comprehensive implementation plan required to be submitted by the Secretary to the Congress through sec. 8(A)(g) sometime within the next few months. Detailed comment on this aspect of the legislation is surely premature until that report is available for examination. It must be emphasized that among the strong objections made by the Secretary to the Act when proposed was his unqualified opposition to the exploration program. In writing on January 19, 1976 to the Chairman of the House Committee on Interior and Insular Affairs, Secretary Kleppe stated:

". . . The Department is strongly opposed to such a program.

"We do not believe the federal government should be involved in the exploratory phase of coal development . . . We believe government exploration would entail large costs with little benefit in terms of federal revenues and the probability of significant delays in discovering coal and in developing coal."

We believe and are quite concerned that the intent of Congress could be frustrated unless the Secretary would be willing to accompany the exploration program with check and balances to insure its integrity both as to the reliability of information and the source of information. Any situation that smacks of a conflict of interest between the persons obtaining the information and those who would benefit thereby would erode irreparably any public confidence in the exploration program.

Public participation having the most impact possible is an objective of the new Act as evidenced by the requirement in § 3(A)(ii) whereby as part of the preparation of land-use plans, there shall be not only consultation with the general public but also ". . . an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest . . ." Until the land-use process is explained in some detail, just how and when the public hearing opportunity would be most useful cannot be determined. Moreover, the proposed regulations requiring only a "meeting" as set forth in sec. 3525.12(b)(2) represents an Interior Department policy which is contrary to the plain language of the statute and represents an act in defiance of the clear intent of Congress. It is interesting that the same letter of Secretary Kleppe from which quotation is made above contains this language on the public hearing question:

". . . The Department agrees with the objective of providing adequate opportunity for public participation in the significant phases of the leasing pro-

gram. We object strongly, however, to provisions which serve only to retard implementation of a coal leasing program and which may invite endless litigation. We believe four potential hearings on one coal lease are excessive.

"We believe that one public hearing before the approval of a land-use plan would be appropriate. Such a hearing would not lead to unwarranted delays and would provide a thorough public review of the most important issues . . ."

A number of additional general questions should be raised concerning the proposed implementation program reflected in Interior's regulations.

The basis of the Interior Department's stating that the completed BLM land-use plans constitute "comprehensive" plans required by § 3 of the Act given yet undescribed "minor revisions" should be immediately explained in detail. We understand that MFP processes are being continued at a fast pace in spite of the many empty areas reflected in the proposed regulations and the very basic questions which are left unanswered. By going ahead with programs which are claimed to be essential, the Interior Department is risking a terrible waste of resources.

According to proposed § 3525.2, the three major elements which will prompt specific coal lease recommendations are the nominations, multiple resource planning, and environmental analysis—each of which will be undertaken with public participation. It is unclear what constitutes "environmental analysis" and how will environmental cosiderations be integrated into this process at the earliest stage possible in order to assure a prominent role. Unfortunately, the environmental impacts seem to be limited to the late stages of the selection of proposed lease tracts. Regulation sec. 3525.12 includes subsection (4) where certain environmental matters are to be interjected. This may well be too little, too late. Further explanation is needed as to what would be the role of the Secretary in framing the criteria for withholding lands as "unsuitable for mining", how and to what degree there will be public input in that process, and how if at all the nominations process is supposed to impact the "unsuitable for mining" concept. Another exampple of too little, too late is subsection (e) of the same regulation where a technical examination concerning identification of specific reclamation requirements is available only after there has been decided a proposed leasing unit.

Subsequent to the promulgation of the first EMARS regulations in June, there were numerous challenges to the Department's insistence on keeping certain information confidential, particularly that with regard to nominations. It was contended that such measures were unwise in the practical sense, and were likely illegal under the Freedom of Information Act and the National Environmental Policy Act. The proposed regulations are not clear as to whether any information is going to be kept confidential. The Department should articulate its position and its claim of justification if any aspects of its planning system are now to be kept from full and free public scrutiny.

In conclusion, the foregoing comments of necessity do not attempt an all-inclusive review of the questions and concerns facing the Sierra Club in light of the new Coal Leasing Amendments Act. If one transcending issue could be stated, it is whether the Interior Department is willing to maintain the timid role of a meek distributor of our nation's nonrenewable resources or whether an abrupt but necessary change is possible whereby creative, aggressive, and jealous management of those resources will pave the way not only to their wisest use where appropriate, but also for that degree of preservation which would deserve commendation.

I will be pleased to answer any questions you may wish to present to me. Thank you for your kind attention.

Senator METCALF. Thank you, Mr. Haring. We are concerned and welcome your opinions and welcome your comments, not only on the regulations but on the statement that I made here today and also on how we are going to plan for future implementation of the legislation that is already enacted and what modifications have to be made from our limited experience so far.

In view of some of the changes of the administration, we have had assurances this morning that at least we are not going to have any abrupt coal leasing program that might establish rights that would be adverse to the policy of the new administration.

I think all I can say is that I welcome your statement here this morning, your outlines and on December 13 when you have comments, I will be delighted to have them. I want to tell you that I look forward to cooperating with the officials of the Sierra Club in working out, I hope, a surface mining bill shortly after Congress convenes this coming year.

Mr. HARING. Your comments are very gratifying, Senator; I appreciate them.

Senator METCALF. We do not have any questions. It is not at all derogatory to your statement. I think a good many points that you have made are points that I would approve and I would only underscore by interrogation. Thank you for coming this morning.

I want you to continue to keep us advised.

Mr. HARING. I will try. Thank you.

Senator METCALF. Thank you. The next witness—you know, administrations come and go, the Assistant Secretaries rise and fall but Carl Bagge continues to come here representing the National Coal Association. Mr. Bagge, we are delighted to have you again.

Mr. BAGGE. I will tell my board of directors that you are encouraging them to keep me for another year. I appreciate that very much.

Senator METCALF. You have a prepared statement, go ahead.

Mr. BAGGE. Thank you very much. I am accompanied this morning by Bill Hynen, vice president of law and legislation of the National Coal Association and Tony Anthony on my right. I have a prepared statement which I will run through as quickly as possible.

STATEMENT OF CARL E. BAGGE, PRESIDENT, NATIONAL COAL ASSOCIATION, ACCOMPANIED BY BILL HYNEN, VICE PRESIDENT OF LAW AND LEGISLATION OF THE NATIONAL COAL ASSOCIATION; AND TONY ANTHONY

Mr. BAGGE. My name is Carl Bagge, president of the National Coal Association which represents the coal industry. I want to particularly commend you and thank you for the opportunity you are providing by this hearing and your attitude towards this whole legislation in trying to——

Senator METCALF. As soon as we straighten out our committee jurisdiction, the program and plans for changes and the modifications for amendments, that might be necessary in the act to make it more workable and more feasible.

Mr. BAGGE. This is precisely our objective. We are grateful to you for that, sir.

As you know, NCA has presented testimony on many occasions before this subcommittee and before the Department of Interior on the need for a flexible coal leasing program, which recognizes the complicated and costly problems associated with the development of coal reserves, particularly with respect to the Federal coal in the West.

Unfortunately, the resulting programs fall far short of these objectives.

On May 8, 1975, Ed Phelps, the chairman of the board of the National Coal Association testified before this subcommittee in reference to the Senate version of the Federal Coal Leasing Amendments Act.

He explained in great detail to this subcommittee the established marketing practices of the coal industry and the need for additional Federal coal leasing.

He emphasized that our dependence on foreign petroleum would increase unless a reasonable policy promoting development of our western coal reserves is devised.

Today, not even 1 year later, we are importing over 40 percent of our oil needs and facing the fact that this could go up to 50 percent.

The Department of Interior is presently treading unknown waters in the area of leasing and it must proceed cautiously. Mr. Phelps explained in great detail before you and the members of the subcommittee, the established marketing practices of the coal industry and the need for additional Federal coal leasing.

We tried to make that case. He emphasized that our dependence on foreign petroleum would increase unless a reasonable policy promoting development of our coal reserves is devised and devised quickly.

This is for the most part new ground. We can certainly anticipate problems and mistakes in its implementation. If this program is to be workable it must be flexible enough to meet the unique aspects of coal marketing and development.

Let me just for a moment talk about or try to explain the unique nature of the development of marketing and coal. It is unique to the other resources.

Coal, unlike oil and gas, we think part of the problem we have within industry, our failure to communicate with Congress and the public, is the unique nature. We cannot think of coal as we think of oil and gas.

Sometimes I think that lies at the root of the public perception of the problem. Coal, unlike oil and gas, does not come into an already established marketing system. Most of the Federal coal is in the West, and this coal in particular cannot simply be mined and delivered to a waiting wholesale or retail outlet with existing customers.

Indeed, because of the vast difference involved in the West, it is sometimes necessary for railroads to plan and construct spur lines of 100 miles or more to the coal producing areas. Pipeline transportation systems can traverse many hundreds of miles.

Each coal mining project must relate to the particular needs of a customer, 80 percent of our coal is marketed not on spot, but utility plants and gasification plants must be put together specifiically to meet requirements of the projected life of the consuming plant.

The importance of devising a workable leasing procedure cannot be understated in light of the fact that the Federal Government owns 60 percent of our western coal reserves, and because of land ownership patterns, will effectively control 80 percent of western coal development.

We believe that these things are important to the interest of the Nation. While we think many aspects of Interior's coal leasing program will cause problems and no doubt, some regulations will have to be changed, we are not here today to go over all of the difficulties and problems we foresee when the program goes into full implementation. We have responded, and I have a copy of our response to the first piece of the regulations proposed by Interior. I would like to sub-

mit that for the record. That deals in detail with our industry's response to the first of the three diligent development requirements which are as you know—that which you filed last week, sir.

Senator METCALF. It will be received and incorporated, various documents that you have.

[The documents referred to follow:]

STATEMENT OF THE NATIONAL COAL ASSOCIATION

The National Coal Association (NCA) is a trade association representing the principal commercial producers of bituminous coal in the United States. The Department of the Interior invited interested parties to comment on the proposed diligent development and continuous operation regulations on federal coal leases published October 15, 1976, 41 Federal Register 201. The National Coal Association respectfully submits the following comments.

The proposed regulation redefines the terms "logical mining unit," "logical mining unit reserves," "diligent development," and "continuous operation" to make the regulations consistent with the Federal Coal Leasing Amendments Act (Public Law 94–377) (hereafter referred to as "Leasing Amendments"). The proposed definitions designate inflexible criteria for the production of coal within arbitrarily established time limits and provide for forfeiture of federal coal leases, including existing leases, in the event that specified levels of production are not achieved and maintained.

National Coal reaffirms its position stated in its filing of March 15, 1976, with the Department of Interior on the then-proposed diligent development and continuous operation provisions as applicable to existing leases. Rather than specifying specific amounts, diligent development and continuous operations for existing leases should include all good-faith activities necessary to make and keep coal available for actual production operations. The potential relevant aspects of good-faith diligent development and continuous operations of federal coal reserves require continual monitoring and evaluation of changing circumstances. Good-faith diligent development cannot be realistically circumscribed by a specific definition; the requirements should provide a flexible framework considering all good-faith developmental activities associated therewith. To designate a specific production requirement as diligent development and continuous operation in existing leases in effect alters the contract between the government and the lessee without the lessee's consent. Such an alteration after the lessee has incurred considerable expense is not only patently unfair to the lessee, but is a violation of the right of contract.

The proposed allowance for delays and extensions allowed in connection with diligent development of an existing lease is unnecessarily and unreasonably limited. Section 3500.0–5(f), after recognizing the necessity of granting a five-year extension for certain reasons, then proceeds to arbitrarily limit any extension period which may be granted by stating that in no event can the period of time to achieve the necessary production be extended beyond August 4, 1986, or the date on which the lease terms first become subject to readjustment, whichever is later.

With this limitation, the extension period would be virtually meaningless for the bulk of existing leases. In order to continue permitting reasonable extensions for existing leases, the last phrase of Section 3500.0–5(f)(2) should be deleted, which reads as follows: "* * * but in no event beyond August 4, 1986, or the date on which the lease terms first become subject to readjustment after August 4, 1976, whichever is later." In addition, Subsection 3500.0–5(f)(1) should also be altered in order that both Subsections will track properly by deleting the following: "* * * but not beyond August 4, 1976, or the date on which the lease terms first becomes subject to readjustment after August 4, 1976, whichever is later." These deletions will do not more than to continue the existing diligence regulations as they were finalized after hearings and comments.

The proposed continuous operation definition requires lessees to produce one percent of the reserves annually. However, the regulations require a one percent reserve production the first two years after diligent development is achieved before allowing the computation of an average annual amount based on a three-year period. This unlike later years does not allow for any flexibility during the

first two years of continuous operation to be made up during the third year. The first years of a mine are those when production is most variable as a work force is being trained and developed, and production is being built up to meet customers needs.

The operator needs realistic flexibility to meet the requirements of continuous operation during the first years. Therefore, the determination of compliance with continued operation should not be made until the end of the third year so that an annual average over the three years can be used to determine if the one percent requirement is met.

The proposed regulations specify that each individual lease will be considered a logical mining unit (LMU). This requirement is inconsistent with Section 5(d)(1) of the Leasing Amendments which provides that the "* * * Secretary may approve the consolidation of coal leases into a logical mining unit." Clearly, the intent of Congress was to create a LMU out of a consolidation of more than one lease. Providing that each lease is automatically a LMU would extend the requirement of extraction of all Federal lease reserves in a forty year period to each individual lease. This is clearly contrary to the language of the Leasing Amendments. The Leasing Amendments clearly states "* * * a coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease." The Secretary does not have discretion in this matter because the leasing Amendments is clear as to the terms of the lease. The 40 year extraction requirement is applicable by the statute only to LMU's.

From an operating as well as a social impact point of view, there is no reason why either a lease or an LMU should terminate at the end of an arbitrary 40 year period. The forty year requirement is irrelevant to the achievement of maximum recovery. For example, the average age of a British coal mine is 77 years with 74 coal mines being over 100 years old. From a socio-economic point of view, if there is a 40-year time frame applicable to every lease there could be a large influx of people into a community for approximately 30 years, followed by substantial migration when the mines close. If however, the lessee develops a mine based on market demand while at the same time meeting the requirement of continuous operations, the local communities can more effectively accommodate population growth and plan for a more stable work force. Furthermore, if the 40 year extraction requirement is made applicable to all leases, career opportunities might be hampered or foreclosed because of the forced termination of leases and the closing down of a mine. The imposition of an arbitrary development period in new areas when several mines are being developed simultaneously could devastate a local community by significant unemployment. Therefore, individual leases can only be governed by the continuous operation requirements.

Clearly, existing leases cannot be made part of LMU by blanket regulation. This is made explicitly clear by the provision that no existing lease can be included in a LMU, without the consent of all lessees involved. The regulation stating that each individual lease will be considered a LMU is obviously inconsistent with this provision of the statute.

All mining plans approved for an LMU must require that reserves of the entire unit be mined "within a period established by the Secretary which shall not be more than forty years." (Section 5(b)(2)) The proposed regulations provide that the 40 year period will begin with the approval of the mining plan. In order to achieve maximum flexibility and to maximize recovery, the 40 year period should begin at the time diligent development has been achieved and production initiated as required by the Mineral Leasing Act as amended, rather than at the time of the mining plan approval. This change is fully within the authority of the Leasing Amendments which left open the issue of when the period was to begin, and would eliminate from the 40 year period the time required for the construction and development during which coal is not being mined in commercial quantities.

The proposed amendment to Section 3522.2–1 seeks to impose the requirements of the Leasing Amendments on all leases which become liable to readjustment prior to August 4, 1976 but to which no readjustment was made prior to that date. This provision is not only blatently unfair to the operator who has in good faith been operating under the terms of his expired lease although no written readjustment has been signed by simple inaction by the Department of Interior.

The following provision of the Mineral Leasing Act controls:

"At the end of each 20-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods." The Secretary is obligated at the end of these periods to act

Additionally, the computation of LMU reserves should not include all federal and private reserves, but only the federal reserves plus those private reserves mined before all federal reserves are exhausted. Otherwise, the Leasing Amendments would unnecessarily and unwarrantedly extend regulations governing federal lands to private and state lands when no federal lands are involved in the continuation of the mining operation. Such an intrusion could cause confusion and conflict with state and local laws governing mining operations. It is NCA's position that the LMU reserves should only include those reserves on federal lands along with the non federal reserves which will be extracted prior to the extraction of all estimated federal reserves. (Section 3500.0–5)

National Coal Association respectfully submits the above comments and suggestions and requests that these comments be carefully considered and made a part of the official record.

A Study of Electric Utility Coal Requirements by Regions

(By the National Coal Association, November 1976)

A study of the National Electric Reliability Council's forecast of future coal requirements of electric utilities by reliability council regions clearly indicates that the rapid development forecast for Western coal will not be the result of increased demands for low-sulfur Western coal by Eastern utilities.

By 1985, 86 per cent of Western coal used by utilities will be burned in the West. In 1975, some 71 per cent of utility demand for Western coal was used in the West.

This analysis was made based on figures released last summer by the National Electric Reliability Council. NERC published utility fuel requirements by the nine regional reliability councils (see attached map).

Approximately half of all Western coal forecast by NERC for use in regions east of the Mississippi River—53.8 million tons in 1985—will be used in the Mid-American Interpool Network (MAIN) region. This region includes eastern Wisconsin, Illinois and eastern Missouri. (Although part of this region is in the West, it was considered as Eastern demand in this study.)

In 1985, MAIN is expected to use 78.7 million tons of coal, 23.7 million tons, or 30 per cent, of which will come from the West. In 1975, MAIN used 53.7 million tons of coal; 13.1 million tons, or 24.4 per cent came from the West.

The significant growth forecast in Western coal demand will be occurring because of a large shift to coal from gas and oil by Western utilities, according to the NERC figures. Coal use west of the Rockies will increase from 17.5 per cent of total electricity generated in 1975 to about 32 per cent in 1985.

In the region including most of Texas, the shift will be far more dramatic. Only about 10 per cent of generation came from coal in 1975 and that figure will increase to 51.5 per cent by 1985. Natural gas use in Texas will decline from 88 per cent of total generation in 1975 to about 15 per cent in 1985.

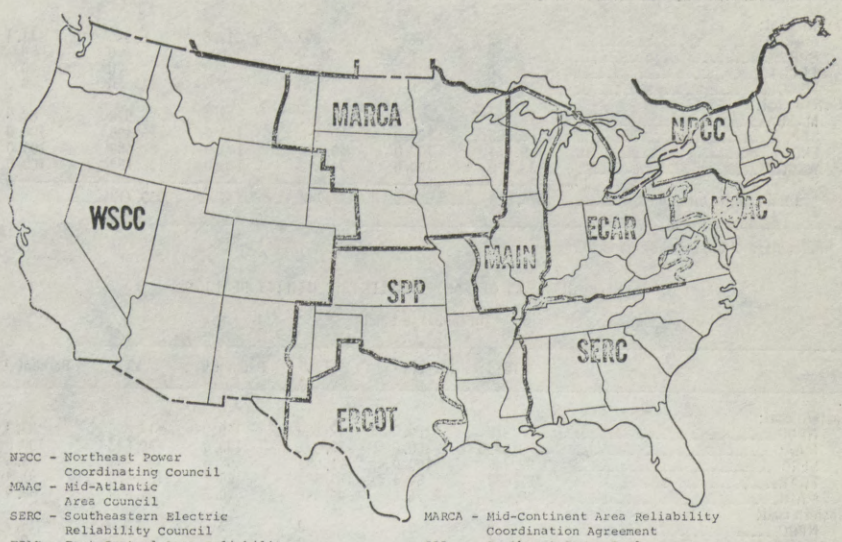
Coal use will also increase sharply in the Southwest Power Pool region of Louisiana, Arkansas, Oklahoma and Kansas. In 1975, coal supplied only about 10 per cent of the total electricity in the region. By 1985, 46 per cent of the total will come from coal. A large shift to coal will also occur in the region including North and South Dakota, Minnesota, Iowa, Nebraska and Western Wisconsin.

The only Eastern utility region besides MAIN that is forecast to use Western coal in any significant quantity is the East Central Area (ECAR) region of NERC. In 1975, utilities in the region including Michigan, Indiana, Ohio, West Virginia and Kentucky used 14.5 million tons of Western coal or about 10.6 per cent of their total coal demand. By 1985, that use will decline to 8.6 per cent of the total coal used in that region.

Coal going to other areas of the country is insignificant and will not rise to more than a small percentage of demand in those regions and amount to no more than three per cent of total Western coal burned.

This analysis of utility fuel consumption forecasts reported by NERC does not attempt to predict changes in coal demand that might occur because of changes in the air quality standards of individual states or federal legislation.

REGIONAL RELIABILITY COUNCILS OF THE NATIONAL ELECTRIC RELIABILITY COUNCIL



NPCC - Northeast Power Coordinating Council
MAAC - Mid-Atlantic Area Council
SERC - Southeastern Electric Reliability Council
ECAR - East Central Area Reliability Coordination Agreement
MAIN - Mid-America Interpool Network
MARCA - Mid-Continent Area Reliability Coordination Agreement
SPP - Southwest Power Pool
ERCOT - Electric Reliability Council of Texas
WSCC - Western Systems Coordinating Council

WESTERN COAL REQUIREMENTS BY ELECTRIC UTILITY REGIONS

[In thousand tons]

Region	1975	Percent[1]	1980	Percent[1]	1985	Percent[1]
NPCC	0	0	0	0	2,900	0.8
MAAC	0	0	0	0	0	0
SERC	0	0	1,778	.8	9,149	2.4
ECAR	14,500	15.2	17,000	7.3	18,000	4.7
MAIN	13,105	13.7	21,010	9.0	23,733	6.1
Total, East	27,605	28.9	39,788	17.1	53,782	13.9
MARCA	16,209	17.0	41,191	17.8	55,978	14.5
SPP	8,708	9.1	39,255	17.0	85,495	22.1
ERCOT	9,044	9.5	40,032	17.3	82,469	21.3
WSCC	33,979	35.6	71,372	30.8	108,782	28.1
Total, West	67,940	71.1	191,850	82.9	332,724	86.1
Total demand western coal	95,545	100.0	231,638	100.0	386,506	100.0

[1] Percentage of total demand for western coal by year.

COAL REQUIREMENTS OF WESTERN ELECTRIC UTILITY REGIONS

[In thousand tons]

	1975	Percent [1]	1980	Percent [1]	1985	Percent [1]
Eastern coal:						
MARCA	5,683	26	5,892	12.5	6,989	11.1
SPP	0	0	0	0	0	0
ERCOT	0	0	0	0	0	0
WSCC	0	0	0	0	0	0
Western coal:						
MARCA	16,209	74.0	41,191	87.5	55,978	88.9
SPP	8,708	100.0	39,255	100.0	85,495	100.0
ERCOT	9,044	100.0	40,032	100.0	82,469	100.0
WSCC	33,979	100.0	71,372	100.0	108,782	100.0
Total coal requirements, West	73,623		197,742		339,713	

[1] Percentage of total coal demand of region.

COAL REQUIREMENTS OF EASTERN ELECTRIC UTILITY REGIONS

[In thousand tons]

	1975	Percent [1]	1980	Percent [1]	1985	Percent [1]
Eastern coal:						
NPCC	8,820	100.0	12,960	100.0	14,460	83.3
MAAC	33,045	100.0	39,271	100.0	40,643	100.0
SERC	97,745	100.0	121,083	98.5	130,899	93.5
ECAR	122,634	89.4	163,523	90.6	192,224	91.4
MAIN	40,621	75.6	49,486	70.2	54,959	69.9
Western coal:						
NPCC	0	0	0	0	2,900	16.7
MAAC	0	0	0	0	0	0
SERC	0	0	1,778	1.5	9,149	6.5
ECAR	14,500	10.6	17,000	9.4	18,000	8.6
MAIN	13,105	24.4	21,010	29.8	23,733	30.1
Total coal requirements, East	330,470		410,811		568,967	

[1] Percentage of total coal demand of region.

Mr. BAGGE. We are still developing and getting responses from our principals on EMARS. This has not been fully filed and fully articulated yet and the testing procedures on exploration of licenses.

Our difficulties with the Federal Coal Leasing Amendments Act, Public Law 94–377, are exacerbated because it has codified provisions which may turn out to be unworkable or impossible to administer and, as you know, a statute once enacted does not lend itself to easy alteration or correction.

I would like to amend that because of your attitude here this morning. Let me add, however, although we are far from pleased with Interior's coal leasing program, at least the Department of the Interior under Thomas Kleppe, realizing the need for western coal development, has gotten up and taken action to devise a program to get Federal coal leasing moving again.

It is quite a relief from the period of inaction and delay that previously existed.

More than once in the consideration of this bill it was noted that out of the 474 coal leases, only 54 are presently producing coal. We heard that time and time again. The question was repeatedly asked "What is the need for additional leases with 16 billion tons of Federal coal under lease?"

NATIONAL ELECTRIC RELIABILITY COUNCIL ESTIMATED COAL REQUIREMENTS [1]

[Contiguous United States]

[In thousand tons]

	NPCC	MAAC	SERC	ECAR	MAIN	MARCA	SPP	ERCOT	WSCC	NERC
Total coal—steam:										
1975 [2]	8,820	33,045	97,745	137,134	53,726	21,892	8,708	9,044	33,979	404,093
1976	8,400	35,616	107,096	139,587	59,412	29,775	10,796	11,210	45,367	447,259
1977	8,900	36,617	108,210	150,719	60,818	32,651	16,061	16,775	51,218	481,969
1978	12,860	37,745	115,388	159,171	65,636	37,654	22,438	27,140	57,504	535,536
1979	12,460	38,637	118,754	166,864	68,187	44,361	29,789	34,363	62,491	575,906
1980	12,960	39,271	122,861	180,523	70,496	47,083	39,255	40,032	71,372	623,853
1981	13,060	39,457	128,531	187,362	71,176	51,417	47,299	47,780	79,884	665,966
1982	13,960	41,201	130,462	192,858	72,035	57,673	54,148	55,292	87,324	704,953
1983	15,360	41,081	130,414	194,914	71,631	60,392	63,740	65,039	95,244	737,815
1984	17,360	41,054	133,034	206,205	72,195	63,923	70,777	72,553	102,968	780,069
1985	17,360	40,643	140,048	210,224	78,692	62,967	85,495	82,469	108,782	826,680
Eastern coal—steam:										
1975 [2]	8,820	33,045	97,745	122,634	40,621	5,683	0	0	0	308,548
1976	8,400	35,616	107,096	124,587	43,213	5,924	0	0	0	324,836
1977	8,900	36,617	108,210	135,719	44,165	5,131	0	0	0	338,742
1978	12,860	37,745	114,925	144,171	46,864	6,292	0	0	0	362,857
1979	12,460	38,637	116,864	146,864	48,363	5,948	0	0	0	369,136
1980	12,960	39,271	121,083	163,523	49,486	5,892	0	0	0	392,215
1981	13,060	39,457	126,292	170,362	50,198	6,046	0	0	0	405,415
1982	13,960	41,201	127,371	174,858	52,210	7,092	0	0	0	416,692
1983	14,860	41,081	124,610	176,914	51,036	7,140	0	0	0	415,641
1984	14,360	41,054	125,369	188,205	51,045	7,419	0	0	0	427,452
1985	14,460	40,643	130,899	192,224	54,959	6,989	0	0	0	440,174
Western coal—steam:										
1975 [2]	0	0	0	14,500	13,105	16,209	8,708	9,044	33,979	95,545
1976	0	0	0	15,000	16,199	23,851	10,796	11,210	45,367	122,423
1977	0	0	0	15,000	16,653	27,520	16,061	16,775	51,218	143,227
1978	0	0	463	15,000	18,772	31,362	22,438	27,140	57,504	172,679
1979	0	0	1,890	20,000	19,824	38,413	29,789	34,363	62,491	206,770
1980	0	0	1,778	17,000	21,010	41,191	39,255	40,032	71,372	231,638
1981	0	0	2,239	17,000	20,978	45,371	47,299	47,780	79,884	260,551
1982	0	0	3,091	18,000	19,825	50,581	54,148	55,292	87,324	288,261
1983	500	0	5,804	18,000	20,595	53,252	63,740	65,039	95,244	322,174
1984	3,000	0	7,665	18,000	21,150	56,504	70,777	72,553	102,968	352,617
1985	2,900	0	9,149	18,000	23,733	55,978	85,495	82,469	108,782	386,506

[1] Data from the National Electric Reliability Council report on "Fossil and Nuclear Fuel for Electric Utility Generation—Requirements and Constraints 1976–85," June 1976. Coal data corrected for ERCOT and SPP regions per NERC notification.

[2] Actual.

That was asked constanly from all sources, the media, this committee, and concerns from a concerned public. It is a reasonable approach, reasonable question.

This type of nonlogic is invariably espoused by someone who has absolutely no idea what the interaction of coal mining and marketing, and the whole coal system, is all about. Such reasoning is oversimplified, erroneous, and has done a great disservice to the American public.

Some problems encountered in this oversimplified reasoning are as follows;

One, many of these Federal coal leases are in tracts of 640 acres or less. Reserves under such limited acreage cannot be developed without contiguous acreage, even if they are located in the middle of a large cornfield.

It would take a case-by-case evaluation to ascertain the status of all these leases and therefore it is impossible to determine with any degree of certainty to what extent they could be developed.

Two, the Federal moratorium imposed on coal leasing in 1971 has in many cases prevented the acquisition of additional leases needed to put together minable units. Without contiguous acreage these leases could not be brought into production.

Three, although its market was stagnant in the fities and sixties, the coal industry continued to prospect and acquire additional reserves in the belief that the country could not continue to ignore its greatest energy source.

One of the things that is not understood by so many people is that our only inventory is our coal reserves. You cannot talk to a utility company that is proposing to build a plant 8 years down the line that has to design—first of all, has to make the basic determination whether to go to nuclear or fossil.

Then if they determine not to go to nuclear, to go to fossil.

Senator METCALF. Are you talking about a utility?

Mr. BAGGE. I am talking about a utility, you have an 8- to 10-year leadtime, when the utility begins to think about a new increment of generation and they cannot make a determination intelligently 10 years before the fact unless they are looking at an existing coal reserve.

It is not that simple to have to look at the ash content, the sulfur content, the diffusion content, when they design the boilers. This is completely misunderstood, I submit, by the average man on the street.

They do not understand that the only thing that we have is our inventory of coal reserves to market our coal 10 years before the utility determines that it is going to add another increment of generation, design its boilers, and then we have to build the mine over a 30-year period.

We have to have a coal inventory. This, I submit, respectfully, is not understood by the public generally. It complicates our problem.

Additional reserves are needed to stay in business. This is not speculation. If we talk about reserves and their analytical study, when I was in Montana the last time, the coal producers there were telling me that the utility and the rest are talking to them about the deliveries commencing in 1987, 1988. That is the time frame.

They cannot talk to them intelligently unless they have coal reserves in the ground that can be analyzed and studied and where they can make an intelligent determination with respect to the economics of the plant, whether to go nuclear, the design of the boiler.

In short, no one sat on coal reserves prior to 1970 because he wanted to, but because there was no market for the coal, especially western coal which was too distant from the markets of that period.

Four, the reasoning fails to take into consideration mining units of numerous leases in which only one lease at present is producing but the entire amount is committed under contract.

The last time I appeared before you, if you recall, we had the Utah situation where the Council on Economic Priorities had taken Peabody coal as an illustration and yet there are 16 leases, and they are only developing 1.

Ed Phelps and I tried to show you that the 16 leases all comprise one logical mining unit that was dedicated to Utah Power & Light and the very nature of our mining and how we did begin on one lease and that entire reserve of 16 leases are committed for 30 years to Utah Power & Light.

That was the Bear Creek Mine, as I recall it. This is the kind of misunderstanding that underlies a lot of the rhetoric that takes place in this area.

This act was passed at the time when, with the exception of the testing permit regulations, all of Interior's leasing regulations had been finalized. We at least know what the ground rules are. At least there is hope now.

They have their act together that we can begin leasing rationally, orderly. That was prior to the enactment of this bill. Thus, Interior was required to rewrite and redraft its regulations to comply with the Leasing Amendments Act.

None of Interior's rewritten regulations has been issued in final form. The one we have submitted for the record is the one response which relates to the diligent development which we are submitting for the record.

In fact the time for public comment is still open for all but the diligent development and continuous operations regulations which terminated this past Monday, November 29. As a result, the coal industry has not completed the evaluation of the changes proposed by Interior and therefore, I am constrained from commenting on all the technical details of the additional increments of these proposals.

We are still talking to our principals trying to make sense out of the regs and be helpful in making this a workable procedure.

I therefore think I should address myself to the deficiencies with the legislation as it was enacted and in my comments on the legislation. I shall address Interior's implementation progress. I shall not attempt to cover exhaustively each problem area.

This is a very complicated area that has been further exacerbated by S. 391 and to make no pretense of knowing all the nuances involved.

The House passed its version of the Federal Coal Amendments Act, H.R. 6721, on January 21, 1976, which was substantially different from the Senate bill, passed in December 1974.

Senator METCALF. May we correct those dates, that was August 1976.

Mr. BAGGE. That is absolutely correct. I guess we would have it all behind us if it was December 1974. Without going to conference and ironing out the differences between the two versions, the Senate acquiesed and accepted the House bill in toto.

This bill will have a marked effect on the development of our western coal resources. The effect of inordinate delays in leasing additional Federal coal lands can preclude the development of existing Federal and non-Federal leases by preventing the creation of an efficient minable unit.

Needless to say, substantial delays in western coal development will endanger the task of significantly reducing this Nation's dependence on foreign energy sources. Let me now hit some of the high points.

Specifically, some of the problem areas we have with this bill and Interior's regulations are as follows:

One, the Federal coal exploration program created under section 8 is both costly and unnecessary. The terminology of section 8 is ambiguous and some of the possible, although we do not believe correct, interpretations of this section could delay Federal coal development indefinitely.

This is how we perceive it, Senator, indefinitely. Additionally, interpretations requiring costly core drilling of all Federal coal, east and west, before any leasing can take place, if accepted, could cost the taxpayer and consumer billions of dollars.

This ambiguity provides the impetus for litigation which in and of itself will be costly and create delays that would often run into years. In the proposed EMARS regulations, the Department of the Interior opted to closely follow the legislative history and interpreted this section to be a codification of the U.S. Geological Survey's drilling program.

One of the sponsors of the bill, Patsy Mink, stated on the House floor that this section—

> * * * essentially extends and codifies the ongoing evaluation program carried out by USGS by directing the Secretary of the Interior to evaluate the known recoverable coal on Federal lands.
>
> This program does not prevent the Secretary from issuing coal leases where he believes he has adequate information about the nature and extent of the coal. Nor does it require that all known coal be evaluated before any is leased.

The same Member stated:

> I wish to make it very clear on the record that at no time in the consideration of S. 391 has there been any intention by the Congress to prevent new lease sales by the Secretary until all Federal coal lands have been evaluated.

The simple fact is that this section is poorly drafted and ambiguous and will cause problems. This section could be interpreted by the courts to be onerous to the industry and extremely expensive to the taxpayer.

These problems could have been prevented by precise drafting and, as an attorney, I would feel a lot better about this provision if we were relying on specific language in the act rather than the legislative history.

No. 2, section 15 of the act requires the Secretary to notify the Attorney General before any lease is issued, renewed, or readjusted. The act is ambiguous as to how much information must be submitted and whether the Attorney General must do anything after he has been notified.

One of the sponsors of the bill stated on the House floor:

> * * * section 15 of S. 391 only requires the Secretary of Interior to notify the Attorney General of proposed leases, and submit accompanying information which will enable the Attorney General to review any possible antitrust implications of a proposed lease.
>
> Nothing in S. 391 requires the Attorney General to undertake a "detailed" antitrust review. Indeed, if the Attorney General takes no action on the information submitted, the Secretary of Interior is free to proceed with leasing after 30 days.
>
> Given the nature of the antitrust laws, and the previously mentioned acreage limitations and other antimonopolistic provisions of S. 391, which crops out in other sections of the bill, it becomes clear that most proposed leases will, on their face, not require review by the Attorney General.

We are unclear as to what this legislation may be.

Senator METCALF. Some of that material was clarified as far as this Senator is concerned in the letter in which Congresswoman Mink and I, as chairpersons of our joint committees urged the President of the United States and that, too, is part of the record.

Mr. BAGGE. We include that letter but you see, again you are giving us a chance to express our concerns. This is nevertheless one of our concerns and I must say that we are concerned about this section.

We are grateful for the letter, we are grateful for the expressions but again we are relying on legislative history.

The act specifies that a "reasonable number" of tracts be reserved for public bodies including Federal agencies, co-ops, and nonprofit corporations controlled by these, section 2(a)(1).

There is no reason for the special treatment given to these entities in the leasing of Federal lands. Excluding potential lessees could lower the prices the public receives in leasing coal.

We are at a loss as to why Federal agencies should be included in this provision unless it is to set the stage for the Government to enter the coal business and compete with the coal companies.

There is no other rationale. The Department of Interior has not indicated how a "reasonable number," what about TVA—those are public agencies and they certainly deviate. TVA is the largest single user of coal in the United States.

Senator METCALF. Certainly they should have an opportunity especially to participate.

Mr. BAGGE. If you are concerned with monopoly and largeness which is one of the concerns of the bill, I do not know why as a matter of national policy, TVA is the largest consumer of coal and should be granted the preference.

Senator METCALF. We are giving our preference also to the smallest REA co-op.

Mr. BAGGE. I understand that, sir.

Senator METCALF. I am just telling you why the Federal agencies were included. It was not to do anything except to include the present Federal agencies or Federal corporations that are consumers of coal.

Mr. BAGGE. I understand sir. This is one of our concerns. We are not very happy with the fact that TVA is going to be mining coal.

Senator METCALF. You are not really concerned that the Federal Government is going to compete with Peabody Coal Co. in the coal business.

Mr. BAGGE. TVA is doing a pretty good job of it right now.

Senator METCALF. Well, all right, they have done that so far, but are you really concerned that the Federal Government is going out there and start mining its own coal in Montana, Wyoming, and South Dakota? Are you really concerned?

Mr. BAGGE. Am I really, really concerned?

Senator METCALF. Yes?

Mr. BAGGE. If you put it that way, on a scale of 1 to 10, I would say, Senator, that it is about 5. I do not like to see the Government doing what the private sector can do better.

Senator METCALF. Right.

Mr. BAGGE. The act specifies that the reserves of a logical mining unit, must be mined within 40 years. Here I am really concerned. On a scale of 1 to 10, I guess this is No. 10 or maybe 1, whichever.

For a matter of national policy planning, this is a disaster. Unfortunately, this is a further attempt to force production regardless of

market demand. I know market demand is a dirty word to a lot of ideological people in the country who do not believe in the free market system.

Nevertheless, it seems to me this is arbitrary and one that is going to be to the disadvantage of the socioeconomic framework.

The logical mining unit, as I understand it, was devised to permit the combining of Federal leases and possibly non-Federal leases into one minable unit to permit the more efficient recovery of the coal.

However, the requirement to exhaust the reserves of an LMU within 40 years is neither economically sound nor beneficial from a social impact view. Indeed, it could cause a glut on the market and seriously jeopardize the economic viability of many coal companies as well as the entire coal market.

The 40 year requirement is irrelevant to the achievement of efficient recovery. Illustrative of this is the fact that the average age of a British coal mine is 77 years with 74 coal mines being over a hundred years old. This is in Europe and throughout the world.

From a socioeconomic point of view, if there is a 40-year timeframe applicable to every lease, there could be a large influx of people into a community for approximately 30 years followed by a substantial migration when the mine is closed.

HEW did a study about 2 or 3 months ago that showed that unlike the broom and bust syndrome in the west, in gas and oil—when I was at Gillette recently they had gone through their second oil boom, but unlike that HEW in that planning, and we are working with them in terms of housing, we are trying to work with them to handle this problem.

It shows that unlike oil and gas booms that in the coal situation, the—once you have a production level stable—we have an opportunity here to achieve a stability in community planning and the whole socioeconomic framework but we are going to be denied that if Congress arbitrary imposes a 40-year limitation in exhausting the resource.

If, however, the lessee develops a mine based on market demand, while at the same time meeting the requirement of continuous operation, without the 40-year cutoff, the local community can more effectively accommodate population growth and plan for a more stable work force, for the people involved in the extraction of the coal.

The imposition of an arbitrary development period in new areas where several mines are being developed simultaneously, this is happening today in towns where we are looking for them, they are coming onstream, coming on at the same time.

If we are going to weigh them out, in 40 years we are going to go through the same situation we have in the past. This is not good sound, national policy.

Section 2 of the act provides that the Secretary of the Interior may approve consolidation of leases into a LMU and that existing leases before being included in an LMU must be approved by all lessees.

Interior's diligent development and continuous operations regulations attempt to extend this 40-year requirement to all industry leases by specifying that each lease will be considered a logical mining unit.

This requirement is inconsistent with section 5 (d) of the act which provides that "* * *. The Secretary may approve the Consolidation of

Coal Leases, into a logical mining unit." Clearly, the Secretary does not have the authority to make all existing leases LMU's by blanket regulation.

Six, the act requires a minimum of a 12½ percent royalty on Federal coal leases. This will become the floor and not the ceiling. We know others have addressed themselves and you are aware of the problem.

This royalty is substantially higher than the 8 percent Interior has been charging and will thereby increase coal prices and energy costs to the consumers. This provision could prevent maximum economic recovery of coal by making some outlying reserves uneconomical to mine.

Mining equipment layouts and mining plans are based on initial cost projections and you cannot design equipment or mining plans in the hope that the royalty rate might be eventually reduced.

The act provides that a lease not producing in commercial quantities within 10 years should be terminated, section 7(a), and this provision ignores long leadtime necessary for both mine development and for construction of coal conversion facilities.

Effectively, Federal coal could be precluded from the use for liquefaction, gasification, and major powerplants.

This is how we see our new emerging as the mother fuel. Someday we are going to be the mother fuel for gasification and liquefaction. This is going to be frustrating.

Until this time, the term "commercial quantities" has been used as a term of art referring to the amount of coal in a prospect license so that a preference right lease may be issued.

The drafters of this legislation have once again added the problem of ambiguity by totally ignoring or being unaware of the fact that the term "commercial quantities" had already been defined for the purposes of coal leasing.

The arbitrary 25,000 acreage limitation of the size of a logical mining unit as imposed by section 2(d)(7) is neither economically or environmentally sound. Because coal exists in seams larger than 25,000 acres, this limitation will discourage more efficient recovery of coal by preventing a larger mining unit than would be more economically and environmentally practical.

The national acreage limitation of 100,00 acres and the limitation of 46,080 acres per State is unrealistic and has no relationship to economic recovery and the creation of efficient mining units, and has, as we submit, no rationale.

Nine, leases for surface mines of national forests must be submitted to the Governor of a State in which the national forest is located 60 days before the lease is issued, section 2(a)(2)(b).

If the Governor objects, there is a mandatory 6-month delay period. This delay period is totally unnecessary because it is the responsibility of the Department of the Interior and other Federal agencies to administer national forests and other Federal lands, it should be the Department of Agriculture instead of Interior with respect to the national forests.

Senator METCALF. Some of the national forests.

Mr. BAGGE. Some of the national forests.

Senator METCALF. There is a split jurisdiction.

Mr. BAGGE. I did not know there was a split in jurisdiction. I stand corrected. Ten, numerous overlapping public hearings, on a scale of 1 to 10, this is No. 10 also. We really have to talk about this one. This one, we think, is a procedural—I do not want to use the term monstrosity, but it could be.

Numerous overlapping public hearings are required which could adequately be handled by one or possibly two hearings. Hearings are required for the land-use plan, prior to the issuance of a lease, before consolidation of an LMU, and if the Secretary decides to issue, renew, or readjust a lease with antitrust problems.

The public hearings required before the issuance of a lease is unnecessary because the public will be adequately protected in the hearings required by the land use plan and environmental impact statements or analyses.

It will simply cause delays tying up bonus money that has been invested by the bidder. The public hearings on LMU consolidation is unncessary because the public is adequately protected at public hearings on the mining plan.

On top of this, public comment is called for prior to the determination of fair market value. In addition to all of the hearings, if separate hearings are necessitated in each case, the public hearing requirements are redundant, overlapping and unnecessary.

This would be a perfect example of needless regulatory delays. We think that with your open attitude, you take the hearings we have in this area very seriously because we think that this could be a real disaster in implementing an effective program.

These problem areas I have briefly covered are only some of the more obvious. While we are not opposed to reasonable coal leasing regulations, this bill and some major provisions of Interior's coal leasing regulations fail to take into consideration coal development in the real world.

We must say that the bill and some of the major provisions and some of the provisions of the "regs" fail to take into consideration coal development in the real world. In preparing for this hearing, in an effort to try to bring some of the objectivity into the dialog about western coal development, because that is the real problem that underlies some of the issues before the committee, before the Congress, that the contention that we in the coal industry are exploiting the American West or intend to do so in order to serve our traditional markets in the East, I submit is a myth.

I take advantage of this occasion to submit to you a study which we have just prepared of the electric utility coal requirements by regions and the thrust of this. Tony Anthony has done the study.

We have taken out our data—not our data but the hard data not for E. I. Edison Electric Institute, but from the National Electric reliability council which does the system planning; once the announcement is made that they are going to build a plant, they have to grind this into the computer region by region, each of the reliability councils.

That is put into a master computer. This is hard data, hard numbers based on their plan. This study, which I would like to supply for the record, demonstrates that myth which we hear time and time again is false.

The fact is that the study of the National Electric reliability concept of electric utilities by reliability council regions clearly indicates that the rapid development for cash for western coal in the next decade will not be the result of increased demands for low sulfur western coal by eastern utilities.

We have the conclusions based on their data which shows that the significant growth of western coal demand will be occurring because of the large shift to coal from oil and gas and we see that already now in the figures.

According to these figures, coal use will increase from 17.5 percent of total electricity generated in 1975 to 32 percent in 1985. The shift will be far more dramatic for the region including western Texas, only about 10 percent of the generation from coal in Texas in 1975.

That figure would increase over 50 percent, 51.5 percent by 1985. Natural gas use in Texas will decline from 88 percent of total generation to only 15 percent in 1985. It is this kind of thing happening in Texas, Oklahoma, and the Southwest, the major shift from our scarce resources of oil and natural gas and a major tremendous dramatic shift to coal and that is going to account for 86 percent of the total western coal production to be turned in the American West.

I submit respectfully that study, together to the study which was supplied to FEA just a month ago, and to you and the committees of Congress, which was our own industry's coal production, our capacity study, documented and also puts to rest the myth that continues to remain that the American coal industry is abandoning the East to go to the West because of more accessible coal reserves. That is simply not true.

The study documented the incremental expansion which would foresee a billion tons in 1985 with half of that incremental expansion coming from east of the Mississippi River and the other half from the west.

What we plead for here is that you reexamine the legislation based on the facts and not the myths of the coal industry's efforts to supply energy for America and not exploit the West for the benefit of the East.

We are committed to coal development nationally in the East, Midwest and the West. We do not think that the public misunderstanding of western coal development and the misconceptions that have given rise to a lot of the legislative proposals ought to govern national policy formulation as we in the coal industry try to meet the great future that we think is in store for us.

Thank you very much.

Senator METCALF. Thank you, Mr. Bagge. I must comment however that most of the arguments that you have propounded this morning we have heard before, especially with respect to S. 391. We heard them in the original hearings, you talked about the monstrosities and the myths.

I suggest that you raised a lot of hobgoblins, most of which have proven to be wrong. You questioned some interpretations, most of which have been interpreted differently than the horror story that you envisaged and many of the aeas you have described here you have described before. The only validity that your trepidations have is that

you continue to reiterate things that have been interpreted differently or have come about differently.

You are giving some validity and some credence to matters that were already settled in the way that you want them settled. The only reason that there is some doubt cast upon some of the interpretations is that you continue to reiterate the different interpretation that you put on this legislation.

It may well be that a few of the things that you predict here will take place. Again right after the passage of a surface mining bill, I will be delighted to sit down with you and your counsel and meet with you and work out some of these things that may need to be changed.

I say after the passage of the surface mining bill because that has the first priority as far as this committee is concerned.

We have answered, the Department has answered, the interested people have answered, the arguments that you propounded this morning. I think we put some analysis of the President's veto message and dealt with some of your misgivings in our record.

Mike, would you pull out of our analysis of the veto message, some of the statements that we made which will at least be part of the legislative history. They will help, they will create a series of interpretations that will allay some of the fears that you expressed today.

Mr. BAGGE. I would like to say that these are not just some of my fears. These are genuine, heartfelt concerns of my principals or I would not be here.

Senator METCALF. I know they are very heartfelt concerns and you always express them and you have always come in and told us about these fears. I respect you for coming today. Thank you very much.

Mr. BAGGE. Thank you.

[The analysis of President Ford's veto message follows:]

ANALYSIS OF PRESIDENT FORD'S VETO MESSAGE OF S. 391

(Prepared by Staff of Senate Committee on Interior and Insular Affairs)

On July 3, President Ford vetoed the Federal Coal Leasing Amendments Act (S. 391). A copy of his veto message is attached. This statement will set forth the background of this legislation and point out the errors and misunderstandings in the President's veto message.

BACKGROUND

There is general agreement that Federal coal leasing policy needs to be modernized. The Senate first passed a Federal coal leasing bill in 1974 by unanimous vote. In 1975, S. 391 was approved by a vote of 84–12. Earlier this year, the House of Representatives approved it by a vote of 344–51. The Senate accepted the House amendment by unanimous vote on June 21.

Enactment of S. 391 will: (1) Eliminate speculation with Federal coal leases; (2) enhance competition among leaseholders; (3) assure a fair return to the public; (4) provide for coordination with State and local officials, public participation, and environmental protection; (5) require thorough evaluation of Federal coal deposits to be offered for lease; and (6) encourage maximum economic recovery of the coal.

RATIONALE FOR VETO

The veto message makes it clear that the disagreement between the President and the Congress is solely over a few specific provisions of S. 391. The provisions which are mentioned in the veto message are discussed below. This discussion demonstrates that the stated reasons for the veto are based on errors, misunderstandings, and a desire to retain authority in the Executive Branch which is properly exercised by the Congress.

MINIMUM ROYALTY

The President says that minimum royalty of 12½ percent is "more than is necessary in all cases." The 12½ percent rate is commensurate with royalties and taxes on coal already on the books. The State of Montana, for example, recently enacted coal taxes above 20 to 30 percent, without significant reduction in coal production resulting.

The President neglected to note that the Secretary of the Interior would be given discretionary authority to set a lower rate for Federal coal produced by underground mining. Nor did he mention that Section 39 of the Mineral Leasing Act would continue to allow the Secretary to set a lower rate for the purpose of encouraging the greatest possible recovery of Federal coal. Thus, administrative flexibility would be assured.

DEFERRED BONUS PAYMENTS

The President says that requiring deferred bonus payments on 50 percent of all acreage leased is "unnecessarily stringent". He fails to point out that this is specifically designed to help smaller coal companies compete for leases by reducing the need for front end capital.

This amendment is favored by the National Coal Association. Without it, the field would become dominated by the major coal companies and by the multinational energy corporations with plenty of available money. A strong and competitive coal industry is unquestionably in the public interest.

The President objects to the requirement that coal be produced within 10 years after issuance of a lease. In fact, the current regulations of the Department of Interior contain such a provision. The Department's regulations are arguably more stringent in that they require production of 2½ percent of the 40-year coal reserves in a logical mining unit or lease within 10 years, with a possible 5-year extension. S. 391 required only production "in commercial quantities"—which could be considerably less—by the end of the tenth year.

The purpose is the same in both cases. It is to bring about diligent development of Federal coal leases. By the Department's own admission, a large proportion of idle leases have been held for speculation. Over time, the bill would force either the relinquishment of the lease or the yielding of coal and public revenues which is so long overdue.

OPERATING AND RECLAMATION PLANS REQUIRED

The President states that the bill would "require approval (emphasis added) of operating and reclamation plans within three years of the issuance of the lease." This is wrong. Section 6 of S. 391 requires that the lessees submit an operating and reclamation plan within 3 years. However, the Secretary's approval of the plan may take much longer, depending upon the adequacy of the original submission. It is therefore a reasonable assumption that ample time would be available for review and modification of the plan by the Department.

With respect to all the above provisions, the President says that "such terms may be appropriate in many lease transactions—or perhaps most of them * * *." Thus, it is difficult to understand how he concluded that they should not become law.

ANTITRUST REVIEW

The President objects to the provisions of S. 391 which require what he calls "detailed antitrust review of all leases, no matter how small." Once again, this is wrong. Section 15 of S. 391 directs the Secretary to provide notification and certain information to the Attorney General at least 30 days prior to issuing a lease. The Attorney General is not required to make a review. There is an identical requirement in the Naval Petroleum Reserves Production Act (H.R. 49) signed by the President in February.

One indication of the need for the antitrust review provision is the study—"Joint Bidding for Federal Onshore Oil and Gas Lands and Coal and Oil Shale Lands"—submitted to Congress by Secretary of the Interior Kleppe on June 29. The study, required by Section 105(e) of the Energy Policy and Conservation Act of 1975, recommended a ban on joint bidding among large coal producers based on a judgment "that the competition that can be expected in the bidding for western Federal coal lands is too fragile to allow the further dilution that unrestricted joint bidding could bring."

PUBLIC HEARINGS

The President states that S. 391 "requires four sets of public hearings where one or two would suffice * * *." Once again, this is wrong, S. 391 requires a public hearing prior to a lease sale. It also requires a public hearing on a land use plan, if requested by a person who may be adversely affected. In many instances, one hearing would meet both requirements. The other two hearing provisions in the bill are for cases where (1) an adversely affected person objects to the consolidation of leases into logical mining units, or (2) the Attorney General objects to issuance of a lease on grounds of possible antitrust violation. These would be relatively rare.

The President overlooked the fact that the Department's own regulations provide four opportunities for public hearing. Reportedly, this number was reached in response to western governors' concern that local apprehensions about the adverse impacts of Federal coal strip mining would receive inadequate attention from the Secretary. S. 391 would meet that need.

COAL LEASING IN NATIONAL FORESTS

S. 391 requires that, if the Secretary proposes to allow surface mining of Federal coal within a National Forest, that the governor of the state be notified. If the governor objects, the lease could not be issued for six months. The President expressed concern about this delay. This provision applies to only 6 percent of Federal recoverable coal, and even then only to surface mining of such coal. Furthermore, the Secretary could readily avoid any undue delay by timing his notification to a governor so that Departmental review of the proposed lease would run concurrently with the six months' hold period.

COAL EVALUATION PROGRAM

Finally, the President states that the coal evaluation program called for by the bill is "simply unnecessary" because the Secretary of Interior already has the authority to obtain data about Federal coal.

In the past, the Department has not had adequate data to determine the actual value of coal tracts which it puts up for lease sale and to estimate advance royalty payments. Recently, the Geological Survey has begun to correct this deficiency. The Department has stated that "expansion of this (coal drilling) program is necessary to supply the Government with additional data to facilitate the coal leasing program". In consequence, the Department's amended budget request for Fiscal 1977 calls for $7.6 million for stratigraphic drilling and other evaluations of Federal coal lands.

S. 391, essentially codifies this program by directly the Secretary "to evaluate * * * the known recoverable coal." The size and timing of this evaluation are left to the Secretary's discretion. The program would not preclude the Secretary from issuing coal leases where he believes he already has adequate information about the nature and extent of the coal, nor would it require that all known Fderal coal reserves be evaluated before any coal is leased.

CONCLUSION

The President agrees with the major policy thrusts of S. 391. His objections focus on relative minor provisions of the bill. It is difficult to see how his concerns—frequently based on errors and misunderstandings—warranted a veto of a bill which had been carefully developed over a long period of time and overwhelmingly supported in the House of Representatives and the Senate.

Senator METCALF. The next witness is Mr. John L. McCormick, the last witness. He is from the Environmental Policy Center. We are delighted to have you again before the committee. As with Mr. Bagge, I suppose this is a series of appearances that you will continue to make in connection with the development further of coal leasing and coal mining programs.

I have read your statement. I am pleased with it. I hope you will summarize it and we will have it incorporated in the record in its entirety.

STATEMENT OF JOHN L. McCORMICK, ENVIRONMENTAL POLICY CENTER

Mr. McCormick. Thank you. I know you share with us the feeling that this is the last act. I want to thank you for offering me this opportunity to come before you to give my views and those of the western coalition on the coal leasing legislation passed by the 94th Congress.

I have several issues of particular importance to my organization that I want to address and will include some opinions voiced by two western citizens' groups, the Colorado Open Space Council and the Northern Plains Resources Council, at the conclusion of my testimony.

Before I begin, however, I want to commend you, Mr. Chairman, on your leadership during the final days of the 94th Congress wherein you quickly took the House version of this bill so to the floor and persuaded the Senate to adopt it as well.

I realize that in doing so, you foreclosed the opportunity to also enact the strict strip mining reclamation provisions included in your version of the bill. But you acted at a time when the likelihood of getting either a coal leasing bill or a strip mining bill was diminishing by the day.

Hopefully, with your continuing leadership as chairman of this subcommittee, and as the spokesman for strip mining legislation in the Senate, we will prevail and President Carter will have a bill by midsummer which he can sign.

Senator Metcalf. I hope we will at least have a bill over to the House of Representatives by mid-December.

Mr. McCormick. The problem has been with the House of Representatives, it is true. The coal leasing bill which finally became law, was one which answered the concerns of those who called for reform of the Federal Government's coal leasing policies.

The more than 900,000 acres of public domain that fell into the hands of coal and energy companies and, in some cases, land speculators, will now become the errant account upon which the public can begin to demand payment.

It is true that a few leases have initiated production and all have been paying rental fees to the Federal Treasury, but that is insignificant when compared with the more than 16 billion tons of the public's resources which it has not had control over or the benefits from.

New and existing leases now have to begin production within 10 years of enactment of this act in order to qualify for additional lease holdings up to the limit of 46,080 acres in any one State and 100,000 acres in the United States.

All lease holdings must begin production within 10 years or the lease will terminate and the lease is for a term of 20 years and for so long as the coal is being produced in commercial quantities.

These are major revisions of the 1920 law and go directly to the heart of the problem. Hopefully, the Department of the Interior's regulations will heed the letter and intent of the statute by grandfathering in all leases where the 10-year production deadline is concerned.

The diligence development requirements are the key to assuring that the Nation will begin to see the public resources finding their way into

the energy market. These provisions must be protected by this committee, for they will surely be the object of strong attack if the coal industry has the opportunity to overhaul the work of the previous Congress.

The coal exploration program is another vital element in the effort to reform the leasing policy. Previously, the Secretary of the Interior had no real knowledge of the value of the coal beneath the land being leased.

Often the coal seams were 20 or 30 feet thick and the acreage may have exceeded 2,000 acres. Given the density of the coal, a holding of that size might have contained more than 1 billion tons of coal.

At a market value of $5 per ton, the total worth of the resource might have been more than $5 billion. The lessee has been paying less than $1 per acre, per year, for the rights to that tremendous wealth.

The coal exploration program was not intended as a billion-dollar subsidy program for drilling companies. I think the earlier misunderstandings of the total costs of this program have been replaced with commonsense and a new appreciation of the potential of such a program.

For the first time, the Secretary can be assured of getting the maximum revenues from the lease of public resources. In addition, there will be further assurance that the coal seam leased and mined, will not preclude the leasing and production of seams above and below the first seam produced.

While the language is in section 8(A) of the act and specifies information on known recoverable coal resources, the qualifier "known" was not intended to mean coal deposits, the quality and quantity of which is recorded.

It was intended to limit the coal exploration program to those areas where a coal deposit is known to exist and one where there is interest in being leased. To ask the Nation to underwrite a massive drilling program throughout the West would be absurd in light of the already leased 16 billion tons of coal and the 12 billion tons of under preference-right agreement.

We hardly have to find new coal to be leased. But we do have to know the value of the coal that will be leased henceforth. In order to acquire that information, the Federal Government must either acquire it from within the Department of the Interior or purchase it from industry.

The increased royalties will also increase the benefits the public enjoys from the transfer of ownership of it resources. It is not unreasonable to expect coal companies to pay a royalty of 12½ percent when the value of the coal is about $6 per ton.

That increase is hardly one that can be perceived in the electric utility consumers' monthly bill. Companies are paying royalties of more than 55 cents per ton on Indian lands and much higher on private lands.

We do not hear complaints from those electricity customers that the burden is too great.

The antitrust review of all leases will not put an undue hardship upon the Federal bureaucracy, either. Hopefully, the diligence development requirements and the time limits for commencing production will limit the new lease agreements in number and in size.

That will help to cull out the speculators. Nonetheless, a coal industry must be maintained as a competitive one and anti-trust review is one sure way to help assure that will be the case in the western coal industry. Public hearings required by the bill are essential and should be maintained.

It is my understanding that the Department of the Interior is in the process of writing regulations for this act. The diligence development requirements are being circulated for comment before they are finally promulgated.

That is an essential requirement and must have teeth in it if the act is to bring about the needed reform. I seriously doubt that the present Secretary and this administration have the intention of writing as strict a set of regulations as are necessary.

The fact that the President vetoed this bill for reasons which were poorly justified, is indication that he does not want to tighten down the leasing process in the first place. To have enacted such a good bill and have it weakened by weak or meaningless regulations is hard to justify.

It is my hope that this Congress and particularly those who worked so hard to write, adopt, and finally override the veto and pass this legislation will strongly urge the President to delay in issuing and promulgating the regulations pursuant to this act and defer that action and judgment to the new administration.

The few months of delay are nothing when compared to the more than 56 years of abuses that have been allowed by previous administrations and Congresses.

Finally, I want to raise several questions about the Ford administration's policy toward coal leasing and in general EMARS, in particular. EMARS was touted as the answer to all the concerns about choice of lease site and potential new mining operations.

Using computers and a long list of criteria, all of the environmental and social concerns are to be plugged into the decisionmaking process before the lease was transacted.

In addition, to EMARS, impact statements were to be provided then for comment and review before an area could be considered for leasing. Some saw it as a perfect scheme to head off any environmentalists objections and thus, speed up the leasing process. It has not worked out quite that way.

On June 1, 1976, the Department of the Interior called for lease tract nominations. There was supposed to be completed, and accepted, a regional environmental impact statement, particularly of the northwest corner of Colorado.

On June 2, just 1 day after nominations were called for, the final impact statement on that northwest corner of the State was released. It covered a study of some 2,500 acres of potential lease acreage or about one percent of the 270,000 acres which eventually were nominated for lease.

It was not enough that the EIS, which was supposed to be the basis for decisionmaking, came out on the second day of the call for nominations; it covered only 1 percent of that acreage.

This came about because the Department of the Interior did not follow its own guidelines. There is a complete mismatch between the pending and released environmental impact statement in potential lease area and the call for nomination in those areas.

The Western COALition contends that since the impact statements are a part of EMARS, the new program in effect is not being adhered to. Thus, EMARS, the answer to the public's strongest concern on abuses in the Federal leasing policy, cannot even get off on the right foot.

Also, the Department will publish the names of those who have nominated or disnominated tracts of land, but it will not identify the location of those tracks. Without this information it is difficult, if not impossible for the public to begin to plan for production in those areas, or even question the intelligence of leasing such land.

The COALition continues to demand such information but may have to resort to litigation in order to obtain it.

Hopefully, some of these problems will be solved or alleviated by the incoming administration. In any event, I urge the subcommittee to defend the provision in the Federal Coal Leasing Amendments Act of 1975 as it comes under attack in the next Congress and get on with the other important segment of the Congress coal policy, the strip mining bill.

Thank you, Mr. Chairman.

[The prepared statement of Mr. McCormick follows:]

STATEMENT OF JOHN L. MCCORMICK, ENVIRONMENTAL POLICY CENTER

Mr. Chairman, members of the Subcommittee, I want to thank you for offering me this oportunity to come before you to give my views and those of the Western COALition on the coal leasing legislation passed by the 94th Congress. I have several issues of particular importance to my organization that I want to address and will include some opinions voiced by two Western citizens groups, the Colorado Open Space Council and the Northern Resources Council, at the conclusion of my testimony.

Before I begin however, I want to commend you, Mr. Chairman, on your leadership during the final days of the 94th Congress wherein you quickly took the House version of this bill to the floor and persuaded the Senate to adopt it as well. I realize that in doing so, you foreclosed the opportunity to also enact the strict strip mining reclamation provisions included in your version of the bill. But, you acted at a time when the likelihood of getting either a coal leasing bill or a strip mining bill was diminishing by the day. Hopefuly, with your continuing leadership as Chairman of this Subcommittee, and as the spokesman for strip mining legislation in the Senate, we will prevail and President Carter will have a bill by mid-summer which he can sign.

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It is true that a few leases have initiated production and all have been paying rental fees to the Federal Treasury, but that is insignificant when compared with the more than 16 billion tons of the public's resources which it has not had control over or the benefits from. New and existing leases now have to begin production within 10 years of enactment of this Act in order to qualify for additional lease holdings up to the limit of 46,080 acres in any one state and 100,000 acres in the United States. All lease holdings must begin production within 10 years or the lease will terminate and the lease is for a term of 20 years and for so long as the coal is being produced in commercial quantities. These are major revisions of the 1920 law and go directly to the heart of the problem. Hopefully, the Department of the Interior's regulations will heed the letter and intent of the statute by grandfathering in all leases where the 10 year production deadline is concerned. The diligence development requirements are the key to assuring that the Nation will begin to see the public resources finding their way into the energy market. These provisions must be protected by this Committee, for they will surely be the

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It is my understanding that the Department of the Interior is in the process of writing regulations for this Act. The diligence development requirements are being circulated for comment before they are finally promulgated. That is an essential requirement and must have teeth in it if the Act is to bring about the needed reform. I seriously doubt that the present Secretary and this Administration have the intention of writing as strict a set of regulations as are necessary.

The fact that the President vetoed this bill for reasons which were poorly justified, is indication that he does not want to tighten down the leasing process in the first place. To have enacted such a good bill and have it weakened by weak or meaningless regulations is hard to justify. It is my hope that this Congress and particularly those who worked so hard to write, adopt and finally override the veto and pass this legislation will strongly urge the President to delay in issuing and promulgating the regulations pursuant to this Act and defer that action and judgment to the new Administration. The few months of delay are nothing when compared to the more than 56 years of abuses that have been allowed by previous administrations and Congresses.

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new mining operations. Using computers and a long list of criteria, all of the environmental and social concerns were to be plugged into the decision-making process before the lease was transacted. In addition to EMARS, impact statements were to be provided for comment and review before an area could be considered for leasing. Some saw it as a perfect scheme to head off any environmentalists objections and thus, speed up the leasing process. It hasn't worked out quite that way.

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The Western COALition contends that since the impact statements are a part of EMARS, the new program is not being adhered to. Thus, EMARS, the answer to the public's strongest concerns on abuses in the Federal leasing policy, cannot even get off on the right foot. Also, the Department will publish the names of those who have nominated or disnominated tracts of land, but it will not identify the location of those tracts. Without this information, it is difficult, if not impossible for the public to begin to plan for production in those areas, or even question the intelligence of leasing such land. The COALition continues to demand such information but may have to resort to litigation in order to obtain it.

Hopefully, some of these problems will be solved or alleviated by the incoming Administration. In any event, I urge the Subcommittee to defend the provision in the Federal Coal Leasing Amendments Act of 1975 as it comes under attack in the next Congress and get on with the other important segment of the Congress' coal policy, the strip mining bill.

Thank you, Mr. Chairman.

Senator METCALF. Thank you, Mr. McCormick. As I said, I read your statement. I am in agreement, however, I am not quite clear about page 6. Is it your complaint that the Department refuses to give the names of those who are bidding on lands that have been nominated or that they refuse to give the descriptions of the tracts that have been nominated?

Mr. MCCORMICK. In the nomination process of the 92 million acres, names have been published of those who have submitted tracts for nomination or disnomination. The Department has not published the location of those tracts so it is impossible for the public to participate in determining which tracts are most——

Mr. HARVEY. Maybe we are not communicating here. The Department has published maps showing the location of tracts that have been nominated and what they call disnominated, where people do not want coal leases.

Those are freely available. What they have not done, as I understand it, is to indicate what company nominated what tract. We do not know company X. There is an argument about whether that information should be revealed but there are maps available.

Mr. MCCORMICK. I stand corrected on this. I am a third party transferring an opinion.

Senator METCALF. I am sure we do know what tracts are to be released and have been nominated, by examination of the maps that have

been supplied. We do not know the names of those who made the nominations. I think that is what you are trying to find out in Montana right now.

You had a hearing in Billings recently.

Mr. McCormick. Right.

Mr. Harvey. Why do you consider that information significant?

Mr. McCormick. They consider that information significant. I am again transferring opinions.

Mr. Harvey. Do you know why they do?

Mr. McCormick. I can assume that knowing the nominee is to have somewhat of an indication of the potential end use of that coal, if the nominee is an electric utility or perhaps a gas company such as El Paso, Wesco, or Pan Handle Leasing, there is some clear indication of what the intended use of the tract is if that company were to bid on it and go into the lease.

Mr. Harvey. You mean you think you could define that somebody is going to locate a gasification plant, for example, there. Is that what people are trying to find out?

Mr. McCormick. I think that is the intent of knowing and matching the name of the nominee.

Mr. Harvey. My point being that if you know something is going to be nominated, you know—you assume the use of the tract is going to be for a coal mine?

Mr. McCormick. Yes; but I think their concern is with onsite conversion of the coal also.

Mr. Harvey. That would also depend on who wins the bidding.

Mr. McCormick. But it gives the citizens some advance warning perhaps that area is targeted as a primary area for gasification.

Mr. Harvey. Of course in Montana, this is what puzzles me about the concern of the citizens.

Senator Metcalf. Thank you very much for coming here this morning. We will look forward to continuing to seek your counsel and advice. We have appreciated your help. Thank you. This concludes the hearing. Maybe this will be the last hearing of the year of this committee.

It could well be that if reorganization takes place, the last hearing of the Senate Interior Committee. We will be in recess.

[Whereupon, at 12:22 p.m., the hearing adjourned.]

80-333 O—76——5

APPENDIX

Additional Statements and Communications Submitted for the Record

United States Senate
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

December 15, 1976

The Honorable Lee Metcalf
Chairman
Subcommittee on Minerals, Materials and Fuels
Senate Interior Committee
3106 Dirksen Office Building
Washington, D.C. 20510

Dear Chairman Metcalf:

Attached you will find a copy of a letter from Mr. Harry Pistole of the Carter Oil Company to the Bureau of Land Management concerning the proposed Diligent Development and Continued Operations regulations promulgated pursuant to the Federal Coal Leasing Amendment Act. If this is acceptable, I would like to have these comments included as part of the hearing record from our oversight hearing of December 2, 1976.

Thank you for your consideration.

Sincerely,

Clifford P. Hansen
U.S.S.

CPH:tjmf

Enclosure

THE CARTER OIL COMPANY
HOUSTON, TEXAS 77001

HARRY PISTOLE
PRESIDENT

POST OFFICE BOX 2180

November 24, 1976

Re: Proposed Diligent Development and Continued Operation Regulations

Mr. Curtis J. Berklund, Director
Bureau of Land Management
Department of the Interior
18th and C Streets, N.W.
Washington, D. C. 20240

Dear Mr. Berklund:

As previously stated to the Department of the Interior, The Carter Oil Company believes that any regulations or policies bearing on the leasing or development of Federal coal lands should have as a basic objective the promotion of maximum effective utilization of coal to aid this nation in achieving the objective of more energy self-sufficiency. Further, we believe it is in the best interest of the country, consumers, and coal purchasers to have large volumes of coal available for development by producers willing to actively seek markets for the coal. Finally, we believe the country is best served when the forces of coal demand and supply determine ultimate production rates for coal mines. In our opinion, the above referenced regulations do not adequately respond to these fundamental principles.

In our comments dated January 29, 1976, to the proposed Diligent Development and Continuous Operations regulations as published in 40 Federal Register, No. 251 (Wednesday, December 31, 1975), we noted the long lead time requirement for development of coal resources. This is because coal, unlike oil and gas, does not come into a built-in market. Many factors, such as quality and accessibility to market must be considered before committing the coal for boiler feed, or for conversion into coke, or for conversion into synthetic gas or liquid. Establishing effective utilization in a specific market for the coal is a prerequisite for its production. In addition, long lead times are necessary to identify quality and quantity of reserves, consummate utilization agreements and plans, and secure state and federal reviews and approvals of mine development plans.

Our specific comments on these proposed regulations differ to some degree from our previous comments as a result of passage of the Federal Coal Leasing Amendments Act of 1975 (Amendments Act) but are primarily directed to diligent development, continued operation,

and logical mining units. Briefly, we believe that (1) deeming production in commercial quantities to be achieved if one percent of the reserves are produced is a responsible approach recognizing that diligent development should not be defined in terms of production; (2) defining continued operation to mean development of one percent of the reserves each year is a reasonable approach, provided more flexibility in production rate is given the operator in the first two years of continued operation; and (3) defining each Federal coal lease as a logical mining unit is inappropriate and is not in agreement with the intent of the Amendments Act.

DILIGENT DEVELOPMENT AND COMMERCIAL QUANTITIES

The proposed regulations relate diligent development to commercial quantities and define both in terms of actual coal production. We do not believe the intent of either the Mineral Leasing Act of 1920 or the Amendments Act is to define development in terms of production.

The fact that the Amendments Act requires production in commercial quantities and also requires diligent development is a recognition that the two terms were intended to have different meanings. Development is not solely production but rather consists of all good faith activities associated with making the coal on the lease lands available for production. These activities may vary with the type and character of the coal, location, other mining activity in the area, environmental circumstances, the construction and equipment availability situation, reclamation technology, market conditions, user technology, and other related factors. For all existing leases, there must be sufficient flexibility in the definition to allow the lessee the opportunity to retain the lease upon a showing of good faith activities rather than reliance upon a rigid production standard which does not take into account the many variables present in the development of coal. As an example, the time period for diligent development should be expanded as a result of delays in obtaining local, state, and federal permits and approvals of bona fide development proposals or for problems associated with the inability of the coal consumer to utilize contracted amounts. Interior's proposed regulations do allow the Secretary to permit some delay if such a problem is encountered in development of an existing lease; but the basic problem of defining diligent development in terms of coal produced still remains.

Interior's allowance for delay in connection with diligent development of an existing lease is an illusion. After recognizing the reasonableness of granting either an amount of delay time equal to the period during which diligent development is significantly impaired or a five-year extension for the reasons stated, the regulations proceed to arbitrarily limit any delay period which may be granted by stating that in no event, can the period of time

to achieve the necessary production be extended beyond August 4, 1986, or the date on which the lease terms first become subject to readjustment, whichever is later. For the bulk of the existing leases, this means that Interior cannot grant the time extensions considered reasonable in the proposed regulations.

This problem can be resolved by eliminating the last sentence of Section 3500.0-5 (f)(2) which presently reads: "The period of time during which production in commercial quantities must be achieved may be extended as provided below, but in no event beyond August 4, 1986, or the date on which the lease terms first become subject to readjustment after August 4, 1976, whichever is later." Elimination of this sentence will give consistency to the regulations and allow existing leases reasonable delay in meeting diligent development requirements. To provide further consistency in the regulations, Interior should also eliminate the phrase "but not beyond August 4, 1986, or the date on which the lease terms first become subject to readjustment after August 4, 1976, whichever is later" in Subsection f(1).

Of course, new leases must produce coal within a ten-year period because of the commercial quantity requirements of the Amendments Act. As the same arguments for flexibility can be made for new leases, we strongly urge that Congress eliminate the rigid ten-year production requirement contained in that Act. However, recognizing that the Amendments Act does require new leases to produce coal in commercial quantities within a defined time frame, we believe the one percent production concept established by these proposed regulations is the most responsible way to define commercial quantity.

CONTINUED OPERATION

An integral part of diligent development is the fact that when the mine is open, continued operations will keep it producing. Historically, in lieu of continued operations, advance royalties could be paid. The Amendments Act limits the advance royalty payment option to the extent that it must be considered by an operator as a "fail-safe" provision to be used in the event major problems occur, preventing compliance with the requirements. As a result, the amount of coal production necessary to meet continued operations should be such that the mine remains in operation yet the lease is not risked when the normal producer/user problems, such as equipment failures, arise and coal cannot either be produced by the operator or used by the customer.

Also, the amount established should require coal production consistent with operator ability to compete for market demand. Whether low or high production requirements are imposed, the Federal

Government will receive basically the same royalty, as the total production of Federal coal from all leases is dependent on market demand rather than individual production requirements. A continued operation requirement of one percent a year, as proposed by Interior, will, however, allow more operators to compete for the total market for western coal. One percent production per year of reserves to be in continued operation is both realistic and reasonable to establish a base which will require consistent production from the lease and allow operators flexibility to respond to coal demand.

We do, however, believe the continued operation definition does place an unintended burden on the operator by requiring one percent reserve production the first two years before allowing the computation of an average annual amount based on a three-year period. This does not allow any slippage incurred during the first two years of continued operation to be made up during the third year. The first years of a mine are those when production is most variable as a work force is being developed and trained. During these first years, the operator needs maximum flexibility to meet the requirements of continued operation. Because of this, we recommend that the determination of compliance with continued operation not be made until the end of the third year so that an annual average over the three years can be used to determine if the one percent requirement is met.

Associated with this problem is the question of when does the requirement for continued operation begin. In any mine, there is a period of production buildup which normally occurs over several years. To give the operator flexibility to build the production rate in a reasonable manner, we believe the requirement for continued operation should begin in the year following the last year in which diligent development and/or production in commercial quantities can be met. Thus for a new lease, the continued operation requirement would begin in the eleventh year after lease issuance. For an existing lease, the requirement may begin at a later time if an extension of time for diligent development has been granted. In either case, the requirement would begin no sooner than the eleventh year.

LOGICAL MINING UNITS

As the proposed regulations define logical mining units, each Federal coal lease is established as an LMU with complete extraction of the LMU reserves within forty years from first approval of a mining plan covering the lease. We believe this definition is not consistent with the Congressional intent of the Amendments Act. Initially, Congress indicated the formation of an LMU should not be automatic but should be based on the desire of lessees to form

such a unit to meet diligent development and continued operation requirements on Federal leases. This is evidenced by the use of the permissive word "may" throughout the Amendments Act in connection with Interior's responsibilities in establishing LMUs. The fact that no existing lease can be included in an LMU, without the consent of all lessees involved, further evidences the Congressional intent that an LMU is not mandatory. Thus, it is urged that Interior define an LMU not as a mandatory requirement for all Federal leases but as a means by which lessees can meet development and production requirements for a lease through mining coal other than that included in the lease.

The second aspect of this problem is the requirement of extraction of all Federal lease reserves in a forty-year period because of inclusion in an LMU. While the Amendments Act does adopt such a maximum development period for LMU reserves, it must be recognized that this is a quid pro quo extracted by Congress for allowing production from non-Federal lands to maintain a Federal coal lease or for allowing development of more than one Federal lease from a single mine. In either case, the Federal Government may not receive royalties it otherwise would and thus some period of maximum development could be expected to assure that Federal royalties are not delayed too long.

It must be noted that the Congress did not legislate a forty-year term for coal leases when it had full opportunity to do so; rather, it stated "a coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease".

From an operating viewpoint, there is no reason why a lease should not be developed over a longer period of time if the operator determines that inclusion in an LMU is not necessary to meet development or production requirements. Illustrative of this is the fact that the average age of a British coal mine is 77 years with 74 coal mines being over 100 years old.

There are other significant reasons why lease termination should not be mandatory at the end of an arbitrary time frame. First, the practicality of any arbitrary period must be considered. Each potential mineable block has its own individual characteristics or conditions which must be considered in determining production rates or mine life. For example, the topography of the area, the geological conditions of the area to be mined, transportation factors, and the various social and economic considerations of the work force are all significant factors in this regard.

Second, the specific forty-year period must be considered in light of the potential end result. A prime example in this regard is Gillette, Wyoming. There have been significant amounts of coal

leases in the Eastern Powder River Coal Basin area. Gillette is the community in which the labor forces necessary to operate mines developing these leases will settle. If there is a forty-year time frame applicable to these leases and considering the time necessary to bring the mine into production, there will be a relatively large influx of people into Gillette for approximately 30 years, followed by mass migration from Gillette when the mines close. This "boom and bust" scenario has occurred before in Gillette as a result of the earlier oilfield activity. If, however, the operator develops a mine based on market demand while at the same time meeting the requirements of continued operation, the local communities can more effectively accommodate population growth and plan for a more stable work force.

Also, we feel it is desirable that career employment be offered, insofar as possible, to the labor force we employ. Presently, we are participating with Casper Community College in a one and one-half year training program designed to develop people capable of working in coal mining. We hope that those completing the course, many of whom are recent high school graduates, will be able to recognize life-long career opportunities in our mines in the Gillette area. However, if an overall forty-year development period is imposed, career opportunities may be foreclosed, particularly for those people entering the work force several years hence.

Further, it should be recognized that, in more mature mining areas, the natural overlap that has existed between the closing of old mines and opening of new mines has provided a relatively steady source of employment. However, the imposition of an arbitrary development period in new areas when several mines are being developed simultaneously, could create future local unemployment.

Finally, the forty-year limitation will make difficult the use of a Federal lease as a source of coal for a major coal synthetics plant. The nature of a synthetics plant is such that project lead time plus any delay in obtaining necessary approvals could mean a loss of the coal supply through lease termination well before the expected life of the plant is reached resulting in the loss of both capital and jobs associated with the plant.

Interior regulations implementing the LMU concept must provide for lessee initiation of action aimed at including a Federal coal lease in an LMU. This will reflect the Congressional intent that each Federal lease need not be an LMU and will also allow Interior to discontinue the concept that a lease should be mined out within forty years, unless that lease is included by the lessee in a LMU.

CONCLUSIONS

Diligent development is closely allied with the commercial quantity concept. Development, however, is not production; thus, the definition of this term should encompass those activities an operator must undertake to develop a coal deposit rather than be related to coal production in a defined amount. The cut-off provision, which would limit extensions of time for diligent development necessitated by reasonable delay, should be eliminated. Recognizing that the Amendments Act does require new leases to produce coal in commercial quantities within a defined time frame, we believe the one percent production concept is a responsible way to define commercial quantity.

Following development of the mine, continued operations will assure that coal production is obtained. The production rate defining this term should not exceed the presently established one percent of reserves each year. This rate will assure the continuance of a mining operation yet allow the operator flexibility to respond to fluctuating national coal demand. The requirement for continued operation should begin in the year following the last year in which the operator has the opportunity to meet development and/or production requirements. The determination of compliance with continued operations should not be made until the end of the third year so that an annual average over the three years can be used to determine if the one percent requirement is met.

Both diligent development and continued operation are related to logical mining units. Regulations implementing the LMU concept must reflect the Congressional intent to have the lessee initiate, insofar as possible, action aimed at including a Federal coal lease in an LMU rather than mandatorily defining each lease as such a unit. Also, an arbitrary time frame, at the end of which leases are terminated, should be discarded because of socio-economic considerations in favor of allowing operators to develop coal mines based on market demand while meeting the requirements of continued operation.

We appreciate the opportunity to submit these comments. If we can clarify our comments in any way, please contact us.

Very truly yours,

Harry Pistole

HP:pc

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December 13, 1976

The Honorable Lee Metcalf
Chairman
Subcommittee on Minerals, Materials and Fuels
Committee on Interior and Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The Subcommittee on Minerals, Materials and Fuels held hearings December 2, 1976, on implementation of the Federal Coal Leasing Amendments Act of 1975. The hearings primarily covered proposed rulemaking by the Department of the Interior issued during recent weeks which would implement various provisions of this statute.

The American Mining Congress has commented to the Department of the Interior on proposed rulemakings to (1) revise the Energy Minerals Activity Recommendation System, (2) define the terms "diligent development" and "continued operation" on coal mining leases, and (3) provide for issuance of exploration licenses for federally owned coal. Copies of our letters to the Department of the Interior are enclosed. We respectfully request that this material be incorporated in the December 2, 1976 hearing record.

Sincerely,

J. Allen Overton, Jr.
President

Enclosures

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December 13, 1976

The Director (210)
Bureau of Land Management
Department of the Interior
Washington, D. C. 20240

Gentlemen:

The American Mining Congress desires to comment on the proposed rule-making to change the Department's Energy Minerals Activity Recommendation System to conform to P.L. 94-377, as published in the Federal Register of October 28, 1976, Vol. 41, No. 209, page 47258 and November 2, 1976, Vol. 41, No. 212, page 48124.

Events have focused the attention of the country on coal as a reliable long-range source of energy which must be developed to its full potential. Since much of the undeveloped low sulfur coal lies in western deposits which are owned by the federal government, or which must be mined in connection with deposits owned by the federal government, the development of federally owned coal will play a key role in determining the nature of energy development which is critical for the nation. The American Mining Congress feels that the federal government should proceed as rapidly as possible to place in the hands of the mining industry those coal reserves that industry deems necessary to control in order to meet the future requirements for this resource as determined by the traditional supply and demand forces of the market place.

The Mining and Minerals Policy Act of 1970, 30 USC 21a, expresses the clear intention of Congress that private enterprise be encouraged in the "orderly and economic development of domestic mineral resources, reserves , . ." and directs the Secretary of the Interior to carry out this policy when exercising his authority under other statutes. This statute has not been abrogated by the Coal Leasing Amendments Act of 1975 and indeed should control the Secretary's administration of the new Act. The Minerals Policy Act clearly states that private enterprise, and not the government, is to develop and produce minerals and that there is great need for the encouragement of mineral development.

continued . . .

We are concerned that any attempt by the government to time its leasing program with an anticipated demand for coal, as analyzed by the government, is contrary to the Minerals Policy Act and also will have an inflationary result. It is currently, and has long been, the practice of the mining industry to hold as reserves mineral deposits which are not currently marketable in the expectation that as market conditions change or as mining techniques change that these deposits will become marketable. From the standpoint of the consumer if there are not uncommitted reserves available to come immediately into the market place as the demand for coal increases then the market price for coal will become artificially higher and will not reflect normal supply and demand factors which would have controlled the price had the mining industry held uncommitted reserves which could have been brought into the market as the demand increased. The result of such a policy is clearly inflationary. For these reasons there should be eliminated any implication that the government will attempt to restrict the issuance of leases to those from which the government thinks there is a foreseeable demand for production.

We have the following more detailed comments on the proposed regulations published October 28:

1. With respect to proposed section 3525.7 on "special leasing opportunities", since P.L. 94-377 requires that no coal be leased to anyone at less than fair market value, there must be a procedure to determine "fair market value" of tracts reserved for public bodies. This should be done by comparing the offers of "public bodies" with the offers of private companies on comparable tracts. A certain percentage of tracts should not be set aside for special leasing opportunities. Such leasing to public bodies should be on an ad hoc basis, and then only when a real need has been demonstrated by the plan of the public body submitted to the Secretary. Such a plan should show a definite immediate need and not merely be a generalization of anticipated need. If the coal is for a given plant it should not be leased until the construction of the plant is assured. The special leasing tracts should be separate and not intermingled with tracts being offered to private bidders or tracts already subject to existing leases or permits.

2. Section 3525.3(a)(2) equates the production of coal in commercial quantities to continuous operation as defined in 3500.0-5(g) which as we pointed out in our letter of November 29, 1976 with regard to the proposed regulations relative to diligent development and continuous operations is defective. Section 7(b) of P.L. 94-377 provides for force majeure and a minimum royalty which is not incorporated herein. The definition of continued operation in 3500.0-5(g) is defective in equating this term with a given level of production and also in omitting any reference to the force majeure exception set forth in the statute.

3. With respect to section 3525.4(a), Indian lands should not be subject to this leasing procedure as the leasing of Indian lands is provided for under other law. However, it should be made clear that these regulations also

apply to federal coal deposits underlying lands where the surface is non-federally owned.

4. With respect to section 3525.10(f) the information disclosures under this subsection should be limited to data obtained pursuant to an exploration license. Any data obtained otherwise and identified as privileged should be held confidential by the Secretary, and not disclosed without the consent of the licensee. The language of section 3520.1-2(f) of regulations published in the June 1, 1976 Federal Register (page 22053) should be incorporated in this subsection.

5. With respect to section 3525.12(c)(4), this subsection should also include the consideration of positive factors, such as, listing criteria for lands which are suitable for coal mining.

6. Under section 3525.12(g) publication of the notice of a lease sale should occur at least 60 to 90 days prior to the sale to permit adequate evaluation of the tract by potential bidders.

7. In section 3525.13(c) the regulations fail to adequately describe "intertract competition". Without such definition, we have serious concern over the procedures, implications, and practical effects of such a bidding procedure. We recommend that this section be deleted and be made subject to separate rulemaking until such time that a full explanation of its operative procedures and practical effects is delineated.

-- November 2 Regulations --

We have the following specific comments on the proposed amendments to 43 CFR that appeared in the Federal Register of November 2, 1976:

1. As to proposed section 3502.9-1(a), a contract and all necessary approvals or licenses, etc., should be required before a "public body" would be eligible for special leasing opportunities. Surely the special leasing opportunities were not intended to permit "public bodies" to speculate in coal leasing.

2. 3524.2-1(b)(2). This subsection is contrary to the intent of the statute and is an invitation for mischief by parties who might desire to stop the expansion of an existing operation. It should be deleted.

3. 3500.0-5(h). This subsection includes state agencies in the definition of "public bodies" entitled to special leasing treatment. Section 2 of P.L. 94-377 makes no mention of state agencies, and we question their inclusion.

The American Mining Congress appreciates the opportunity to present these comments.

Sincerely,

J. Allen Overton, Jr.
President

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November 29, 1976

copy

Mr. Curtis J. Berklund
Director
Bureau of Land Management
U. S. Department of the Interior
Washington, D. C. 20240

Dear Mr. Berklund:

The American Mining Congress desires to comment on the proposed regulations relating to diligent development and continued operation on coal mining leases published October 15, 1976 in 41 Federal Register at page 45571.

Since the regulations are designed to conform with the provisions of the Federal Coal Leasing Amendments Act of 1975 which became law on August 4, 1976, there are two broad questions which must be addressed in examining them:

(a) How may the new statute, and the regulations thereunder, be applied to leases issued prior to August 4, 1976?

(b) With respect to leases issued after August 4, 1976, are the proposed regulations a correct interpretation of the statute as amended by the August 4, 1976 Act?

We feel that the proposed regulations contain serious defects with respect to both of the above questions.

The preamble to the proposed regulations indicates that the new statutory requirements will be applicable to existing leases at the next readjustment of terms of such leases and states that the proposed regulations reflect that fact. However, an examination of the individual provisions in the regulations does not seem to bear out this statement in the preamble. On this question it is our opinion that leases issued under the old statute may not be modified by either the new Act of August 4, 1976 or by Interior Department regulations prior to the next scheduled readjustment of their terms in accordance with 30 USC 207

Continued...

as it existed prior to August 4, 1976. The rights of the lessees under existing leases are vested as of the issuance of the lease and are governed by the statutory system pursuant to which the lease was issued. Your attention is called to 30 USC 188 (a) stating that a lease may be terminated whenever the lessee fails to comply with "the general regulations promulgated under this chapter and in force at the date of the lease." A number of the proposed new regulations would appear to change existing leases substantially with respect to extremely important provisions. Moreover, in several instances where specific regulations refer to changing existing leases on their next readjustment date, the provisions then to be made applicable to such existing leases would appear to be more restrictive than those that would be applicable to a new lease issued at such time. We suggest that this is contrary to the intention of the statute.

We also feel that the proposed regulations as applied to new leases would in some instances be contrary to the intention of the statute. The most glaring example is the attempt to equate the concept of "diligent development" and "continued operation" with production from the lease. In our opinion the legislative history of the new Act clearly indicates that Congress did not intend production to be the sole test of diligent development and continued operation since it incorporated into the statute two new features -- the requirement for a plan of operation to be submitted within three years and the provision that leases not in production within 10 years after their issuance be terminated. If diligent development is to require a certain level of production prior to the expiration of 10 years, these new features become meaningless. House Report 94-681, accompanying H.R. 6721, which subsequently became the new Act, stated that the concept of diligent development and continued operation was to be left as it had been under the previous law and it recognized the then proposed Interior Department regulations which provided that other activities than production could qualify as diligent development.

Our comments on specific sections of the proposed regulations are as follows:

1. In 3500.0-5(d) the definition of a Logical Mining Unit states that reserves in an LMU must be capable of complete extraction within 40 years. This seems to be based on the new statutory provision that a mining plan for an LMU must require production of the reserves within 40 years, but the statute does not state that this is an element to be required in the formation of the LMU itself. It is suggested that at the time of the formation of an LMU the ultimate mining plan may not be known, yet the proposed regulation would seem to prohibit the creation of any LMU until a mining plan is proposed.

2. 3500.0-5(e) would permit the mining supervisor alone to determine the reserves in an LMU. The question of reserves is one upon which reasonable parties may differ, since it involves judgments as to amounts of coal in place, amounts recoverable by various methods of mining, etc. It is doubtful that the statute intends that this question be determined solely by the judgment of the Secretary or his designates. Rather it would seem that the question is one for objective determination or in lieu thereof determination by agreement between the lessee and the Secretary. On this same subject the proposed regulation in 3525.2-6(c) would seem to indicate that in order to decrease LMU reserves the lessee will have to surrender a portion of the reserves. It is suggested that changes in mining conditions, changes in the law relating to mining and reclamation, changes in geological knowledge and other such matters may lead to a recomputation of reserves without the necessity for a surrender.

3. The definition of diligent development in 3500.0-5(f) is confusing and seems to conflict with the statement in the preamble concerning the treatment of existing leases. The proposed regulation indicates that existing leases must be in production by June 1, 1986. This is contrary to the intent of Congress as revealed in the legislative history of the new Act. As mentioned above, existing leases should be interpreted in accordance with the statutory scheme as it existed prior to August 4, 1976 and it is suggested that the old statutory scheme did not require production in order to hold a lease. Moreover, the legislative history of the new Act indicates the intent of Congress that "diligent development and continued operation" need not require production. House Report 94-681 accompanying H.R. 6721, which became the new Act, incorporates the Department's regulations published December 11, 1974 which did not equate these terms with production. The report indicates that production is only important in connection with the lease term of (then) 15 years and so long thereafter as there is production in commercial quantities.

In any event the concepts of the new Act can only be applied to an existing lease from and after the readjustment of its terms,and an existing lease should have 10 years after the date of readjustment of terms within which to commence production, just as would a new lease issued on such date. The proposed regulation would apply a much more stringent test of diligent development to existing coal leases than to new coal leases issued under the August 4, 1976 amendment, a concept which is completely contrary to the history of the Act and its amendment.

In section (2)(i) of this proposed definition, an extension of the period for attaining diligent development due to force majeure is completely discretionary with the Secretary. This is contrary to the provisions of the statute both as it

existed prior to August 4, 1976 and as it exists now, for the statutory language qualifies diligent development and continued operation by the language "except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee." This is clearly an objective standard and not discretionary with the Secretary.

4. The definition of continued operation in 3500.0-5(g) is defective in equating this term with a given level of production and also in omitting any reference to the force majeure exception set forth in the statute.

5. In 3503.3-2(b)(1) advance royalties on existing leases are to be tied to a schedule based on June 1, 1976. What is the rationale for this date? Again, this would seem to impose a heavier burden on existing leases than on a new lease. This same provision is also set forth in 3522.2-1(b), which additionally sets forth the new statutory provision that advance royalties paid in the first 20 years cannot be credited against production royalties after the 20th year. The application of this limitation to an existing lease with respect to any advance royalties paid prior to the adjustment of its terms would also seem to be illegal.

The last sentence of 3522.2-1(b) states that any existing lease subject to readjustment before August 4, 1976, but not adjusted as of such date, will be adjusted to conform with the requirements of the new Act. It is suggested that a lease issued under the old statutory scheme is entitled to an adjustment of its terms within a reasonable time after the date on which it becomes subject to readjustment, and any administrative delay to encompass the provisions of the new statute is illegal. Any such lease is entitled to a renewal on the provisions being used by the Secretary prior to the passage of the new Act.

6. The provisions of the proposed 3520.2-1(a)(3) on duration of leases are confusing and inconsistent. It states that "commercial quantities" of production means the quantities sufficient to meet the definition of "continued operation" and then in the next sentence it states that if "diligent development" has not been achieved by the end of the 10th year the lease will automatically terminate. It is suggested that these two tests are not the same and are inconsistent due to the definitions of "continued operation" and "diligent development" incorporated in the regulations.

The provision that the lease will automatically terminate is inconsistent with the provision of 30 USC 188 which provides for court proceedings to cancel the lease. This provision of 188 was not changed by the new amendment of the statute and it is suggested that the new statutory language which says "any lease which is not producing in commercial quantities at the end of 10 years shall be

terminated" does not abrogate the old procedure for lease forfeiture. The question of whether or not a lease is producing in commercial quantities is left for judicial determination under 30 USC 188.

7. The proposed Section 3520.2-5 seems to limit the force majeure language of the statute to the "continued operation" condition and not to apply it to the "diligent development" condition. This is contrary to the statute and is also inconsistent with the definitions of diligent development and continued operation as proposed in these regulations. The statute makes it clear that force majeure is applicable to both conditions.

8. 3520.2-6 states that existing leases are to be considered by themselves as LMU's. This is contrary to the new Act which in Section 5 states that existing leases can only be included in an LMU with the consent of the lessee. Likewise the proposed regulation states that the mining supervisor may direct the formation of an LMU. For the same reason this can have no application to an existing lease.

9. On the basis mentioned above the proposed provisions of 3523.2-1 (b)(1) providing for automatic termination of the lease for failure to meet diligent development requirements is contrary to 30 USC 188.

We appreciate the opportunity to make these comments.

Sincerely,

J. Allen Overton, Jr.

J. Allen Overton, Jr.
President

AMERICAN MINING CONGRESS

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December 13, 1976

Director (210)
Bureau of Land Management
U. S. Department of the Interior
Washington, D. C. 20240

Dear Sir:

The American Mining Congress desires to comment on proposed rule-making providing for issuance of exploration licenses for federally-owned coal that appeared in the Federal Register of November 5, 1976, Vol. 41, No. 215, p. 48754, as follows:

1. Section 3507.0-5(g) -- The definition of "exploration for commercial purposes" in this section should exclude any activities on lands subject to outstanding prospecting permits or activities on lands covered by preference right lease applications undertaken by an applicant to provide information required for support of the application.

2. Section 3507.0-5(k) -- This definition is confusing and should be rewritten to make it clear that drilling and sampling are permitted.

3. Section 3507.1(b) -- We suggest the addition of the following language: "...nor on any land where there is an outstanding prospecting permit, or a preference right lease application pending."

4. Sections 3507.2-2 and 3 -- These sections relating to cultural resources and endangered species should be deleted since the statutes involved would apply to the licensee's operations under any license issued regardless of any mention of them in the regulations. The regulation proposed for cultural resources would appear to go beyond the authority of the Historic Preservation Act in extending its application to sites not included in the National Register, but only nominated for inclusion. We refer you to South Hill Neighborhood Association v. Romney, 421 F2d 454. In addition, Executive Order 11593 seems to have expired by its own terms. With respect to endangered species, it would seem that licenses could and should be issued with protective conditions included, rather than prohibiting issuance if the authorized officer is concerned that such species may be threatened.

Continued...

5. Section 3507.3-1(d) -- This regulation would require the permittee to permit anyone to participate in his exploration program on a pro rata cost-sharing basis. Section 4 of the Coal Leasing Amendments Act of 1975, which authorizes the license program which these proposed regulations purport to establish, clearly provides that data obtained by a licensee shall be kept confidential -- even by the Secretary. Section 3507.3-1(d) of the proposed regulations is violative of this intent and should be deleted or substantially modified. Since licenses will not be exclusive and any party may obtain a license over an area already subject to another license, ample opportunity for access by interested parties to any given area is assured. If not deleted entirely, this regulation could be revised to provide that the licensee can assign an interest in his license pursuant to agreement between the licensee and another party or parties, thus affording the licensee the opportunity to protect the confidentiality of his information by the terms of such agreement. Under the proposed regulation there is no way in which the licensee can prevent any other party willing to share costs from sharing in information obtained, or from further distributing such information to other parties.

6. Section 3507.3-2(d) -- The licensee should be entitled to a hearing to be held upon request of the licensee prior to any revocation of the license.

7. Section 3507.3-2(f) -- If modifications in a license are to be undertaken, they should only be with the licensee's consent.

8. Section 3507.3-6 -- This should be limited to groundwater data developed incidental to the exploration program.

9. Section 3507.4 -- The five-year limit on confidentiality is contrary to section 4(b)(3) of P.L. 94-377, has no basis in the legislative history and is arbitrary. The statute specifically states that the "Secretary shall maintain the confidentiality of all data so obtained...."

We appreciate the opportunity to comment on these proposed regulations.

Sincerely,

J. Allen Overton, Jr.
President

GILBERT LeKANDER

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December 6, 1976

Honorable Lee Metcalf
United States Senate
Washington, DC 20510

Dear Senator Metcalf:

During the course of your oversight hearing on coal leasing, Mr. Trucott mentioned that a sale under the short-term criteria is planned in the near future in Montana. Western Energy in the interested coal operator.

Because this will likely be the first such procedure since the enactment of S, 391. I felt that I should give you background on the case.

The tract involved is a portion of Section 32 in Mining Area A at Colstrip. Western Energy originally made application to lease this tract as part of a larger tract some years ago. Action on that application was suspended, and we now ask for the lease under the short-term criteria because the federal coal is required immediately for an ongoing operation and will be bypassed, the resource lost, if we are not able to get it. The attached diagram illustrates where we are mining now in Section 4. The overburden in Section 4 is relatively thin. In Section 32 it becomes heavier, up to almost 200 feet, at the northern end. Economics dictate that the mining operation should average out the overburdens. If mining proceeds too far south in Sections 4 and 5, it will be impractical to turn north into Section 32 or to return and extract that coal later on.

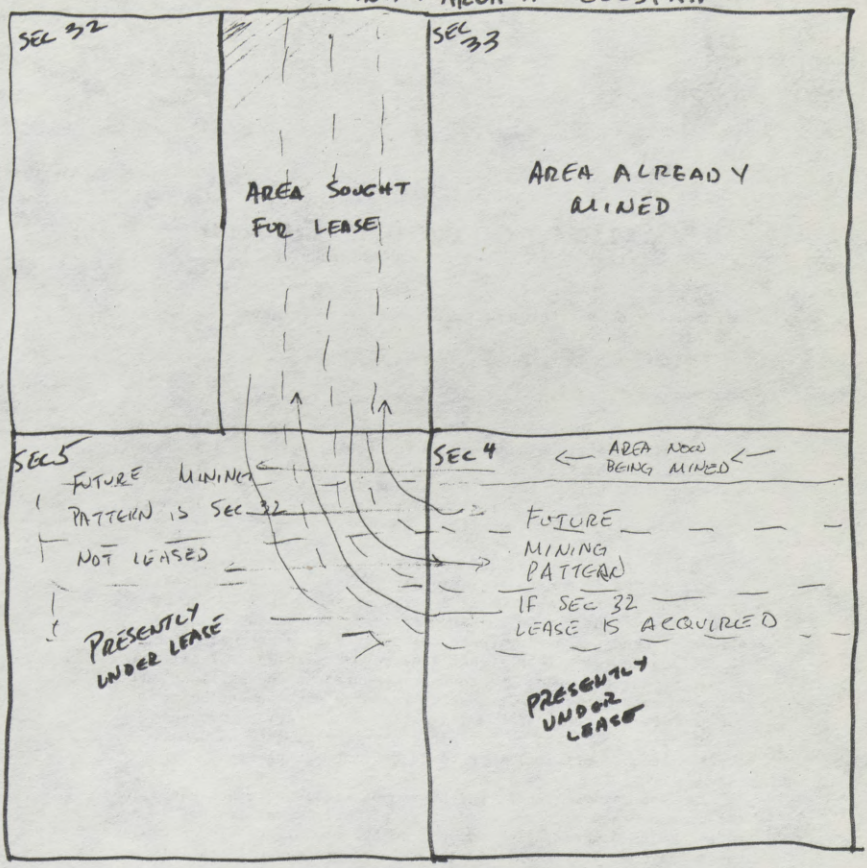
The last word I had was that a sale may be expected in early February, following a public meeting in December and the advertising required by law.

I hope you will call on me if I can furnish any information on this or any other of the Western Energy lease applications.

Sincerely

Gilbert LeKander
fc
Enclosure

MINING AREA A - COLSTRIP



December 3, 1976

WYOMING OUTDOOR COUNCIL (307)
P.O. Box 1184 2003 Central Cheyenne WY 82001 635-3416

The Honorable Lee Metcalf, Chairman
Subcommittee on Minerals, Materials & Fuels - Interior
3106 Dirksen Building
Washington, D.C. 20510

Dear Senator Metcalf,

It has recently come to my attention that your committee has been holding oversight hearings on the coal leasing activities of the Department of Interior. Many of us here in Wyoming are also most concerned with Interior's policies in this matter, and I would like to take this opportunity to convey to you the thoughts of the Wyoming Outdoor Council.

Our organization has joined most other conservation groups in this region in a call to seriously reconsider further leasing of coal on federal lands until a national energy policy can be developed. Figures seem to vary regarding the amount of coal already leased -- the Environmental Defense Fund estimates some 16 billion tons, while a recent Rand report mentioned 27 billion tons. Needless to say, the tonnage measures in the billions and seems an incredible committment to resource development before our country has truly stated its policy on energy. Given the amount already leased, we certainly have the time to take this overall look so critical to a sound development plan.

As you may well know, the Bureau of Land Management has opened and closed a new process to identify potential coal leasing areas in its EMARS program. In Wyoming, we are now progressing through the steps that will result in the release of regional coal EIS's in the southwest portion of our state. These will be finished by December of 1977, after which further leasing will be approved. So we are well on our way to galloping through a process that will evaluate certain parcels of land for their suitability for coal development -- without actually coming to decision on the continuance of leasing as an issue in its own right.

BLM has of course asked for public comment throughout this process. But it is safe to say that we have had no response to our questions regarding the opening of further leasing. The agency has, on the surface, "involved the public" -- but seems to take no heed from the substance of that input. Although our group has submitted

comments at several points in this process, we have to date not even received a reply from the Wyoming BLM state director. If public participation is to mean anything, then those comments offered in sincere interest in the issue at hand should at the least be acknowledged.

I have enclosed a copy of the position statement we submitted during the EMARS process. This position is held by over 80 groups throughout the West who have gathered together as the Western COALition, and was developed out of a regional meeting held in Billings in July, 1976.

I would like to thank you, Senator, for holding these oversight hearings, as the Department of Interior is progressing far down the road of committing our western region to levels of development which could well do great damage to our way of life, if careful consideration is not given to the pace and timing of coal leasing and mining. I hope you will give due consideration to these comments and the enclosed position paper, and further hope that I have sent them in time for their inclusion in the hearing record.

Thank you again for your concern in this matter.

Sincerely,

Colleen Kelly

Colleen Kelly
Executive Director

enclosure

cc: Congressman Teno Roncalio, Senators Cliff Hansen and Malcolm Wallop, BLM Wyo. State Director Dan Baker

STATEMENT ON THE
DEPARTMENT OF THE INTERIOR'S
CALL FOR TRACT NOMINATIONS TO IMPLEMENT
THE NEW FEDERAL COAL LEASING POLICY

I. INTRODUCTION

This statement is issued in response to the Department of the Interior's recent call for nominations for tracts to be considered for new federal coal leasing. See 41 Fed. Reg. 22133 (June 1, 1976). We believe the call for nominations is seriously premature at this time because

(a) the Department has not demonstrated a need for a major new federal coal leasing program; in fact, all available evidence suggest that Western coal already leased to energy companies by federal, state and private sources is enough to satisfy national needs for many years;

(b) the Department has not yet developed a sound system for controlling the rate, timing and location of new leasing, and particularly failed to formulate criteria for designating lands unsuitable for mining;

(c) the Department and the Administration continue to oppose strong federal regulation of the environmental impacts of coal development, including legislation to require adequate reclamation of strip-mined land.

In addition to these broader considerations, the Department's announced procedure for soliciting and evaluating coal tract nominations is tilted heavily in favor of coal industry interests, for the sole purpose of facilitating massive new leasing. Citizens are asked to shoulder the impossible burden of reviewing 92 million acres of federal coal land in sixty days, to identify and describe each specific 2,560-acre tract which they believe should or should

not be subject to leasing.

Each of these points is discussed in more detail below. We then discuss some of the factors which should be considered in devising a sound system for new federal coal leasing. We conclude by setting forth, in Appendix A, suggested criteria for designating lands unsuitable for mining and call upon the Department to work with us and other concerned citizens in establishing and applying such criteria to federal coal lands, before any steps are taken toward major new leasing.

Appendix B provides background information on the Department's new leasing program.

II. THE DEPARTMENT HAS NOT DEMONSTRATED A NEED FOR LARGE-SCALE NEW FEDERAL COAL LEASING.

We begin with some facts on the enormous quantity of coal reserves already under federal, state and private lease in the West:

> There are 16 billion tons of federal coal already under lease, and an additional 12 billion tons which are subject to preference right coal lease applications and regarded by the Department as committed for development. This total of 28 billion tons of undeveloped federal coal reserves is located primarily in Montana, Wyoming, Colorado and Utah.
>
> In Montana, Wyoming, and North and South Dakota alone more than 10 billion tons are under federal lease or permit.
>
> In addition to federally leased coal, enormous amounts of coal have been leased by states, Indian tribes, railroads, and other entities in the West. One study put the number of acres under lease in these other

categories in the Northern Great Plains region (Wyoming, Montana, North and South Dakota) at over 2.7 million acres. Assuming that these lands contain on the average as much coal as the leased federal lands in these same four states (approximately 38,800 tons per acre), then approximately 105 billion tons of nonfederal coal are under lease in these four states alone.

In sum, then, more than four million acres containing upwards of 130 billion tons of coal are already in private hands ready for development in the Rocky Mountain/Northern Great Plains region.

By comparison, total coal production from all sources -- private, state and federal -- in the entire U.S. during recent years has averaged about 600 million tons per year.

Simple arithmetic shows that, at current production rates, federal coal lands already under lease or permit could supply total national needs for the next 47 years. Expressed more graphically, existing federal coal commitments could be mined at the rate of one million tons a day, seven days a week, for the next 76 years.

And if we consider the amount of coal estimated to be under state, private and Tribal lease right now, the total Western coal now under lease could furnish the total current U.S. production for more than 200 years. Even if annual U.S. coal production were tripled immediately, the already leased Western coal could be mined for more than 70 years before being exhausted.

Despite repeated requests from concerned citizens and groups like ourselves, the Department has never seriously considered the question of need for further leasing, especially in relation to the amount of coal under lease. This is unfortunate, for it is clear from all the available information that no major new federal coal leasing will be needed for some time.

While some segments of the coal industry continue to call for massive new federal leasing, the reason seems obvious enough. Past federal leasing policies allowed massive amounts of coal to be leased at a paltry rate of return to the federal treasury. One such lease cost Atlantic Richfield an estimated one-tenth of a cent per ton for the coal it received. Small wonder, then, that industry is eager to have the gravy train continue.

By instituting the new program without considering national or regional needs, the Department has implicitly made a basic policy decision to do everything in its power to promote rapid deployment of federal coal lands in the West, and to underwrite a massive shift of the nation's coal industry from the East and Midwest to the West, without considering the consequences.

III. THE DEPARTMENT'S NEW COAL LEASING SYSTEM IS UNCONSCIONABLY VAGUE AND BADLY FLAWED.

The Department's new coal leasing system was supposedly discussed in the environmental impact statement (EIS) it prepared on its new coal leasing program. Unfortunately, the so-called EMARS (an acronym for Energy Minerals Activity Recommendation System) leasing system described in the final EIS was significantly changed from that set forth in the draft EIS without a word of explanation. As EMARS was described in the draft EIS, the Department of the Interior would make some effort to regulate the rate of federal coal leasing, and the geographic

areas in which coal would be leased. In sharp contrast, in the new EMARS system now being implemented, the Department abandons the idea of exercising any authority over federal leasing either by magnitude or geographically. Instead, the Department proposes to let industry nominations decide the need for, and location of, further leasing. Thus, if industry expresses interest only in coal located in, say, Campbell County, Wyoming, the Department will lease that coal rather than offering to lease some coal in Montana or Utah as an alternative.

The new leasing system may well result in sharp imbalances among geographic areas in both the rate and total amount of federal coal leased for development. This in turn could result in rapid industrialization and population growth in heavily impacted areas, with severe environmental and social costs. None of the ominous implications of this change in the leasing system was identified or discussed in the final EIS. We firmly believe that decisions with such enormous impacts should not be made by default.

The EMARS leasing system does not, moreover, include any consideration of the following factors in the leasing process: (a) whether the location and type of use of the coal to be leased will be taken into account and, if so, how coal to be mined for export will be treated as compared to coal to be consumed on-site or nearby in electric generating plants, or coal gasification or liquefaction plants; (b) whether the shipment of Western federal coal to the coal-rich Eastern and

Midwestern states will be encouraged or discouraged; (c) whether federal leasing policies are intended to encourage or discourage development of non-federal coal; (d) whether new federal coal will be leased in areas already heavily committed through state or private leasing; (e) whether the quality of the coal, and particularly its sulfur content and Btu value, will be considered in deciding whether or not to lease it.

The Department has also failed to disclose publicly the essential details of the EMARS system, particularly the criteria by which conflicts among the various important resources at stake will be resolved. Land containing large deposits of federal coal may also contain important historic, cultural, scenic, agricultural or ecological values or key wildlife or fisheries habitat which would be irreparably damaged if mining were allowed to proceed. Federal coal development often has very significant socio-economic impacts on nearby communities. The Department has also failed to recognize that the surface of federal coal lands is often privately owned. Under what circumstances should coal mining activities preempt these other values, either temporary or for all time?

Rather than answering this question, the Department has made pious and essentially empty pronouncements about how environmentally sensitive its policies will be. Nevertheless, it would be entirely consistent with the Department's description of EMARS if all federal coal lands are eventually devoted exclusively to coal development. Resource conflicts may be resolved in every instance in favor of promoting federal coal development,

and lands deemed suitable for coal leasing could well turn out to be any lands containing coal. We fear, then, that the Department's failure to set forth criteria for resolving such conflicts stems from its inclination to resolve every resource conflict in favor of coal development.

The Department has, moreover, failed to formulate any criteria for determining lands unsuitable for mining. Calling for nominations of tracts and instituting a new leasing program without first formulating such criteria signals a return to the leasing policies of the 1960's which the Department previously acknowledged were totally inadequate.

IV. THE ADMINISTRATION HAS CONSISTENTLY OPPOSED STRONG RECLAMATION REQUIREMENTS.

It is, of course, well known that the present Administration has twice vetoed surface mining legislation enacted by Congress. The Congress' narrow failure to override the second veto was attributable primarily to testimony presented by the Administration that the legislation would have substantial impact on jobs and coal production. This testimony has since been discredited; nevertheless, the Administration continues to oppose sound reclamation legislation.

In a continuing effort to fight off such legislation, the Department has recently promulgated new reclamation regulations for mining operations on federally leased land. These regulations are substantially weaker in several key respects than the Congressionally-approved legislation. They also contain

a controversial provision allowing the federal government to override state and local desires and to preempt the application of stronger state law to surface mining on federal leases, whenever the Secretary of the Interior deems it necessary.

We believe the Administration should exert every effort to secure passage of strong surface mining reclamation legislation in this session of Congress. So long as the Department is bent on applying weaker reclamation requirements to federal lease operations than either the Congress or state governments have determined is necessary, we believe new federal leasing should not proceed.

The Administration has also, within the past few weeks, vetoed legislation which would have reformed the badly outdated Mineral Leasing Act of 1920 as it applies to coal leasing. The old Act does not mandate environmental safeguards in the leasing process. While the legislation recently vetoed would not have provided all the needed reforms, it was a substantial step in the right direction. The Administration's veto can only further erode public confidence in its ability to protect the fragile environment of the West.

It should also be noted that, at the same time it has been blocking efforts to place environmental controls on Western coal development, the Administration has refused to support a strong program of energy conservation and development of environmentally preferable alternative sources of energy.

V. THE NOMINATIONS PROCESS WE ARE ASKED TO PARTICIPATE IN IS TILTED HEAVILY IN FAVOR OF INDUSTRY AND SEEMS DESIGNED ONLY TO FACILITATE MASSIVE NEW LEASING.

The Department has candidly admitted that its call for nominations of specific tracts for and against new federal leasing is designed primarily for industry. While lip service is paid to the idea that non-industry interests should be allowed to nomiate areas as unsuitable for leasing, this opportunity is largely illusory. The public bears an impossible burden of collecting and organizing information about 92 million acres of federal coal land in 60 days. Such information would have to be collected at the rate of 1 1/2 million acres per day.

The so-called "opportunity" for the public to participate in the nominations process is made even more ludicrous when we consider that the Department itself admits that the Geological Survey will not complete resource mapping in key federal coal areas until 1978. The General Accounting Office recently completed a careful review of the Department's efforts to gather the needed information and concluded:

> "The Department of the Interior is not prepared to resume large-scale coal leasing with sound judgments based on the location and size of coal tracts suitable for leasing. The information and preparatory work necessary to implement Interior's proposed leasing program is inadequate. Procedures for selecting specific coal tracts have not yet been developed. Efforts to prepare for an ancitipated leasing program have been hindered by the lack of timely departmental direction, leasing goals, data gaps, and limited manpower and funding."

The call for nominations relies heavily on the so-called "management framework plans" which the BLM claims to have completed in many Western coal areas. Formulation of these plans has taken place in many areas without serious effort to involve the public. Even where views of concerned citizens were obtained, they have not been accorded serious consideration. The General Accounting Office has found that "the effectiveness of the Bureau's land use planning system and the usefulness of the already completed plans is poor." The Department's own internal auditors have found that weaknesses have resulted partly from an undercurrent of pressure from higher levels to complete such plans quickly to pave the way for major new leasing.

It must be emphasized that the Department originally proposed to divide the nominations process into two stages, allowing for the submission of comments by state, local and non-industry interests on industry nominations which were to be submitted first. See 41 Fed. Reg. 11035 (March 16, 1976). The final regulations telescope those two stages into one, thereby short-circuiting the opportunity for specific comments by states, localities and non-industry interests on specific tracts nominated by industry. The Department has justified this by saying it was in response to public comment. In fact, only industry pushed hard to eliminate this second stage. Agencies like the EPA and CEQ, as well as the Western Governors' Regional Energy Policy Office, all strongly supported the two stage nominations process.

The process limits nominations against as well as for leasing to tracts not larger than 2,560 acres, and requires that priority be stated among areas nominated. While this may make sense with respect to industry nominations, the reasons for seeking to exclude areas from leasing--such as for lack of rehabilitation potential, presence of an important competing use, or important historic, scenic, archeological or other significant values--do not lend themselves to an acreage limitation or a ranking.

Non-industry nominations for exclusion must also conform to the requirements of industry nominations. For example, they must be on BLM maps or otherwise contain a legal description of the tracts by miles and locales or by section, township and range. This poses a substantial hardship for non-profit, low-budget groups who usually cannot deduct the cost as a business expense and have no expectation of profits if their nominations are adopted.

Although the call for nominations states that the Department does not intend to issue coal leases in certain protected areas like wildlife refuges, other equally important areas are not excluded. These include Wild and Scenic River Areas, Forest Service Wilderness Study Areas, and Inventoried Roadless Areas in the National Forests which are eligible for wilderness designation.

Finally, in what appears to be a patent violation of the Freedom on Information Act, the information submitted by

industry in support of nominations for leasing will not be publicly disclosed. This includes the identity of the nominator, and all other supporting geological, geophysical and other information designated as privileged or confidential by those submitting the information. Preventing the public from seeing this information seems designed only to limit opportunity and thereby hasten major new federal coal leasing.

VI. CONCLUSION

For all of the reasons discussed above, we have decided not to nominate or disnominate specific tracts for new federal coal leasing. We firmly believe that to do so would inevitably be construed as lending our support to what we regard as an ill-conceived effort to renew leasing of additional large amounts of federal coal for rapid development.

While there is a wide and diverse spectrum of opinion on mining among our groups, we all recognize that the West can and will contribute its fair share to the nation's energy supplies. Nevertheless, the Department's efforts to mount a major new leasing program in the face of the huge amount of Western coal already under lease suggest that irreplaceable values in the region may well be sacrificed on the energy altar.

Much remains to be done before a rational federal coal leasing program can be implemented. Probably the most serious shortcoming of the Department's leasing process is its failure to establish criteria for designating lands suitable and unsuitable for coal mining. It makes no sense for the Department

to issue a call for nominations before such criteria are formulated and published.

We invite the Department to join with us and other concerned parties to formulate such criteria. Since we are seriously concerned about federal coal development, we have given considerable thought to criteria which should be applied to determine lands unsuitable for mining, and we attach as Appendix A an initial list of suggested criteria. It should be recognized that the attached criteria are not all inclusive. Moreover, while these standards have general applicability, local or regional conditions may well warrant the application of stricter criteria in particular circumstances.

We ask the Department to demonstrate its good faith by suspending the EMARS process pending formulation and adoption of such criteria. We stand ready to meet with representatives of the Department at their convenience to explain our suggestions and to participate in this necessary first step.

In the meantime, we believe the Department should follow a policy of issuing new federal coal leases only when there is a clearly demonstrated need to maintain a currently existing operation. Such a policy, coupled with the huge amount of coal already under lease, will provide adequately for the public's needs well into the future.

APPENDIX A

Criteria For Designating Areas Unsuitable For Mining

1. Where reclamation of disturbed surface cannot be attained within a reasonable period of time after mining, based where possible on data from comparable mines in the area.

2. Where areas have the following characteristics:

a. Where there is insufficient precipitation or available moisture to support and sustain vegetation. For example, the National Academy of Sciences study of the Rehabilitation Potential of Western Coal Lands concluded that less than 10 inches per year average precipitation is insufficient, and in some cases an average of 10 or more inches may not be sufficient, because of, among other things, frequency of severe drought or insufficient rainfall during the growing season.

b. Where viable seeds and plants are unavailable or insufficient in quantity to establish self-sustaining post-mining plant communities of suitable predominantly native species.

c. Where soils and subsoils are unsuitable to establish self-sustaining post-mining plant communities of suitable predominantly native species.

d. In hilly or mountainous areas where the predominate slope is greater than 20 degrees from the horizontal.

e. In geological hazard areas such as areas with unsuitable soils, high erosion potential, or slumping.

3. Where the mining activity is likely to interfere with other values in the area, such as the following:

a. Where significant wildlife habitat would be disrupted or destroyed by the mining and associated activities;

b. Where agricultural operations would be disrupted or destroyed by the mining activity, due to diminution of productivity or disruption or destruction of critical parts of the operation, such as winter forage production areas or water quality or quantity;

c. Where significant recreational values would be disrupted or destroyed by the mining and associated activities;

d. Where surface or ground water quantity or quality would be adversely affected by the mining and associated activities. In all cases, alluvial valley floors would be unsuitable, as would areas that involve mining through or alteration of stream channels;

e. Where existing or potential oil, gas or geothermal operations would be disrupted or destroyed;

f. Where significant archeological, cultural, historical, scenic, or ecological values would be destroyed;

g. In areas which appear to meet the definition of wilderness contained in the 1964 Wilderness Act (de facto wilderness areas).

To facilitate identification of the values listed above, the boundaries of the following should be delineated in areas containing federal coal:

Logical Agricultural Units
Logical Wildlife Habitat Units

4. Lands which fall in any of the following formally designated areas:

Units of the National Park System
Units of the National Forest System
Units of the National Wildlife Refuge System
Primitive Areas
Wilderness Areas
Wild and Scenic Rivers Areas
State Parks, Recreation and Wildlife Management Areas
Incorporated Cities and Towns

5. Where any surface owner has not given his written consent, or a waiver, to have his property strip mined.

6. Where significant socio-economic impacts would result from mining operations, such as with a rapid population influx into predominantly rural areas.

7. Where strip mining would effectively prevent deep mining at a later date.

APPENDIX B

BACKGROUND INFORMATION ON THE EVOLUTION OF THE NEW FEDERAL COAL LEASING PROGRAM

Prior to 1971, the Department of the Interior's coal leasing policy was simply to issue leases upon request, without regard to the total reserves under lease, and without any assessment of the environmental impacts of the coal mining and development.

As a result of this policy there was, in the middle and late 1960's, a dramatic surge in the number of federal coal leases issued and, correspondingly, in the acreage of federal coal under lease. In 1949 less than 100,000 acres were under federal coal lease, and in 1959 less than 200,000. By 1965 nearly 400,000 and by 1970 nearly 800,000 acres of federal coal lands were under lease. These lands contain an estimated 16.3 billion tons of coal reserves,[1/] 10.6 billion of which are mineable by strip mining.

At the present time, an additional 183 applications for so-called "preference right" leases are pending before the Department. These have resulted from the previous issuance of

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1/ Coal "reserves" are defined by the United States Geological Survey as coal deposits both the quality and quantity of which have been determined and which are deemed mineable at a profit under existing market conditions.

permits to prospect for coal where the holder of the prospecting permit believes he has found coal in commercial quantities. These applications cover an additional 500,000 acres containing an estimated twelve billion tons of coal. (Another 37 prospecting permits covering an additional 100,000 acres containing an unknown amount of coal may soon result in additional preference right lease applications.) The Department claims it has no discretion under the Mineral Leasing Act to consider environmental factors in acting on these applications; in fact, the Department claims it must issue these leases. (This interpretation is being contested in federal court in Natural Resources Defense Council v. Berklund, No. 75-0313 (D.D.C.).)

Despite this huge increase in the amount of federal coal under lease or regarded as committed to lease, a Departmental study completed in November 1970 revealed that production of coal from federal leases had actually declined from about 10 million tons in 1945 to 7.4 million tons in 1970. In fact, of the total acreage under federal lease in 1970, more than 90 percent was non-producing and being held for speculation.

Because of this and because of widespread concern that the Department's leasing process was not environmentally adequate, a moratorium was informally placed on the issuance of new federal coal leases and prospecting permits in late 1970 to allow the Department to reassess its coal leasing policies.

In February 1973, the Secretary of the Interior announced a new federal coal leasing policy, which included both short- and long-term actions. The short-term action included a total

moratorium on the issuance of new prospecting permits and a leasing policy whereby new federal coal leases would be issued only to maintain existing mines or to supply reserves for production in the near future. The Secretary stated that this short-term leasing program was designed to insure that current coal production can continue, and to "prevent deficiencies in supplies of coal which are necessary to meet our continuing energy needs."

The long-term coal leasing policy was to be developed in two interrelated Departmental actions:

--Formulation of a planning system to determine the size, timing, and location of future coal leases in order to meet energy needs most effectually; and

--Preparation of an environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA), on the entire coal leasing program.

The new coal leasing policy was designed, in the words of the Departmental press release announcing it, to "assure that [federal coal] development is carefully controlled to avoid environmental mistakes of the past and to keep our planning options open."

From documents obtained from the Department in connection with pending litigation, we have learned that several months before even a draft EIS was issued, the Department formulated and decided to adopt a new coal leasing system called EMARS (an acronym for the Energy Minerals Allocation Recommendation System). This demonstrates that the Department has been

planning a major new leasing program since new federal coal leasing was restricted to instances where a need could be shown. It also means that the Department has never seriously considered extending the present leasing policy into the future.

In May 1974 the draft EIS was released. It was roundly criticized, even by high Departmental officials, for, among other things, failing to describe the new leasing system or its alternatives, failing to relate the new program to the huge amount of coal already under lease, and failing to consider the alternative of leasing only in response to demonstrated need. The President's Council on Environmental Quality, the Environmental Protection Agency, several states and many environmental and other affected groups called for drastic revision and circulation of a new draft EIS in order to comply fully with NEPA. The Department ignored these requests and instead issued a final EIS in October 1975.

Because of the glaring deficiencies in the Department's NEPA compliance actions, the Natural Resources Defense Council, Environmental Defense Fund, Northern Plains Resource Council and Powder River Basin Resource Council filed suit in November 1975 to halt implementation of the new federal coal leasing program pending full, bona fide compliance with NEPA. NRDC, et al. v. Hughes, et al., No. 75-1749 (D.D.C.). Both sides have moved for summary judgment, all briefs have been filed, and a decision may be issued soon.

Despite the serious issues raised in this lawsuit, and the very serious questions raised about the need for the adequacy

of the new federal coal leasing program, the Department is proceeding full speed ahead. The latest move toward renewing massive new federal coal leasing is the call for industry nominations of tracts for new leasing, issued on June 1, 1976. (41 Fed. Reg. 22133). The Department of the Interior has announced that this call for nominations is "directed primarily to industry". Ibid. The Department has also, seemingly as an afterthought, granted those organizations and individuals "who have interests or concern regarding the leasing of Federal coal lands" the opportunity to nominate areas which they feel should or should not be leased by the federal government to industry for coal development.

The purpose of the nominations process is "to determine in large measure the selection of specific lease tracts and where and when future competitive coal lease sales will be held." Ibid.

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November 30, 1976

DEC 6 1976 REC'D

Honorable Clifford P. Hansen
United States Senate
Washington, D.C. 20510

Dear Senator Hansen:

By letter dated November 11, 1976, your legislative assistant, J. Nolan McKean, requested this Company to supply you with our comments on proposed federal coal exploration regulations for your oversight hearings to be held December 2. I certainly appreciate your requesting our comments which follow.

While 30 C.F.R. § 211.10 is in final form and cannot itself be challenged, the requirement in the proposed regulations that that section's standards apply is a problem. Section 211.10, for example, requires a listing of all surface owners and all subsurface owners (other than the U.S.) in the exploration tracts. The requirement of listing subsurface owners would force applicants either to perform extensive title work to determine ownership of the minerals, or select exploration tracts solely by the United States' ownership of all minerals. S.391 requires that the exploration license application identify the general area and probable methods of exploration. However, § 211.10 requires the submission of data showing geologic, water, and vegetation factors; distribution, abundance, and habitat of fish and wildlife (particularly threatened or endangered species); methods of exploration and types of equipment to be used; measures to be taken to control fire, soil erosion, pollution of ground and surface water, damage to fish, wildlife or other natural resources, and hazards to public safety; methods for plugging drill holes; measures for surface reclamation, including a time schedule for each phase of work, methods of grading, backfilling, soil stabilization, compacting and contouring, methods for soil preparation and fertilizer analyses, mixture of shrubs, grasses, forbs and other vegetation to be used, and the method of planting; and topographical maps or aerial photographs showing existing bodies of surface water, topographical, cultural, and drainage features, and the proposed location of drill holes, trenches and

roads. In addition to these specific requirements of § 211.10, the Section also allows the mining supervisor to impose requirements for other data. If the finalized regulations contain these requirements, applicants will be forced to collect a great deal of information, costing time and money. The best change would be a limitation of this requirement to a "general and reasonable" basis.

§ 3507.2-1 requires the Department to make what could be an extensive environmental analysis and technical examination of all exploration plans before issuance of a license. S.391 only requires that each license contain conditions deemed to be reasonable by the Secretary, including environmental safeguards, and that exploration not cause substantial damage to natural land surface. But § 3507.2-1(a) requires that the environmental/technical analyses include the potential effect of the planned exploration on the resources of the area and the environment, including fish and other aquatic resources, wildlife habitat and population, visual resources, recreational resources, culture resources, and any other resources in area. Since these analyses must be done on each specific submitted exploration plan (and not for a general area), this requirement will clearly slow down to a crawl the issuance of exploration licenses.

The proposed invitation for others to participate in exploration on a pro rata cash sharing basis (§ 3507.3-1(d)) is not required by S.391. This provision would slow issuance of a license by at least the four weeks required for advertising. Licensees might find themselves in the undesirable position of being forced to conduct exploration with an unwanted party. Or an outside party, wishing for some reason to slow the issuance of a license to a specific licensee, could respond to the invitation, requiring time for that party's compliance with the exploration license regulations as well as negotiation of a "pro rata" participation basis. This section is outside the scope of the Act.

§ 3507.3-6 of the proposed regulations provides that the applicant for an exploration permit "may be required" to collect and report ground water data. This provision might be interpreted to require applicants to shoulder the burden of acquiring ground water data other than that acquired in the normal course of exploration.

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§ 3507.5(a) of the proposed regulations provides that a licensee may use only as much of the surface of the licensed lands as is authorized by the approved exploration plan. This provision should contain procedures for modification of the exploration plan with respect to surface use. § 3507.3-2(f) is a general modification provision, dealing with modification of the license or the exploration plan as a result of "unforeseen conditions that could result in significant disturbance or damage", or of geologic or other physical conditions warranting a modification. This general provision does not allow modification if the exploration plan underestimated the surface use, for example. Further, under the general provision, modification seems to be initiated by the federal government; but a licensee should be able to apply for modification. The § 3507.5(a) limitation that the licensee may use only the amount of surface authorized by the exploration plan should be qualified by making the plan subject to modification. This might entail the inclusion of another modification provision in the regulations, allowing modifications for good cause on application of the licensee. Without these changes, a licensee who had underestimated surface use would seem to be required to apply for a new license.

§ 3507.5(b) prohibits exploration operations from unreasonable interference with any other authorized use under any other Act. This provision, because of its vagueness, could cause trouble for an exploration operation. For example, there is no way of knowing in advance what will constitute "unreasonable interference".

Finally, since the proposed exploration license regulations make the operating regulations of 30 C.F.R. Part 211 applicable to licensed exploration operations (§ 3507.3-4), compliance with Part 211 may make exploration a very expensive and time-consuming project. Exploration operations, being different than actual mining operations, would be better served by operating rules specifically designed for exploration.

Very truly yours,

Robert W. Adams
Chairman of the Board

RWA/vav

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MAURICE F. GRANVILLE
CHAIRMAN OF THE BOARD

September 20, 1976

Honorable Clifford P. Hansen
United States Senate
Washington, D.C. 20510

Dear Senator Hansen:

Thank you for your letter of August 12, 1976 regarding the recently enacted "Federal Coal Leasing Amendments Act of 1976." Texaco fully supports certain features of the legislation, particularly the provision for payment of 50% mineral leasing revenues to the State wherein such revenues are generated. Texaco also supports the broad objectives of the act: to control the leasing of Federal coal in an orderly manner for the good of the citizens, to insure timely development, to protect the environment, and to minimize and correct adverse impacts on the population of the coal mining regions.

However, it is Texaco's opinion that the act should be amended as soon as possible since numerous provisions contained therein are unduly burdensome and will have an adverse impact upon the coal industry, the states involved and the Federal Government. Specifically, I refer to the following provisions:

1. The requirement for coal mining operations within ten years.

2. The submittal of an operational and reclamation plan within three years.

3. The sudden increase of royalty to 12½ percent.

4. The federal coal exploration program.

5. The reservation of certain tracts from competitive bidding for utilization by special groups.

6. The prevention of an entity from acquiring a lease where it is impractical to place on production another lease that has been held for ten years.

7. The establishment of a mining rate for complete reserves depletion within forty years.

8. The necessity for all lands in a logical mining unit to be contiguous.

I am attaching brief comments on each of these objectionable provisions.

Again I want to express my appreciation for the opportunity to submit views on this important matter and I look forward to working with you to the end that appropriate amendments to the act can be promptly accomplished.

Sincerely,

Maurice D. Granville

MFG:mr
Attachment

FEDERAL COAL LEASING AMENDMENTS ACT OF 1976
OBJECTIONABLE PROVISIONS

1. It is visualized that the coal industry in the West, where most of the federal acreage is located, will continue to have certain deterrents to rapid expansion; namely, (1) the coal is generally subbituminous or lignite quality, (2) the coal is located at great distances from the primary energy markets, and (3) a substantial portion of the western coal may be utilized for conversion to gas and liquid and the technology for conversion is not yet sufficiently demonstrated. In the case of coal conversion, the time frames established in the act are not consistent with the time frames established by ERDA and Industry for the development of technology. Therefore, it is not believed feasible to initiate mining operations within ten years for many of the tracts as required in Section 7(a) especially those having low quality, high sulfur coal that may be best suited for conversion to gaseous or liquid products. Therefore, it is recommended that the limitation be changed to 15 years and that provisions be included for a waiver by the Secretary of the Interior contingent upon just reasons presented by the lessee.

2. The filing of an operation and reclamation plan within three years as required by Section 7(c) is not believed workable because such a plan, to be meaningful, would require development of a market, the formation of a logical mining unit, an environmental study and an engineering mining study. It would frequently be impossible to execute such a program in a logical sequence within a three-year period. A plan based on supposition would likely lead to substantial wastes of time and money. Instead, it is believed that the filing of status reports on development plans would be adequate until such time that a meaningful operation and reclamation plan could be formulated.

3. While it is not my intention to judge what a reasonable and just royalty should be, I consider the impact of raising the established royalty drastically to 12½% as set forth in Section 7(a), will be counter-productive to the intention of establishing timely and orderly development of federal leases. In the first place the high royalty will further deteriorate western coals' competitive position when compared to eastern coals. Within the western coal regions there will be a strong tendency for operators to develop non-federal coal at a competitive disadvantage. The high royalty will also render certain low quality deposits non-economical resulting in a loss of reserves. In view of the present struggle to establish a sizeable and viable

coal mining industry in the West for the good of the nation, it is believed untimely to make such a drastic increase in royalty.

4. The federal coal exploration program established by Section 3(3)(C) is believed to be unnecessary and a waste of taxpayer money. The work already conducted by the Department of the Interior is believed to be adequate for most deposits. A new exploration program would no doubt result in delays of several years in the federal leasing program where there has already been a moratorium since May, 1971. Therefore, it is recommended that this provision be deleted.

5. The reservation of a "reasonable number" of tracts as set forth in Section 2(1) will be a distinct advantage to select groups to the detriment of our free enterprise system. In the first place, the term "reasonable number" is believed to be ambiguous. In actual practice, there would probably be a tendency to reserve high quality tracts for the special groups, thereby eliminating them from competitive bidding. It is recommended that this provision be deleted.

6. Section 3(2)(A) prohibits the issuing of a lease or leases to an entity where a federal lease has been held without production for ten years. There may be numerous valid reasons why a lease cannot be produced so it is believed unjust to prohibit an entity from acquiring additional acreage in such a situation. Furthermore, it is believed unwise to eliminate otherwise competitive operators from the federal coal development program. The act should be amended to be consistent with the recommended provisions of Item 1 above.

7. The formation of a logical mining unit would involve a maze of complex factors such as ownership, deposit quality variations, market projections, etc. so there would, no doubt, be cases where a maximum permissible productive life of forty years as provided in Section 5(d)(2) would be impractical. Furthermore, this requirement would lead to high levels of production from some areas and no production from other areas. In turn, this would lead to inordinate community growth periods or "boom and bust" situations. Excessive supplies of coal could result, thereby causing submarginal economics and supply/demand cycles. Since domestic coal resources will last far beyond forty years, the overall depletion rate must be much slower than set forth for an individual logical mining unit. Therefore, it would appear that a plan with more mines operating over longer lives would be more efficient and would tend to eliminate "boom and bust" periods for the communities with coal resources.

8. The requirement in Section 5(d)(1) for a logical mining unit to consist of contiguous lands appears to have no bearing on the objectives and should be deleted. Mining from multiple non-contiguous pits frequently proves to be advantageous through the utilitization of common ancillary facilities and by blending various grade coals for quality control.

STATEMENT OF MOBIL OIL CORPORATION TO THE
SENATE INTERIOR COMMITTEE OVERSIGHT HEARING
DECEMBER 2, 1976

The following comments are being submitted on Public Law 94-377, the Federal Coal Leasing Amendments Act of 1975, by Mobil in view of the invitation for public comment at the oversight hearings. Mobil supports the urgent need to increase coal production and use to reduce our nation's growing dependence on imported energy supplies. However, in Mobil's view Public Law 94-377 contains several undesirable features which are counterproductive to this goal and which should be amended. These are:

1. A mandated royalty of 12.5% on surface mine coal is undesirable. Higher royalties increase the cost of coal and these costs must necessarily be passed on to the consumer. The result can only reduce the development of coal resources. We consider that a royalty of no more than 5% should be applicable to surface mined coal.

2. The provision for federal exploration is undesirable. This requirement is a wasteful use of public funds and will delay additional leasing. Furthermore we do not believe such exploration will provide any increased revenue over historical competitive bidding procedures. It must be appreciated that the major coal bearing regions are already reasonably well identified and the barrier to coal development is not exploration but leasing. The initiation of federal exploration of coal lands is, in our view, an unnecessary expansion of federal activities.

3. The requirement for termination of leases not in production within ten years of issue should be relaxed. This requirement does not reflect the necessary time frame for the development and commercialization of projects for conversion of coal to liquid and gaseous products. We believe at least fifteen years initial lease term should be provided with provision for extension where appropriate because of technological or economic factors as well as for force majure reasons.

4. The maximum 100,000 acre national limitation on lease holdings by a company is far too low. This arbitrary restriction can only limit future coal production and impede the massive financial commitment necessary for synthetic fuels development. Previous legislation limits single company leasing of federal acreage to about 46,000 acres in each state without a nationwide limitation. Such a limitation is more appropriate.

5. The law imposes a number of undesirable and arbitrary requirements which should be more appropriately left to the enforcing regulatory agency for modification to suit specific circumstances. For example, the law requires the submission of operation and reclamation plans within three years of lease issue. This is insufficient time on large mining blocks and is unnecessary in light of the diligence provisions of the law.

Also, the law establishes procedures calling for public comment as many as five times on a given lease. This type of requirement is unnecessary and can only delay coal development.

We believe Public Law 94-377 should be amended to reflect the above changes and thereby permit the urgently required and timely development of the nation's coal resources.

MOBIL OIL CORPORATION
NOVEMBER 30, 1976

PEABODY COAL COMPANY
301 NORTH MEMORIAL DRIVE · ST. LOUIS, MISSOURI 63102

December 30, 1976

The Honorable Lee Metcalf, Chairman
Senate Interior Committee
The United States Senate
Room 1121
Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Metcalf:

Peabody Coal Company respectfully submits the enclosed comments which have been filed with the Department of Interior as participation in their rulemaking procedures to implement the Federal Coal Leasing Amendments Act of 1975 (P.L. 94-377). It is requested that these be made part of the hearing record of the Senate Interior Committee's Oversight Hearings on Federal Coal Leasing.

Additionally, Peabody is a member of the National Coal Association (N.C.A.) and has provided input to that organization as it has developed industry position on Federal coal leasing and development policy. Therefore, we wish to go on record as being supportive to and in concurrence with N.C.A. President Carl E. Bagge's testimony presented on December 2, 1976 before your Committee's Subcommittee on Minerals, Materials and Fuels.

We are appreciative of this opportunity to present our views and look forward to your objective consideration of them and any future inputs in which we have the opportunity to participate.

Respectfully,

Donald J. Wilzbacher

Donald J. Wilzbacher
Project Engineer
Federal Coal Leasing

DJW:mag

Enclosures

PEABODY COAL COMPANY
COMMENTS

PROPOSED DILIGENT DEVELOPMENT AND CONTINUED OPERATION REGULATIONS
43 CFR 3500, 3520 - 41 F. R. 45571, 10/15/76

3500.0-5 Definitions.

(d) Logical Mining Unit (LMU).

This section requires "complete extraction of the LMU reserves within 40 years from the first approval of a mining plan for that LMU". Is the B.L.M. anticipating a separate mining plan for each Federal leasehold? "First approval" seems to indicate such intention.

(e) Logical Mining Unit (LMU) Reserves.

In this paragraph, it is stated that LMU reserves may be adjusted by the Mining Supervisor "whenever significant new information becomes available about the amount of such reserves, including the time at which a mining plan is approved". Does this not preclude the Mining Supervisor from adjusting LMU reserves, especially upward, after mining plan approval or after production has begun? If the Supervisor has this perogative, it could cause changes that are excessively burdensome, especially in the face of an executed coal sales contract or mining equipment commitment, and overall from the standpoint of requiring increased production for commercial quantities.

Along the above lines, Peabody questions whether the conditions for adjustment of estimated reserves cover all the necessary requirements. If reserves were estimated to a 150-foot recovery line, and later increased to a 200-foot recovery line, because of the design of some

new mining equipment, seemingly, these reserves could be increased under the provision "whenever significant new information becomes available". Such a "catch-all" phrase could cover most situations.

According to this definition, an operator could continue mining operations beyond 40 years if he developed his mining plan so that non-Federal coal mined along with Federal coal is held to a minimum, leaving most of the non-Federal coal for mining after the Federal. Seemingly, then, an LMU cannot be defined unless preceded by a mining plan.

(f) Diligent Development (2).

Production in commercial quantities for existing or non-readjusted leases is to be at least one-fortieth of LMU reserves (2 1/2 percent). For leases issued or readjusted after August 4, 1976, commercial quantities production is one percent of LMU reserves. What is the rationale for this discrepancy requiring the higher production for existing leases?

(f) (2) (i).

Provisions for extending time allowed for diligent development should emphasize in (C) not only the "not attributable" and "not foreseeable", but the noncontrollable. The conditions outlined for extension of the period for diligent development do not seem to adequately cover the situation where a coal customer's facility is delayed. Such a condition should be allowed as a legitimate exception to the requirements.

(f) (2) (ii).

This allows a one-time extension for diligent development of a maximum of five years. Is the extension allowable under (f) (2) (ii) in addition to this five year extension? Clarifying language could be added in (ii) after the words "ten-year period" in the third and fourth lines, and before "within" as follows: "extended as provided in (i) above".

(g) Continued Operation.

It is suggested that line 4 should read "... of at least one percent of all LMU reserves...".

3503.3-2 General Statement on Royalties.

Section 3500.0-5, previously, does not take into consideration the right to pay advance royalties in lieu of continuous operation, as herein provided, in the computation to determine continuous operations. In other words, the annual average is to be computed on a three-year basis. If, in one of those years, an advance royalty is paid instead of mining, will the credit be given on the basis of one fortieth, one hundredth, or zero?

3520.2-6 Coal: Logical Mining Unit.

(a) Establishment and modification of logical mining units.

If every Federal coal lease is to be automatically considered by itself as an LMU unless included in an LMU with other Federal leases, this appears to require that LMU's be defined for existing mines that

contain Federal leases. The second paragraph of the Proposed Rulemaking, however, states that the new statutory requirements are not made applicable to existing leases prior to their next readjustment. This apparent contradiction should be clarified.

This section, which creates the LMU standard for allowing non-Federal coal to be a part of the LMU, is based exclusively on maximum recovery of Federal coal. A second standard might be added as follows: after the word "thereby" which is the last word in the section's second sentence, add "or the inclusion of which will provide a maximum utilization of the coal resource and will not restrict development of the Federal deposits".

PEABODY COAL COMPANY
COMMENTS

Proposed Competitive Coal Leasing Regulations (43 CFR 3520)
41 Federal Register, 47258, 10/28/76

In general, it appears that the Department of Interior has provided few time limitations in which actions are to be taken. The Secretary is required to consult, obtain approvals and hold public hearings and meetings without any mandated time restrictions within which these duties must be carried out. Since some of the Secretary's duties are set by statute, it is inappropriate to suggest that actions there be taken within a certain time. However, paragraph 3525.12 (b) (2), "Procedures", could be modified to impose time limitations upon the Secretary such that applicants are assured that activities are undertaken, completed, and decisions made within a specified period.

Special Leasing Opportunities

Several points arise in consideration of this general subject as covered in both the preamble and in 3525.7. If Interior to is eventually quantify the term "reasonable number" of coal lease tracts to be reserved for such special leasing opportunities, it is recommended that the rationale of approximately 5 1/2 per cent of each township being set aside to the state for school purposes, as was done in the West, be considered in applying this reservation. Such a figure has a rational basis in that both the school lands reservation and Section 3525.7 are designed to directly benefit the public.

In choosing the special leasing tracts, the selection should be based on sound resource information. Such should include the relationship

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of the potentially selected tracts to other coal tracts under lease, permit or available for lease so as not to preclude efficient resource recovery and conservation in extraction. Thus, such tracts should not be intermingled with those offered to private companies. If the special tracts were intermingled with those offered to private industry, this would put those allowed such special leasing opportunities into an unfair bargaining position.

In order that the necessary consideration be given to maintaining the competitive nature of future leasing as envisioned in these rules and their enabling statute, tracts set aside for public bodies should be leased on "fair market value" basis with respect to all Federal coal lease sales in the area. The regulations should reflect this. They should also reflect another statutory intent; even in preferential treatment, the public bodies served by such provisions should be required to submit a definite and real development and mining plan within the established time frames as required of private industry. Such should be made a part of the public record for comment and be part of the qualifications for bidding. Therefore, paragraph 3525.12 should be amended accordingly.

Deferred Bidding Policy

The preamble states that the Department is considering alternatives to the deferred bonus schedule in 3525.8 which required the full amount of the bonus be paid in five years. One specified alternative envisions a 10-year payment schedule and a deferral until after the lessee begins production. Such a deferral is desirable and justified

on the basis of the financial condition of coal companies generally, and the large number of small mining companies in the United States whose access to western reserves would be impeded or precluded under the present provisions of paragraph 3525.8.

3525.3

Subparagraph (a) (2) specifies that, for the purposes of this paragraph, production of coal in commercial quantities is considered to be production adequate to meet the requirement for continued operations as defined in 43 CFR 3500.0-5 (g). Peabody questions how the continued operations requirement for the purposes of these proposed rules can be arbitrarily based on another part of, as yet, unadopted and possibly defective proposed rules.

3525.9

The regulations contained in this section are designed to implement paragraph 15 of the Federal Coal Leasing Amendments Act of 1975 which required the Secretary to consult with the Attorney General before issuing leases under the Act. It is felt that they should require the Attorney General to respond within a given period of time.

As specified in paragraph 3525.9 (c), if the Attorney General notifies the Secretary that a proposed lease would create or maintain a situation inconsistent with the antitrust laws, the Secretary may reject the bid and ask the Attorney General to consider the next qualified high bidder. In the alternative, the Secretary may hold a public hearing and may determine that the lease be issued to the first high bidder. However, the statute makes no provision which permits the Secretary to reject

the high bidder and proceed to the next qualified high bidder on the basis of the Attorney General's recommendation. This procedure in the proposed regulations of proceeding to the next qualified bidder, then, seemingly amounts to a patent denial of due process in that the first qualified high bid may be rejected solely on the basis of an Attorney General's opinion and without a hearing. In addition, there is nothing in the statute which purports to vest the Secretary with the powers specified in subparagraph (c) (1) of S3525.9. A potential lessee's property interest, or expectation therefor, should be sufficient to maintain a due process argument. Subsection (c) (1), therefore, should be stricken or modified to permit a determination by a neutral, detached tribunal that an antitrust violation would indeed result from the issuance of the lease.

3525.10

This paragraph should be amended to clarify and reflect that confidentality of proprietary date and information will be maintained for submittals other than those pursuant to exploration licenses.

PEABODY COAL COMPANY
COMMENTS

Proposed Amendments to 43 CFR 3500, 3510, "Coal Leases"
at 41 Federal Register, No. 212, 48124, 11/2/76

3524.2-1 (b) (2)

It will seemingly be an arbitrary and discretionary decision as to whether additional reserves desired to be acquired through lease modification will be categorized as "competitive" or "noncompetitive" for disposal. The sole basis should be demonstrated need or committed need with submittal of definitive development plans for the reserves or deposit in question. Would the area having been nominated for competitive lease necessarily place it in the competitive category when any uncontrolled reserve area can be nominated? The phrase "...in the interest of the United States..." as in 3524.2-1 (a) should be the sole qualifying factor in such determination of allowance of lease modification. Subparagraph 3524.2-1 (b) (2) should be deleted.

PEABODY COAL COMPANY
COMMENTS

Proposed Exploration License Regulations (43 CFR 3500, 9230)
41 Federal Register, 48754, 11/5/76

Peabody feels a general comment on these proposed regulations should be made. In these and other regulations, the concept of a "Federally-owned coal estate" is espoused. There is no basis for this concept in law, yet, by its being used by the Federal government, it will come to have a meaning. It again takes us further from the concept of "public lands" to that of some sort of concept of Federally owned lands.

Sec. 3507.0-1:

Here, and in 3507.0-5 (a), the phrase "...coal deposits subject to disposal..." is used. It must be asked how such deposit will be determined to be "subject to disposal"? For example, if the BLM, on the state level, in its Management Framework Plan (MFP) process determines that a certain area should not be leased, is that area then not able to have an exploration license issued covering it because it is not "subject to disposal"?

Sec. 3507.0-4 (c):

The proposed regulations do not define "authorized officer".

Sec. 3507.0-4 (d):

This subparagraph requires that the Geological Survey will review and concur in exploration plans, and recommend termination of bond liability upon completion of exploration operations, "after

consultation with the authorized offier, or where appropriate, the surface management agency and the surface owner". This leaves a question of whether the Geological Survey's concurrence is required for exploration plans to be approved. Also, a question is raised of what significance, if any, to give the fact that the reference to the surface management agency and the surface owner was preceded here by "or", whereas in subsection (c) it was preceded by "and".

Sec. 3507.0-5 (g):

The definition of "coal exploration for commercial purposes" seemingly conflicts with other portions of the proposed regulations. Exploration includes "...information...to prepare a complete resource evaluation of the land.". If "resource values of the land" refers to multiple uses as envisioned in the Federal Land Policy and Management Act of 1976 (B.L.M. Organic Act), then an exploration license is seemingly required to collect information for an E.I.S. Yet in some instances an exploration license may not be granted without an E.I.S. Thus, it may not be possible to explore without an E.I.S. or to collect E.I.S. information without an exploration license.

"Coal exploration for commercial purposes" as herein defined should be rewritten so that such delineated activities are excluded on lands now subject to a Preference Right Lease Application.

Sec. 3507.1 (4) (b):

This should state that "no exploration license will be issued for any land on which a coal lease has been issued or for any lands on which a Preference Right Lease Application is pending".

Sec. 3507.2-1:

This section states that a full E.I.S. will be required before issuance of an exploration license if so determined by the appropriate officer or agency. A requirement such as this could delay a routine exploration drilling operation up to 36 months, that figure being based on past Peabody experience. If this requirement is enacted, it is possible that three full E.I.S.s (exploration plan approval, mine plan approval, NPDES permit approval) could be required before a mine could begin production.

Sec. 3507.2-2:

The regulation proposed for cultural resources appears to go beyond the authority of the Historic Preservation Act by extending its application to sites not included in the National Register, but merely nominated for inclusion.

Sec. 3507.2-3:

With regard to endangered species, Peabody recommends that exploration licenses should be issued with protective conditions included, rather than to have their issuance denied if the authorized officer is concerned that such species may be threatened.

Sec. 3507.3-1:

Section 4 of the Federal Coal Leasing Amendments Act prescribes, "The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license", and it is true that this language provides great latitude in the promulgation of regulations. But, where Section 4 of the Act makes no provision for such a requirement of participation in exploration plans, the

inclusion of the requirement in the regulations would seem to exceed the authority delegated to the Secretary. Peabody is unaware of any provision in the statutes which would require the Department to allow anyone else applying to participate in an approved exploration plan. The inclusion of this provision should be given the most careful consideration since, in practical effect, it may make exploration licenses useless.

As an example, Peabody may apply for and receive such approval for a plan and publish its "Notice of Invitation". As the proposed regulation is interpreted, any person, corporation or "public body" could participate in the exploration plan. Peabody could go through considerable time and effort to obtain its approved license. It would then be unfair to be forced to allow outside parties to merely "buy in".

In addition, Peabody is concerned that this proposed procedure does not adequately allow the licensee to protect confidential information. This regulation should be revised to allow the permittee to assign an interest in his license pursuant to a cost-sharing agreement between the license holder and another party or parties, thus affording the license holder the opportunity to protect confidential information by the terms of such an agreement.

Sec. 3507.3-1 (c):

If the authorized officer issues a call for an expression of interest in exploration licenses for any areas, such an invitation should not be made to other than the prospecting permit holders for areas under pending Preference Right Lease Application.

Sec. 3507.3-2 (b):

As presently worded, the purpose of this regulation could be defeated by the authorized officer refusing to designate the date on which operations may begin, or because no time is stipulated for such designation to be made, or because the designated starting date may not be prudent with respect to the licensee's needs. This subsection should be rewritten to preclude the potential occurrence of these shortfalls.

Sec. 3507.3-2 (f):

Peabody is unaware of any express provision in the Act for modification of exploration licenses.

Sec. 3507.3-5:

Without guidelines set at a higher level, the authorized officer may be given too much discretionary authority to set license stipulations and requirements.

Sec. 3507.3-6:

This section should be rewritten to clarify what the licensee may be required to collect in regard to "groundwater data". Such a requirement at the discretion of the authorized officer could be excessively burdensome, time-consuming and costly. Clarification should additionally be made to indicate over how large an area such data collection might be required.

Sec. 3507.4:

The explanation of what the licensee is supposed to submit, to whom and under what circumstances is not at all clear. As for

the provision on confidentiality, it follows the Act with the major exception of the limitation of confidentiality to five years, which appears only in the regulation. This limitation does not seem justifiable.

Sec. 3507.5 (b):

This seems, without any apparent authority, to give exploration the lowest priority of all possible uses. Additionally, it is contrary to the B.L.M. Organic Act, expressly Sec. 103 (1) where exploration is ranked on an equal basis with other uses and Sec. 204 where withdrawals for mineral exploration may have to be filed to segregate an area from the operation of the public land laws.

AMERICAN PUBLIC POWER ASSOCIATION,
Washington, D.C., December 10, 1976.

Hon. LEE METCALF,
Chairman, Subcommittee on Minerals, Materials, and Fuels, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR METCALF: The attached comments on the Interior Department's proposed rules implementing the Coal Leasing Amendments Act of 1975 were submitted to the Department today by the American Public Power Association. We would appreciate the inclusion of these comments in the record of the Subcommittee's hearing on implementation of the Act on December 2, 1976. Thank you very much.

Sincerely,

ALEX RADIN.

AMERICAN PUBLIC POWER ASSOCIATION,
Washington, D.C., December 10, 1976.

Re: Department of Interior Notice of Proposed Rulemaking of 41 F.R. 47258, October 28, 1976

DIRECTOR,
Bureau of Land Management, Department of the Interior,
Washington, D.C.

COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION ON PROPOSED REGULATIONS IMPLEMENTING THE COAL LEASING AMENDMENTS ACT OF 1975

American Public Power Association, the national organization of more than 1,400 local publicly owned electric systems in 48 states, the Virgin Islands, Guam and Puerto Rico, is pleased to offer comments on the proposed rulemaking implementing the competitive coal leasing provisions of the Coal Leasing Amendments Act of 1975. APPA is particularly concerned about the proposed Sections 3525.7 and 3525.8, on "Special Leasing Opportunities" and "Deferred Bidding Policy."

Tract nominations by public bodies

Section 3525.7(c) would permit the "designation" of coal lease tracts as "special leasing opportunities" for public bodies only if tracts within the State have been nominated by a public body and a request has been made by that public body "that the procedures of this section apply." The requirement of a tract nomination within the State by a public body is not found in the Act, which says that "a reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section (Sec. 2(a)(1)) to public bodies . . .", and specifies in Sec. 3525.12(c)(3)(iii) that the Secretary may offer coal tracts for lease either on request or on his own motion.

The proposed regulations would not require nominations by private entities prior to lease sales, but provide that proposed tracts may either be nominated or be "identified by BLM as potential leasing tract . . ."

APPA believes that the restriction of lease offerings made to public entities to tracts in states where nominations have been made by them is discriminatory and contrary to the purpose of the public preference provision in the Act. According to the Senate Interior Committee Report on S. 391, that purpose is to "stimulate competition in the coal industry by allowing new organizations to obtain and develop coal leases."

Regulations arbitrarily limiting the coal tracts which would otherwise be included in preference lease sales would not stimulate, but inhibit competition in the coal industry.

"Designation" of tracts

Section 3525.7(a) would specify that the Secretary must "designate and reserve" for preference lease sales a reasonable number of the coal lease tracts offered each year. However, the Act does not call for *designating* specific tracts for preference customer leases; it says, to the contrary, that a reasonable number shall be *"reserved and offered"* for lease to public bodies.

Numerous considerations enter into the choice of particular tracts of coal for particular preference end-users. There is a danger of thwarting the purpose of the preference provisions of the Act by designating some tracts and excluding

others in advance from eligibility for bids by preference customers, as could be the case under Section 3525.7(a).

Meeting preference customer requirements

APPA suggests that the Department's duty to meet the needs of preference customers in accordance with the Act may be satisfied by taking the following steps;

Special attention should be given to ascertaining preference customers' needs, including considerations such as location of tract, transportation, coal quality, and environmental and economic conditions.

Publicly owned electric systems, as local governmental entities, cannot raise money to acquire coal leases in a speculative manner. Such leasing must be done as part of a power supply program. Special attention therefore should be given to the needs of such preference lessees in locating tracts which fit into their overall power supply planning.

Sufficient advance notice of leasing opportunities should be given to preference entities to enable them to incorporate potential coal resources into long-range power supply programs.

Federal power marketing agencies should be consulted so that the coal requirements of preference customers could be considered in connection with the marketing of Federal power to preference customers.

Investigation into ways of determining the short- and long-term needs of preference customers should be undertaken. The Department might consider setting up a joint Preference Customer-Interior Department committee or a coal marketing agency to survey needs and demand.

Standards for "a reasonable number"

APPA believes that the Department is correct in deciding not to quantify "a reasonable number" of leasing tracts at this time. Proceeding on an ad hoc basis allows maximum flexibility in resolving the problems of preference customers as they arise. The Act's provision for public preference in coal leasing imposes two requirements for the application, whether ad hoc or formally promulgated, of the term "reasonable number": (1) that the number be sufficient to ensure the stimulation of competition in the coal industry, and (2) that the number be sufficient to supply the requirements of preference customers.

The Senate Interior Committee Report on S. 391, and later Sen. Lee Metcalf, Chairman of the Senate Subcommittee on Minerals, Materials, and Fuels, in committee hearings on December 2, 1976, suggested that the preference in coal leasing was intended to follow the precedent offered by the historical procedures for allocating hydroelectric power at Federal projects.[1] Thus, state and local government entities, such as publicly owned electric utilities, and rural electric cooperatives should have a first opportunity to obtain leases before coal tracts are offered to private bidders.

Deferred bonus bidding

In those situations under the Act where deferred bonus bidding is appropriate, the proposed rule would divide these deferred bids into five equal annual installments, the first to be paid upon award of the lease. The Department notes, however, that it is considering the adoption of other alternatives in the final rulemaking. These alternatives are extending the payment schedule to ten years, and deferring payment of most of the bonus until production has begun.

The purpose of the Act in deferring bonus payments on at least 50% of all leases was to reduce the need for large amounts of front-end capital, and thus to "permit a wider opportunity for competition for Federal coal leases," according to the Senate Committee Report. Although dividing bonus payments over five years provides greater leeway for small public entities than past practice, we are concerned that it may be a stringent schedule, and we suggest that the Department's stated alternatives, or other approaches, would better achieve the Act's purpose.

RUTH GONZE,
Legislative Representative.

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[1] Senator Metcalf stated at the hearing his belief that the proposed rules do not implement preference in accordance with the intent of Congress. He further stated that the preference implementation should be reconciled with history, and in this regard cited the Federal hydroelectric program.

[Telegram]

ENERGY FUELS CORP.,
Denver, Colo., December 1, 1976.

Hon. CLIFFORD P. HANSEN,
U.S. Senate,
Capitol Hill, D.C.

DEAR SENATOR HANSEN: By letter dated November 11, 1976, your legislative assistant, J. Nolan McKean, requested this company to supply you with our comments on proposed Federal coal exploration regulations for your oversight hearings to be held December 2. I certainly appreciate your requesting our comments which follow.

While 30 C.F.R. 6 § 211.10 is in final form and cannot itself be challenged, the requirement that that section's standards apply is subject to comment. Section 211.10, for example, requires a listing of all surface owners and all subsurface owners (other than the U.S.) in the exploration tracts. The requirement of listing subsurface owners would force applicants either to perform extensive title work to determine ownership of the minerals, or select exploration tracts solely by the United States' ownership of all minerals.

S. 391 requires that the exploration license application identify the general area and probable methods of exploration. However, § 211.10 requires the submission of data showing geologic, water, and vegetation factors; distribution, abundance, and habitat of fish and wildlife (particularly threatened or endangered species); methods of exploration and types of equipment to be used; measures to be taken to control fire, soil erosion, pollution of ground and surface water, damage to fish, wildlife or other natural resources, and hazards to public safety; methods for plugging drill holes; measures for surface reclamation, including a time schedule for each phase of work, methods of grading, backfilling, soil stabilization, compacting and contouring, methods for soil preparation and fertilizer analyses, mixture of shrubs, grasses, forbs and other vegetation to be used, and the method of planting; and topographical maps or aerial photographs showing existing bodies of surface water, topographical, cultural, and drainage features, and the proposed location of drill holes, trenches and roads. In addition to these specific requirements of § 211.10, the section also allows the mining supervisor to impose requirements for other data. If the finalized regulations contain these requirements, applicants will be forced to collect a great deal of information, costing time and money. The best change would be a limitation of this requirement to a "general and reasonable" basis.

S. 3507.2–1 requires the department to make what could be an extensive environmental analysis and technical examination of all exploration plans before issuance of a license. S. 391 only requires that each license contain conditions deemed to be reasonable by the secretary, including environmental safeguards, and that exploration not cause substantial damage to natural land surface. But S. 3507.2–1(a) requires that the environmental/technical analyses include the potential effect of the planned exploration on the resources of the area and the environment, including fish and other aquatic resources, wildlife habitat and population, visual resources, recreational resources, culture resources, and any other resources in area. Since these analyses must be done on each specific submitted exploration plan (and not for a general area), this requirement will clearly slow down issuance of exploration licenses.

The proposed invitation for others to participate in exploration on a pro rata each sharing basis (S. 3507.3–1(d)) is not required by S. 391. This provision would slow issuance of a license by at least the four weeks required for advertising; and since the exploration plan must have been approved before advertising, the regulation cannot be circumvented by advertising prior to approval of the plan. Further, licensees might find themselves in the undesirable position of being forced to conduct exploration with an unwanted party, or an outside party, wishing for some reason to slow the issuance of a license to a specific licensee, could respond to the invitation, requiring time for that party's compliance with the exploration license regulations as well as negotiation of a "pro rata" participation basis.

S. 3507.3–6 of the proposed regulations provides that the applicant for an exploration permit "may be required" to collect and report ground water data. This provision might be interpreted to require applicants to shoulder the burden of acquiring ground water data other than that acquired in the normal course of exploration.

S. 3507.5(a) of the proposed regulations provides that a licensee may use only as much of the surface of the licensed lands as is authorized by the approved exploration plan. This provision should contain procedures for modification of the exploration plan with respect to surface use. S. 3507.3–2(f) is a general modification provision, dealing with modification of the license or the exploration plan as a result of "unforeseen conditions that could result in significant disturbance or damage", or of geologic or other physical conditions warranting a modification. This general provision does not allow modification if the exploration plan underestimated the surface use, for example. Further, under the general provision, modification seems to be initiated by the Federal Government; but a licensee should be able to apply for modification. The S. 3507.5(a) limitation that the licensee may use only the amount of surface authorized by the exploration plan should be qualified by making the plan subject to modification. This might entail the inclusion of another modification provision in the regulations, allowing modifications for good cause on application of the licensee. Without these changes, a licensee who had underestimated surface use would seem to be required to apply for a new license.

S. 3507.5(b) prohibits exploration operations from unreasonable interference with any other authorized use under any other act. This provision, because of its vagueness, could cause trouble for an exploration operation. For example, there is no way of knowing in advance what will constitute "unreasonable interference".

Finally, since the proposed exploration license regulations make the operating regulations of 30 C.F.R. part 211 applicable to licensed exploration operations (S. 3507.3–4), compliance with part 211 may make exploration a very expensive and time-consuming project. Exploration operations, being different than actual mining operations, could be better served by operating rules specifically designed for exploration.

Very truly yours,

ROBERT W. ADAMS,
Chairman of the Board.

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