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COAL LEASING AMENDMENTS

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HEARING

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BEFORE THE

SUBCOMMITTEE ON

ENERGY PRODUCTION AND SUPPLY

OF THE

COMMITTEE ON

ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 3189

A BILL TO FURTHER AMEND THE MINERAL LEASING ACT
OF 1920 (30 U.S.C. 201(a)), TO AUTHORIZE THE SECRETARY
OF THE INTERIOR TO EXCHANGE FEDERAL COAL LEASES
AND TO ENCOURAGE RECOVERY OF CERTAIN COAL DEPOS-
ITS, AND FOR OTHER PURPOSES

JUNE 27, 1978

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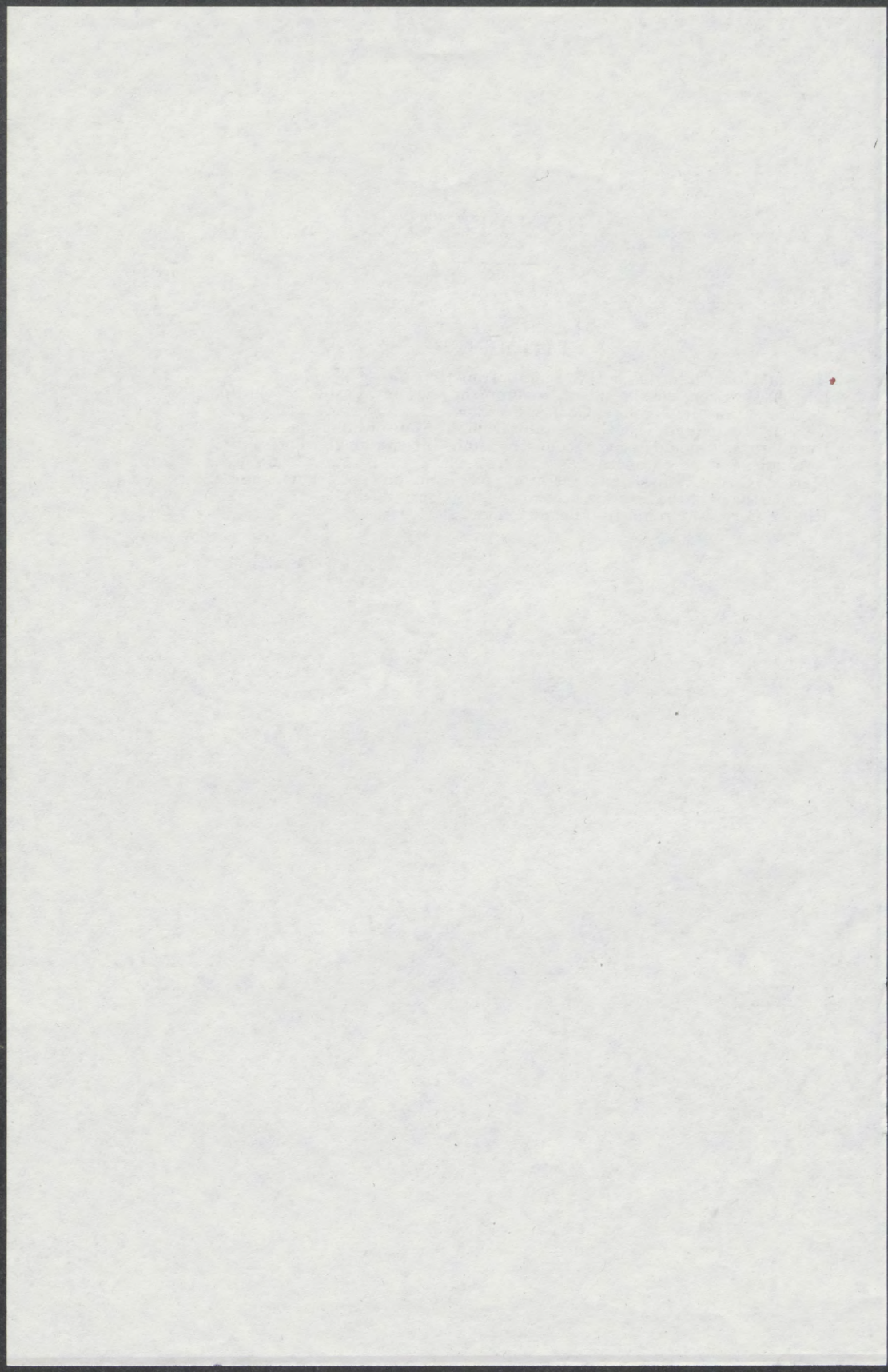
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COAL LEASING AMENDMENTS

TUESDAY, JUNE 27, 1978

U.S. SENATE,
SUBCOMMITTEE ON ENERGY PRODUCTION AND SUPPLY,
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 8 a.m., in room 3110 Dirksen Office Building, Hon. Floyd K. Haskell presiding.

Present: Senators Haskell and Hansen.

Also present: Tom Laughlin, professional staff member, and Darla West, legislative assistant to Senator Domenici.

OPENING STATEMENT OF HON. FLOYD K. HASKELL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator HASKELL. The hearing will come to order and this morning's hearing is on S. 3189, a bill to amend certain coal provisions of the Mineral Leasing Act of 1920.

The bill is the result of a series of oversight hearings on Federal coal leasing policy conducted by this subcommittee late last year and in early 1978. Witnesses at these hearings included numerous representatives of the coal industry, environmental groups, coal users and state and local governments.

Among the recommendations received from coal industry representatives was the suggestion that the act be amended to provide for noncompetitive access to coal which was removed incidental to the exercise of a Federal right-of-way. A second recommendation was that, in cases where a lessee obtained a lease modification, he should not be required to pay a higher royalty on his original lease as a result of the modification.

Another recommendation, looked upon with favor, as I understand it, by environmental groups, industry and the administration was to provide for the exchange of coal leases which should not be developed for environmental reasons for those which could be developed without unacceptable environmental consequences.

Working with Senator Hansen and the Department of the Interior, we arrived at the text of S. 3189 to make these three recommended changes in the law.

This morning's hearing will be the only hearing on the bill. I hope that witnesses will address themselves particularly to the content of the bill and recommend whatever changes they view as necessary so that this legislation will result in an improvement in the Secretary's ability to properly manage the Federal coal lands.

At this point, I would request that S. 3189, together with the department report, be made a part of the record.

[The bill and report follows:]

95TH CONGRESS
2D SESSION

S. 3189

IN THE SENATE OF THE UNITED STATES

JUNE 9 (legislative day, MAY 17), 1978

Mr. HASKELL (for himself and Mr. HANSEN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To further amend the Mineral Leasing Act of 1920 (30 U.S.C. 201 (a)), to authorize the Secretary of the Interior to exchange Federal coal leases and to encourage recovery of certain coal deposits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 2 (a) (1) of the Mineral Leasing Act of 1920,
4 as amended (30 U.S.C. (a) (1)) is further amended by
5 adding the following paragraph at the end thereof:

6 “Notwithstanding the requirement in this section that
7 leases be awarded by competitive bidding or any other pro-
8 vision of this or any other Act to the contrary, the Secretary
9 is authorized to acquire Federal coal leases or rights to Fed-

1 eral coal leases by purchase at fair market value as deter-
2 mined by him, by exchange for another coal lease, or by
3 condemnation, subject to the provisions of subparagraphs (i)
4 through (iv) of this subsection. The authority granted by
5 this paragraph is in addition to and does not restrict the
6 existing authority of the Secretary to acquire coal and other
7 mineral leases and rights to leases by exchange for another
8 Federal mineral lease, or for bidding rights to Federal min-
9 eral leases.

10 “(i) The acquisition authority granted in this sub-
11 section may be exercised by the Secretary only upon a
12 determination by him that (a) development of the lease
13 would result in unacceptable damage to other resource values
14 including archeological values or significant adverse en-
15 vironmental, social, and economic impacts in the vicinity of
16 the lands covered by the lease or proposed lease, and the
17 public interest would be better served by acquisition of the
18 lease or right to lease in question than by development of
19 the existing lease or proposed lease, or (b) development
20 of the lease would conflict with a specific proposal for use
21 of the land for a public purpose and such use was not con-
22 sidered by the Secretary prior to issuance of the prospecting
23 permit or lease.

24 “(ii) This subsection does not require or obligate the
25 Secretary to take any action or to make any commitment to

1 a lessee or lease applicant with respect to issuance, admin-
2 istration, or development of any lease.

3 “(iii) If the Secretary decides to acquire an outstand-
4 ing coal lease or right thereto by exchange, he is, authorized
5 to accept relinquishment of a lease issued under this Act, the
6 Mineral Leasing Act for Acquired Lands (30 U.S.C. 271-
7 276), or the Railroad and Other Right-of-Way Leasing Act
8 of May 31, 1930 (30 U.S.C. 301-306) or a right to issuance
9 of such a lease, in whole or in part, and to issue to the lessee
10 or lease applicant, in exchange therefor, a coal lease which
11 the Secretary determines to be a lease of comparable value.
12 Leases issued pursuant to the exchange provisions of this
13 subsection are subject to the provisions of this Act except
14 as otherwise provided expressly in this subsection. A new
15 lease issued in accordance with this subsection shall become
16 effective only upon relinquishment of the outstanding lease
17 or right to a lease.

18 “(iv) The Secretary shall issue such rules and regula-
19 tions and establish such procedures as he deems necessary
20 to carry out the provisions of this section. Such rules and
21 regulations shall include but need not be limited to require-
22 ments concerning information which must be submitted by
23 a lessee or lease applicant and requirements for public par-
24 ticipation with respect to any proposed exchange including

1 public meetings or hearings where the Secretary deems
2 them necessary.”.

3 SEC. 2. Section 2 (a) (1) of the Mineral Leasing Act of
4 1920 as amended (30 U.S.C. 201 (a) (1)) is further
5 amended by striking the period at the end of the first sen-
6 tence and inserting in lieu thereof the following: “: *Provided*,
7 That notwithstanding the competitive bidding requirement
8 of this section, access may be granted for tunnels or surface
9 rights-of-way through coal deposits subject to obtaining the
10 fair market value through negotiated sale and subject to the
11 conditions which the Secretary may deem appropriate.”.

12 SEC. 3. Section 3 of the Mineral Leasing Act of 1920 as
13 amended (30 U.S.C. 203) is further amended by adding,
14 after the word “contiguous”, the words “or cornering” and
15 by deleting the period at the end of the second sentence
16 thereof and adding the following clause: “except that nothing
17 in this section shall require the Secretary to apply the mini-
18 mum royalty provisions in section 7 (a) of this Act (30
19 U.S.C. 207 (a)) to any lands covered by the modified lease
20 prior to such modification.”.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 27 1978

Honorable Henry M. Jackson
Chairman, Committee on
Energy and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This will respond to your request for the views of this Department on S. 3189, a bill "To further amend the Mineral Leasing Act of 1920 (30 U.S.C. 201(a)), to authorize the Secretary of the Interior to exchange Federal coal leases and to encourage recovery of certain coal deposits and for other purposes."

We believe that S. 3189 will eliminate or correct several gaps in our current regulatory authority; and, accordingly, we recommend that S. 3189 be enacted, subject to the recommendations contained in this report.

S. 3189 would amend the Mineral Leasing Act to: (1) authorize the Secretary of the Interior to exchange existing coal leases or rights covering lands which, in his judgment should not be developed for environmental reasons or because of conflicts with other land uses, for new leases on which development would not involve such risks or to condemn such leases or rights; (2) authorize the Secretary to negotiate the noncompetitive sale of small amounts of coal which would be removed as an incident to the granting of a right-of-way pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA); (3) provide that noncompetitive modifications of leases of up to 160 acres would not subject the original leasehold to the requirement of a 12.5 percent royalty.

Exchange Authority

For leasable minerals other than coal, the Department has the authority to exchange leases and has issued regulations that effect such exchanges. Coal, however, must be leased competitively; noncompetitive exchanges are barred. President Carter's May 23, 1977, environmental message expressed support for the idea of exchanging environmentally unsatisfactory leases for environmentally acceptable coal lands of equivalent value. Section 1 of S. 3189 would substantially accomplish this purpose. We do, however, have the following concerns:

First, we believe that the application of subsection 1 should be limited to existing leases and rights to leases. Passage of the Coal Leasing Amendments, with its increased opportunity for public participation, and the implementation of a new coal program should prevent the occurrence of situations requiring exchange, purchase, or condemnation. Accordingly, we recommend insertion of the language ", existing as of the date of enactment of this section," on page 2, line 1, after the word "leases."

Second, the "notwithstanding" clause at the beginning of the exchange provision is quite broad and may reduce our abilities to implement both diligent development and unsuitability designation policies. Lessees who are unable to meet the diligent development standard may try to use the exchange provisions to prevent loss of their leases.

Third, it is important to make clear that this broad "Notwithstanding..." clause relates only to competitive bidding and does not restrict or abrogate the Secretary's authority under the Surface Mining Act. It may, therefore, be necessary to insert explicit language to this effect into the Mineral Leasing Act amendments. We suggest the following language: "Nothing herein shall be construed as superseding, modifying, restricting, amending or repealing the authority of the Secretary under any provisions of the Surface Mining Control and Reclamation Act of 1977 to purchase, acquire, or condemn lands adversely affected by past coal mining, to exchange coal leases involving alluvial valley floors or to designate any Federal lands as unsuitable for mining coal or other minerals." This language should be inserted in Section 1 on page 2, line 9, after the sentence which ends on that line.

Additionally, appropriate language could be included in the legislative history to protect the authority in section 522. We would be glad to suggest such language.

Fourth, we believe that subsection 1(i) on page 2, should require the exhaustion of administrative and regulatory remedies available before exercising the authorities for exchange, purchase or condemnation. We recommend the substitution of the following for the language beginning after "(a)" on page 2, line 12 to ", and the" on line 16:

"coal mining would result in unacceptable environmental impacts, that such impacts cannot be prevented or adequately mitigated with the Surface Mining and Reclamation Act of 1977, or other Federal laws."

Also, a period should be placed after the word "development" on line 18, and the rest of (i) deleted.

Fifth, subsection (iii) of the new provision that would be added to section 201(a)(1) of the Mineral Leasing Act provides for exchange of leases of "comparable" value. The term "comparable" is not defined. Even if its parameters could be established, we believe the possibility of finding two coal leases of "comparable" value would be almost impossible. We found this to be the case in exchanges of lands; the same would be true of coal leases. In addition, application of the concept of "comparable value" may in some cases, be inconsistent with the concept of receipt of fair market value, which is the policy of the Congress with respect to disposal of property (31 U.S.C. 483a; 43 U.S.C. 1701(a)(9); 30 U.S.C. 201). We suggest that the approach used in section 206 of the Federal Land Policy and Management Act of 1976 be used instead. This could be accomplished by deleting the requirement for "comparable value" and substituting instead:

"If the value of the leases to be exchanged is not of equal value the value shall be equalized by the payment of money to the grantor or to the Secretary as long as the payment does not exceed 25 percent of the total value of the lands or interest transferred out of Federal ownership. The Secretary shall try to reduce the amount of payment to as small an amount as possible."

This language could be inserted in section 1(iii) on page 3, line 11, between "value." and "Leases."

Sixth, the authority to condemn leases might be better delineated by labeling the language, starting on page 2, line 10, as section 1(a)(2); and then by adding, on page 4, line 3, the following new subsection:

"1(a)(3)(i). The Secretary may initiate a condemnation action under this section only after reasonable efforts to exchange or purchase a lease or lease right have failed."

This would underscore that the exchange authority and condemnation authority contained in the bill are two separate approaches to resolving problems of undesirable outstanding leases.

Also, more effective implementation of the condemnation authority could be achieved if there were provisions to: specify the measures of compensation; authorize, in regulations, guidelines for making condemnations, as well as exchanges; and, to provide for judicial review in the U.S. District Courts in which the property or properties subject to condemnation are located. These objectives can be accomplished by the following additional amendments:

On page 4, after amendment section 1(a) (3) (i) suggested above, add the following:

"Sec. 1(a) (3) (ii). The lessee shall be entitled to receive such compensation as he shows to the Secretary is equal to the lesser of (A) the fair value of the cancelled rights as of the date of cancellation, taking account the cost of compliance with all applicable regulations or operating orders, reasonably anticipated with respect to the lease, or (B) the excess, if any, over the lessee's revenues from the lease of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease, and in connection with exploration or development, or both, pursuant to the lease: Provided, That with respect to leases issued before the date of enactment of this Act, such compensation shall be equal to the amount of specified in item (A) of this sentence."

On page 3, line 21, after the words "limited to," add the following language:

"the standards that the Secretary shall employ for making the determination of those conditions under which he will purchase at fair market value, exchange for another coal lease, and/or condemn coal leases,"

On page 4, add the following new subsection:

"Sec. 1(a) (5). The value of rights condemned by the Secretary under this subsection shall be subject to judicial review only by the United States District Court for the District in which the property or properties subject to condemnation are located."

Seventh, we suggest language to clarify the applicability of these authorities to preference right lease applicants. To the extent that this legislation should only apply to existing leases, we want to insure that they also apply to preference right lease applications where the Secretary has made a determination that the preference right lease applicant has met all of the requirements for a lease under the Mineral Leasing Act of 1920. We propose that the following subsection be added following page 2, line 24:

"(ii). This section does not require the Secretary to exchange, purchase or condemn any lease. The authorities in this section may be exercised by the Secretary as to an applicant for a preference right lease only upon a determination by him that the application and the permit upon which it was based has, in fact, met all of the requirements for its lease under the Mineral Leasing Act of 1920 (30 U.S.C. 201).

Rights-of-way

Section 2 of S. 3189 would give the Secretary authority to negotiate the sale of small amounts of coal which could then be removed for sale by the companies exercising rights-of-way granted by the Secretary for access to other leased coal deposits. This amendment could facilitate the development of Federal and nonfederal coal. However, we also believe that some limitation, beyond the language in the proposed amendment, on the discretion to grant rights-of-way is necessary to make clear the Congressional intention to allow use of this exemption from the normal competitive sale requirement only for conservation of resources purposes. We would be please to work with the committee on drafting specific language to clarify those limitations and circumstances of use.

Royalty for noncompetitive modifications

Section 3 of S. 3189 would provide that original leaseholds which are noncompetitively modified would not become subject to the 12.5 percent royalty as a result of such modification. New additions to the original leasehold, as a result of such modification, however, would be subject to the 12.5 percent royalty. This provision could be very useful in discouraging waste of coal resources.

We recommend that this provision might be better stated, however, as follows:

"except the provisions of section 7(a) of the Act (30 U.S.C. 207(a)) need not be applied to the lands of the original lease as a result of the lease modification."

Additional Recommendations

We believe the provisions of S. 3189 are desirable and we support their enactment. We would also like to suggest several other amendments that may be worthy of consideration at the same time and which we believe are also highly desirable.

Set aside for socially and economically disadvantaged groups:

The Federal Coal Leasing Act Amendment of 1976, provides for the awarding of coal leases by competitive bidding only, and offering a reasonable number of leasing tracts to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities provided that the coal is used by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers. No bid which is less than fair market value is to be accepted.

In establishing these set-aside programs, Congress recognized that some social goals were more important than attracting the greatest number of bidders in any single sale. The reservation of a reasonable number of tracts to be awarded solely to businesses owned or controlled by socially or economically disadvantaged groups would further the national social policy of enhancing access by such groups into the industry, thus promoting diversity and competition.

Therefore, we recommend that section 2(a)(1) of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 201(a)(1)) be further amended by inserting the following new sentence after the proviso therein:

"To further the national policy of promoting minority business opportunities, a reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to persons, including corporations, joint ventures, or other entities which are owned and controlled by members of socially or economically disadvantaged groups, as defined in regulations to be promulgated by the Secretary."

Women miners:

Section 30 of the Mineral Leasing Act provides, "Each lease shall contain...provisions prohibiting the employment of...any girl or woman, without regard to age, in any mine below the surface...." Whether such a lease term is now constitutional or not, the department is required by statute to put it in every lease. We believe that such a requirement is incompatible with the fundamental policies of the Civil Rights Act of 1964 and other Executive

directives. The Department is aware of cases in which women are working in underground mines adjacent to Federal lease tracts. If a Federal lease were issued, on these adjacent tracts, these women under this clause, would have to stop working when the mine operation extended into Federal lands. Accordingly, we recommended deleting this language.

Conveying reserved Federal mineral interests:

It appears that section 209 of FLPMA, the provision for conveying reserved Federal mineral interests, cannot apply to lands containing deposits of leasable minerals which make the lands valuable therefor.

In our view, each House of Congress intended to amend or repeal section 27 of the Mineral Leasing Act, 30 U.S.C. 193, which provides that the Leasing Act is the exclusive method of disposing of these resources, by making section 209 applicable to such lands. Congress negated itself, however, by adding section 701(f) to FLPMA in Conference. The repeal by implication of section 37 that would otherwise have occurred was prevented by the Conference provision that FLPMA does not "repeal any law by implication."

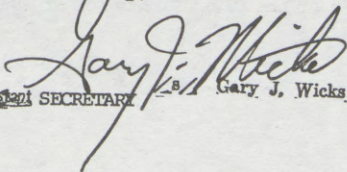
The original Congressional intent which the Department has always supported, to have leasable minerals subject to section 209, can be accomplished by the addition of the following simple amendment:

Section 4. Section 27 of the Mineral Leasing Act of 1920 (30 U.S.C. 193) is further amended by the addition of the words "except as provided in sections 206 and 209 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2756, 2757-58, and" after "only in the form and manner provided in this act," and before "except as to valid claims...."

The addition of section 206 does not alter existing law. By memorandum dated June 3, 1977, from the Deputy Solicitor to the Director, BLM, the Department concluded that section 37 did not pose a similar bar to exchanges under section 206 of FLPMA (for reasons inapplicable to section 209). The addition of section 4 would serve to forestall legal challenges.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,


Deputy Assistant Secretary Gary J. Wicks

Senator HASKELL. I will now call on Senator Hansen for an opening statement.

STATEMENT OF HON. CLIFFORD P. HANSEN, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator HANSEN. Thank you, Mr. Chairman.

Mr. Chairman, I was pleased to cosponsor this legislation which adds some fine tuning to the coal leasing provisions of the Mineral Leasing Act. As you may remember our late great Senator from Montana, Lee Metcalf and I had made a commitment along with you to look at this legislation for any needed corrections.

I understand the industry, environmental groups, and others may seek more sweeping changes as shown in the review of the excellent hearing record you have compiled. This bill does not make sweeping changes in the coal leasing policies of this country. It does provide for needed facilitation to do the job at hand without needless expense and delays.

You have described the three provisions and I think the witnesses will speak to them in detail. Thank you, Mr. Chairman.

Senator HASKELL. Thank you, Senator Hansen. Our first witness is Secretary Martin, Assistant Secretary for Land and Water Resources of the Department of Interior.

STATEMENT OF GUY R. MARTIN, ASSISTANT SECRETARY FOR LAND AND WATER RESOURCES, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY GARY WICKS

Mr. MARTIN. Good morning, Senator, how are you?

Mr. Chairman, thank you very much. It is a pleasure to be here and I particularly want to thank you and Senator Hansen for a period of work and cooperation on this that I think sets a model for the way we ought to work through problems. We have appreciated it and both you gentlemen and your staffs have been very, very helpful, too, and we have appreciated that. We think we have a good product as a result.

Senator HASKELL. Thank you very much.

Mr. MARTIN. Mr. Chairman, S. 3189 would provide the Secretary of Interior with additional tools of great assistance in developing and administering a coal leasing program to meet coal production, environmental protection, and other natural resource management objectives. To summarize, S. 3189 would amend the Mineral Leasing Act to permit the Secretary of the Interior to exchange environmentally unacceptable coal leases or rights to coal leases for new leases where development would not involve such risks. Authority to reacquire such leases through condemnation action is also included. In addition the bill would give the Secretary the authority to negotiate the noncompetitive sale of small amounts of coal which would be removed as an incident to the granting of a right-of-way pursuant to the Federal Land Policy and Management Act of 1976 and would provide that noncompetitive modifications of coal leases of up to 160 acres would

not automatically subject the original leasehold to a requirement of a minimum 12.5 percent royalty. We favor the concepts in this bill and, subject to several suggested changes and additions which I will discuss shortly, we recommend its enactment.

In his environmental message of 1977, the President expressed support for the idea of exchanging environmentally unsatisfactory leases for ones which were environmentally sound and of equivalent value. For leasable minerals other than coal, the Department already has the authority to exchange leases and has issued regulations that effect such exchanges. Coal, however, must be leased competitively; non-competitive exchanges are barred. In addition to authority needed to exchange coal leases, the President also called for legislation to authorize acquisition of outstanding rights upon payment of reasonable compensation, if necessary to prevent environmental damage.

Following this message, the President instructed the Secretary of the Interior to "manage the coal leasing program to assure that it can respond to reasonable production goals by leasing only those areas where mining is environmentally acceptable and compatible with other land uses."

The President further directed that we "scrutinize existing Federal coal leases and applications for preference right leases to determine whether they show prospects for timely development in an environmentally acceptable manner," taking steps as necessary to deal with nonproducing and environmentally unsatisfactory leases and applications.

Section 1 of your bill would substantially fulfill the legislative needs identified in this part of the environmental message and would provide us with additional means to carry out the President's directive. However we recommend certain changes. These changes, detailed in our report on the bill, would make it clear that the exchange provisions are not intended and will not be used by this Department to enable lessees who are unable to meet the diligent development standards to use the exchange provisions to prevent loss of their leases or otherwise escape lease obligations.

We have also suggested an additional provision to clarify that the enactment of S. 3189 would not undermine existing authority of the Secretary under the Surface Mining Control and Reclamation Act of 1977 to purchase, acquire, or condemn lands adversely affected by past coal mining, to exchange coal leases involving alluvial valley floors or to designate any Federal lands as unsuitable for mining coal or other minerals.

In addition, we strongly recommend the addition of a provision to permit use of limited cash equalization in making exchanges and to eliminate the term "comparable value." Even assuming that this term "comparable value" could be adequately defined, it is extremely unlikely that we would be able to identify two coal leases which we would confidently assert to be of "comparable value." Thus, for better administration and to guarantee flexibility we suggest that the approach used in the Federal Land Policy and Management Act of 1976 be used. This well thought-out process provides that the leases shall be equal value, or if they are not equal, that the values shall be equalized by the payment of money, which is not to exceed 25 percent of the total value

of the new lease to be issued by the Secretary. This approach would also avoid any possibility of deviation from the fair market value standard for which the Congress has expressed continued support.

Other clarifying changes are included in our report and I will go through those briefly:

Section 2 of S. 3189 would enable the Secretary to resolve access problems by sales of small amounts of coal in connection with exercise of rights-of-way over or through coal deposits. This amendment could facilitate the more rapid development of Federal and non-Federal coal.

Section 3 of S. 3189 would broaden the authority of the Secretary to grant modifications of coal leases to include not only lands contiguous to those embraced in the lease but also those cornering the lands covered by the lease. This is a helpful authority that should avoid the needless and wasteful bypass of small deposits of coal.

Section 3 would also remedy a significant difficulty posed by the modification and minimum royalty provisions of the Federal Coal Leasing Amendments Act of 1975.

In recent years, although the Secretary exercised his discretion to charge a royalty generally ranging between 4 to 6 percent, the royalty did not approach the 12½-percent minimum prescribed by the Federal Coal Leasing Amendments Act of 1975. Thus, the vast majority of Federal coal leases are subject to a royalty far below the minimum royalty required by that act. The value of Federal coal production for 1977 was \$433.6 million. Of that amount only \$9.8 million, or a little over 2 percent of production value, was paid in royalties.

Most outstanding leases require royalty payments of 17½ to 22½ cents per ton. These leases will become subject to the current 12½ percent minimum upon readjustment at the end of their respective terms. Section 3 of the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act has been interpreted to require imposition of the new 12½-percent minimum royalty to all the acreage in a modified lease, including acreage which is not otherwise subject to that minimum. We believe that the effect of this requirement may be to leave undeveloped small areas of coal that would otherwise be sought by modification. Leasees are not willing to subject their entire acreage to the 12½-percent royalty during that period of time before the leases will be readjusted, merely to obtain and develop these small additional areas.

In our view S. 3189 should simply state that the Federal Coal Leasing Amendments Act does not require the Secretary to impose the 12½-percent royalty on the old acreage in a modified lease. However, it would still require imposition of the minimum royalty for the new acreage and would not prohibit an increase for the entire leasehold if the Secretary, in his discretion, decides that an increase is appropriate. This change would give the Secretary the flexibility needed to negotiate appropriate modifications in the interim before these older leases are readjusted.

In our report we have suggested alternate language that we think represents a clear statement of this provision.

In summary, we believe that enactment of the new and flexible authorities included in S. 3189 will provide opportunities to resolve

existing leasing problems at the earliest possible time in the life of a lease and will significantly assist this Department in meeting the President's expectation for a new coal leasing program that can achieve production goals in a framework environmental integrity and proper resource management.

Let me move on to a couple of additional items which I believe are of interest to the Department and to you Mr. Chairman.

The Federal Coal Leasing Amendments Act of 1975 provides for awarding coal leases by competitive bidding only, and for offering a reasonable number of leasing tracts to certain public bodies. No bid which is less than fair market value is to be accepted. In establishing these set-aside programs, Congress recognized that some social goals were more important than attracting the greatest number of bidders in any single sale.

The reservation of a reasonable number of tracts to be awarded solely to businesses owned or controlled by members of socially or economically disadvantaged groups would serve a national policy of enhancing access by such groups to industry, thus promoting diversity and competition. Amendment of the law to permit such an additional category of set-asides would be appropriate. We are prepared to support an amendment to this effect and have suggested language in our report.

Section 30 of the Mineral Leasing Act requires a prohibition in each lease against the employment of any girl or woman, in any mine below the surface. Whether such a lease term would be found constitutional or not, the Department is required by statute to put it in every lease. We believe that such a requirement is archaic and inconsistent with civil rights legislation and related Executive directives. The Department is aware of cases in which women are working in underground mines adjacent to Federal lease tracts. If a Federal lease were issued on these adjacent tracts, these women, because of this clause, would have to stop working when the mine operation extended onto Federal lands. This situation merits corrective action at the earliest date.

Another problem deserving your attention relates to the construction of section 37 of the Mineral Leasing Act of 1920 as it relates to section 209 of the Federal Land Policy and Management Act of 1976. Section 209 of the Federal Land Policy and Management Act provides for conveyance of mineral interests, if certain criteria are met. It is our view that the Congress intended that leasable minerals be subject to these provisions. However, section 37 of the Mineral Leasing Act states that disposal under that act is the exclusive method of disposing of these resources. Since the Federal Land Policy and Management Act provides that it does not repeal any law by implication and section 37 of the Mineral Leasing Act was not formally amended or repealed, it appears that section 209 of the Federal Land Policy and Management Act cannot be applied to leasable minerals and therefore, such minerals cannot be disposed of under the section 209 criteria for conveyance of reserved mineral interests.

The original congressional intent, which the Department has always supported, to have leasable minerals subject to conveyance under section 209 can be accomplished by a simple amendment contained in our report.

Our report more fully discusses all of our additional concerns.

Mr. Chairman, I will conclude there and thank you very much.

Senator HASKELL. Well, thank you, sir. I do have a few questions.

Just for clarification you say, "These changes detailed in our reported bill would make it clear that the exchanged provisions are not intended and will not be used by this Department to enable lessees who are unable to meet the diligent development standards to use the exchange provisions."

I don't think it was anybody's intention to do anything—are you talking about the exchange where environmentally, land can't be mined unless the authority is given to exchange it for other lands. Is that what you are talking about?

Mr. MARTIN. That is the provision, yes, sir.

Senator HASKELL. Well, I think we meant just what we said. I don't quite understand what you are getting at.

Mr. MARTIN. Mr. Chairman, it was more of a drafting difference. We think that your interest is the same as our intent. We are not suggesting that it was anything else but we do suggest our amendments clarify that.

Senator HASKELL. Well maybe your staff and our staff could get together but speaking for myself, all I intended was that where environmentally, land couldn't be mined it would be the authority for exchange and I didn't mean anything further.

Senator HANSEN. I would join with you, Mr. Chairman, underscoring the point you have just made. We recognized some restrictions were placed in this bill. I think the restriction on mining at the alluvial valley floor is a case in point.

There, it seemed to us as though, the amendment offered by Senator Wallop to provide for an exchange mechanism avoided the confrontation which would result by imposing a restriction on the ownership of private property as is oftentimes the case. The surface and the minerals too were owned by an individual and the Government flatly prohibited the mining of coal in the alluvial valley floor. We would provide an opportunity for that individual to mine coal someplace else in an environmentally acceptable situation and we had nothing further in mind.

Mr. MARTIN. There is no question of that in our mind. The vehicle we use and the language we suggest, Mr. Chairman, is simply to tighten the controls on the Secretary's discretion. As you know, any exchange is a difficult matter for the land manager. What we do in our language is simply to allow the Secretary less discretion and to guide the exchange process carefully.

Senator HASKELL. Well, I am sure this can be worked out. Just speaking for myself, I agree strongly with your suggestions in your statement where you allow the 25-percent monetary adjustment. It seems to me that makes good sense.

Senator HANSEN. And could that be worked both ways?

Mr. MARTIN. You mean whether the land in question is over or under either side could pay?

Senator HANSEN. Yes, either side could pay?

Mr. MARTIN. Yes. Our language provided that either side could make the offset payment.

Senator HASKELL. Now, you say in your statement it was at least my feeling that in the bill when you got this minimal amount of new acreage that the new royalty provisions would apply to the minimal amount of new acreage but I didn't intend to give the Secretary the authority to apply the new royalty to all the acreage in the whole lease. Now you are suggesting that the Secretary have that authority but that certainly wasn't my intent when we drafted the bill.

Senator HANSEN. Precisely, Mr. Chairman, I think our concern was making certain that imposing the law through regulations as stated in the bill, would result in deposits of coal being left so as to make it uneconomically feasible to go back and mine them at some later time when it was obvious that if they were to be mined they would have to be mined in conjunction with the lease but, by holding forth the possibility that the entire lease might be subjected to a higher royalty would obviate their being mined.

As I understand it that was not to be the case and if we provide here, as your language seems to suggest, that discretion can be exercised by the Secretary, I should think we might vitiate a lot of the result we had in mind. Would you agree with that?

Mr. MARTIN. Senator, I think we are not in substantial disagreement. Your language was largely satisfactory to us and again we intended to tighten it somewhat and suggest to the committee something to consider. Is the line which apparently is disturbing you that which provides the authority to include the entire leasehold?

Senator HASKELL. That is what we are trying to obviate.

Mr. MARTIN. That is right. Let me ask Mr. Wicks to comment on that.

Mr. WICKS. Well, Senator, all we are doing there is assuring that the Secretary retain the authority he presently has, at the end of the 10-year leases, to renegotiate or reset the relative rate; and all that sentence does is restate the laws that exist right now.

Senator HASKELL. Well, yes. Then I think that this statement, perhaps is a little bit misleading. Because we don't mean to take away that authority at the end of the term. All we were saying was that with this small amount of acreage, that per se, doesn't give the Secretary any rights.

Mr. WICKS. Right. And I think the language we have in our report makes that clear that that is what we are talking about so there is no disagreement.

Senator HASKELL. Now getting on in your statement, I view your suggestion of a national policy to, in effect, set aside for minority business as laudable in its purpose but here, Mr. Martin, all we are doing is trying to make some corrections in the Coal Leasing Act to make the leasing facilitate the administration of the act.

These things in our bill arose out of a series of hearings that Senator Hansen and I had extending over a 2-year period. At no time did this suggestion of yours pop up in any of our oversight hearings and I, speaking as a subcommittee member, if the administration would send us a bill with a suggestion embodying this in a legislative way how you figure out the set-asides, where you have the set-asides, these endless amount of questions arise, we would be, although this is going to be little tough, new but in due course of time I would certainly have

hearings on the subject in which you can present your views and the other person can present their views but I just, speaking for myself, don't think that we would be in a position to include this.

Senator HANSEN. You, again, echo my sentiments, Mr. Chairman. I am not aware of any evidence of an interest that would be served by the language that is contained in the paragraph to which you refer. As I say, I am unaware of it but it certainly could be considered.

I think there is a possibility that requiring a set-aside that percentage might tend to restrict employment opportunities in a given area. Hypothetically this could be the case if it were to result in a lessened degree of mining activity. It could make the securing of jobs by minority groups within an area more difficult that would be the case if all the coal would be available.

It is expensive and requires a lot of capital and I would agree with you that we are not in a position to include this issue.

Senator HASKELL. And it may be extremely meritorious but I think it is something that we ought to have hearings on.

Now, this next one, though we never considered this, this business of employing women underground, I don't know, that may be so antediluvian that we would eliminate that forthwith. I at once would like to have staff look at the ramifications of that.

Now, let's see. I don't understand you say section 209 provides that for conveyance of mineral interests if certain criteria are met. It is our view that the Congress intended that leasable minerals be subject to these provisions. I don't think I understand that.

Mr. MARTIN. Mr. Chairman let me have my deputy assistant secretary, Mr. Gary Wicks, comment on that.

Senator HASKELL. I just plain don't understand what you are talking about in your statement.

Mr. WICKS. What we are talking about is section 209 of FLPMA provides that you convey mineral interests and section 209 restricts that in advance to anything except leaseable minerals. What we are trying to do here is to provide that if it is the intent of Congress, which we think it is, in the original language, for the Department to also have the authority to convey leasable minerals then this amendment that we are suggesting would give the Department the authority to convey leaseable minerals as we think Congress intended in section 209E.

Senator HASKELL. I would personally like to have staff take a look at it. I don't know what the basic intent was in section 209, nor do I know whether this has come up when we have had hearings. I don't know whether this is technical or a very substantial correction and I personally would reserve judgment on that.

Senator HANSEN. You echo my feelings again, Mr. Chairman. Are you saying, Mr. Secretary, that our Kimball amendments are subject to conveyance of provisions of the law but leaseable minerals are not?

Mr. MARTIN. That is correct.

Senator HANSEN. And it would be your purpose to broaden the law to include the ability to convey lease agreements on minerals?

Mr. WICKS. Yes. If they were found to meet the requirements presently in the law.

Senator HANSEN. Could an exchange take place without this provision being added?

Mr. WICKS. Yes.

Senator HANSEN. So it is not necessary in order to affect a transfer?

Mr. WICKS. No. This is just to clean up some language and administrative problems that would be taken care of in this bill if the committee chose to do so.

Senator HANSEN. It would be helpful to this Senator if there could be an explanation given on that provision. I am not aware of a need for it. There may very well be a need.

Mr. MARTIN. Senator, I think the point we are making and we will work with staff on this, is that we read the intent of section 209 to tend in this direction, to try to accomplish this very thing.

What we have identified here is a possible inconsistency in the law that we may be able to take care of but we will be glad to work with the staff and work it out.

Senator HASKELL. One thing that occurs to me, Mr. Martin, and I would like to ask your views on the subject and this deals with the exchange provision. As you know some leases require production within a certain period of time, 10 years. Have you given thought as to how the Department would administer the exchange provision? We wouldn't want you folks exchanging a lease which had run for 8 years with no activity for a lease that had a brand new term of 10 years. What were you going to do with a situation like that?

Mr. MARTIN. Well, first of all that is one of the reasons we suggest some of the language we brought before you today to limit the Secretary's discretion.

We will have to follow up this legislation very quickly with the set of regulations that even further bound the Secretary's discretion as we see it. The worst situation for any land manager as I am sure you know, in exercising exchange authority is to have too much discretion, because the manager is always presented with a new set of facts or equitable argument for exchange. We need to have a set of firm rules and we propose to do that, both by the amendments we suggest and the regulations.

Senator HASKELL. I have no further questions.

Senator HANSEN. Thank you, Mr. Chairman. I do have one further question. I have scanned some of the testimony that will be given later this morning by other witnesses. In the statement of Mr. Humphreys on behalf of the American Mining Congress, he makes this point.

Section 1 of the bill grants the Secretary the power of condemnation or a power to purchase coal rights at a value as determined by him. We believe that these powers of condemnation should be eliminated from the bill and the holder of Federal coal rights should not be forced to either sell or exchange his product other than in a voluntary manner.

I refer now, Mr. Secretary, to your testimony:

We have also suggested an additional provision to clarify that the enactment of S. 3189 would not undermine existing authority to the Secretary under the Surface Mine Control Information Act of 1977 to purchase, acquire or condemn lands adversely affected by past coal mining to exchange coal leases involving the alluvial floors or to designate any Federal lands as unsuitable for mining coal or other minerals.

I think that expands a little bit upon the condemnation authority in the bill.

Would you care to comment, for my edification, the reasons behind your language in light of the observation made by Mr. Humphreys? I don't know if you have this statement before you or not.

Mr. MARTIN. I have not had a chance to read it. I received it. I think we have an honest disagreement on that point; Senator, it is our feeling and I think a great deal of the testimony that was given during your hearings reinforces that feeling, that the Secretary must have discretion to make purchases by condemnation if necessary to achieve certain protections. Those protections, as we see it, are well set out in your bill.

We think that the amendment that we propose clarifies that and makes clear that there is no change in basic authority that the Secretary now has. Beyond that I think we are not proposing anything that is inconsistent with the intent of the bill.

Senator HANSEN. I am not certain I caught the full thrust of your statement, Mr. Secretary. Why do you think it is necessary that the Secretary have this authority?

Mr. MARTIN. In order to achieve a series of goals, particularly those articulated by this committee. As set out in the testimony here, there is language which states as follows:

The Secretary may initiate condemnation action under this section only after reasonable efforts to exchange or purchase a lease or lease right have failed.

So we essentially limit the Secretary's discretion in that regard and then at the bottom of page 4 there is the following language which is, and this also is proposed as an amendment:

The value of rights condemned as a Secretary under Subsection shall be subject to the judicial review only by the United States District Court for the district in which the property is located.

So that we believe that we are not taking upon ourselves an unduly or inappropriately arbitrary authority.

We think responsibility must rest with the Secretary and he should exercise it properly but we don't feel that he should first use that authority without having exhausted all reasonable attempts to otherwise protect the resources. We, and I am sure you, take condemnation to be an extremely serious matter and something would should not be used lightly.

Senator HANSEN. It may be, Mr. Chairman, that when we have heard the other witnesses that another question or two would be indicated. Perhaps we could submit those in writing to you, Mr. Secretary?

Mr. MARTIN. We would be pleased to respond.

Senator HANSEN. Thank you very much, Mr. Secretary. I appreciate it.

Senator HASKELL. Now we have Mr. Harrison Loesch, vice president of Peabody Coal Co. representing the National Coal Association.

Mr. Loesch, I would like you to observe that things have been going downhill since you left the committee. We get up at ungodly hours in the morning to start hearings. Things are generally going to pot around here.

STATEMENT OF HARRISON LOESCH, VICE PRESIDENT, GOVERNMENT RELATIONS, PEABODY COAL CO., REPRESENTING THE NATIONAL COAL ASSOCIATION

Mr. LOESCH. I have always been an early riser, Mr. Chairman.

May I say that this appearance this morning gives me more pain than pleasure. It has been 5 years or more since I was customarily before this committee on this side of the table.

I testified a great deal over 4 years of time and I was always received with unfailing courtesy but extremely varying degrees of approval, depending on what I had to say.

Anyway it is a pleasure to be back again. I am the vice president of Peabody Coal Co. and I am here on behalf of the National Coal Association. The hearings last fall and last winter which you conducted on Federal coal leasing policy, Mr. Chairman, to appraise the existing law and to solicit proposals for change gave National Coal Association a gratefully received opportunity to testify and it is gratified also, and at the prompt legislation which resulted in the form of S. 3189.

The National Coal Association supports the objectives of that bill and with one significant deletion and the addition of a clarifying clause to the bill itself. In the first place we agree that a lease exchange arrangement is essential when a Federal coal lease is precluded from full development as a result of conflicting and overriding environmental or other land use policy considerations.

The most rudimentary tenants of equity call for such result and the constitutional protections of property rights demand it. We have serious reservations about the leasing change program, not the concept. Since our prior testimony did not outline these concerns I will offer a few general observations hoping that the committee will take them into account.

As we have noted in numerous prior appearances before the Congress there are, at present, very many impediments to coal production on Federal lands depending on administrative attitudes it is quite possible that the proposed exchange provision could become an additional impediment if used systematically to banning in particular areas. That is if the exchange program went wild.

The condemnation language of the bill is vague enough to allow such an interpretation and the provision in the Surface Mining Control Reclamation Act of 1977 for designating areas unsuitable for mining provides a logical basis for that kind of an approach by the Department.

We are confident that it is not the intent of the sponsors of the bill nor of this committee, nor of the Congress, to allow the Department of the Interior to undertake a restructuring of the entire existing Federal leasing scheme based upon future perceptions of "unacceptable damage to other resource values," or because of conflicts with proposed alternative land uses arising after issuance of the particular lease.

We perceive the intention to be to provide equitable relief in the rare case when some valid public policy or circumstance requires the replacement of one Federal lease by another of similar value. An example might be exchanged for lease areas designated as unsuitable for surface mining pursuant to section 522 of the Surface Mining Act. Another example might be exchange when the surface of the lands under Federal lease is needed for anyone of a variety of multiple public land uses such as parks, recreational areas, roads or simply for urban development. Surface Mining Act authorizes exchanges for leases in alluvial valley floors found to be unstable for mining.

It is possible, although unlikely that the dichotomy between the Mineral Leasing Act and the Surface Mining Act might be interpreted so that because of the requirement for competitive bidding on all leases you might have an illusory remedy for any operator on the alluvial valley floor even so. May I repeat that an exchange program is needed. I hope that we read your intentions correctly that the amendment will not, in fact become another device to frustrate or hamstring future production operations.

To assure that the bill is positive an equitable potential is realized and to guard against its misuse we strongly urge that the condemnation authority granted the Secretary be stricken. Further, we suggested the addition of clear report language to the effect that this amendment does not grant new authority to the Secretary to designate areas unsuitable for mining.

In our view that is left a little open in the present language of the bill. Unless this is done it appears that the limited grandfather protections which were so painstakingly built into the Surface Mining Act could be eliminated. I am speaking here with regard to the alluvial floor provision. This is so because the Secretary's condemnation authority contained in S. 3189 is retroactive and because it encompasses broader areas than those contemplated in the alluvial valley, prime farmlands, and areas unsuitable provisions of that Surface Mining Control Reclamation Act.

If this authority is not deleted our association and its members may have to forego their approval of its other features and oppose the bill as its whole. We hope that that won't happen.

In addition, we believe that clarifying language is needed with regard to the mechanism of exchanging leases. In this regard, if mining on a particular Federal lease or portion of a lease should be foreclosed as a matter of sound and legitimate public policy, then to have the proper effect, S. 3189 should mandate the exchange of an equivalent leasehold or portion of a leasehold wherever possible. Allowing the Department of the Interior merely to condemn or to buy out a particular operation would, in many cases provide an inadequate remedy. The full value of a Federal coal lease will often transcend the per ton worth of its underlying coal reserves because of long-term delivery obligations undertaken in reliance on anticipated production from it. Without providing a dispossessed Federal leaseholder with access to equivalent coal reserves on another comparable tract, he cannot be made whole in an equitable sense. Indeed, if a parcel of leased Federal land is crucial to the logical mining unit established by the operator then its loss could well overturn the economics of mining a much larger

area containing private or State-owned leaseholds. Under such circumstances, what would be the fair market value of the Federal parcel?

Turning to the remaining two provisions of S. 3189, we do support them wholeheartedly. The proposed right-of-way amendment will facilitate access to both Federal and non-Federal coal lands and should be adopted. By making clear that competitive bidding is not required for acquisition of such rights of way, an unnecessarily cumbersome procedure can be eliminated.

Similarly, we endorse the proposed change in section 3 of the Mineral Leasing Act and support its goal in discouraging the bypass of Federal resources. Experience has shown the adverse effects of making an entire existing subject to the fixed, minimum royalty rate whenever such leases are modified to include limited additional acreage. This requirement clearly has resulted in the bypassing of significant Federal coal reserves near existing mines simply because there was no economic justification for subjecting the production of an entire operation to the 12.5 percent royalty rate just to obtain a few additional acres of Federal land. As a result, this provision of the 1975 Leasing Act Amendment has frustrated intent of Congress to discourage the bypassing of Federal coal reserves.

Let me digress here for just a moment if I may, Mr. Chairman, to say that we were highly interested in the back of the room in your questions to Secretary Martin on this subject because it appeared that there was some impression, perhaps is the word, in his statement. It was our understanding that your bill is intended to prevent the Secretary from charging the new royalties on the old part of the lease when a small addition is made and it appeared to me that Secretary Martin's statement wishes to allow the Secretary the discretion to continue to do so and certainly we don't read that as your intent and we hope we are right in not doing so.

We believe that allowing for lease modifications to add contiguous or cornering acreage to existing leases without incurring royalty liability is one needed change to achieve the intent of Congress. However, the threat of royalty increases is not the only factor which encourages such bypasses. Another is the imposition of additional terms and performance conditions on an existing lease whenever a modification is granted. This requirement is similarly counterproductive and to restore congressional intent we urge the addition of the following language to section 3 of the proposed amendment:

* * * and provided that notwithstanding any other provisions of this act, the terms and conditions in the existing lease shall not be changed as a result of such modification.

Now, whatever the language, as it now stands may mean, and whatever Secretary Martin and Deputy Secretary Wicks had in mind, certainly the addition of this language would make it very clear indeed that not only royalty but other provisions of the existing lease would not be changed by such an addition.

In concluding, Mr. Chairman, allow me to remind the committee that we have other serious concerns about the Federal leasing program which are not addressed to this bill. In testimony on behalf of NCA

on February 8, 1978, Mr. Robert Quenon, president and now chief executive officer of Peabody Coal Co., as well as chairman of the National Coal Association itself identified for this subcommittee a series of areas in the Leasing Act and amendments which need revision. Since these concerns are part of the report I will not repeat them now. But on behalf of NCA, I request that your next year's program include consideration of the other amendments to the law which we have identified and which are necessary to the implementation of the national goal of substantially increased coal production.

Again, Mr. Chairman and Senator Hansen, let me say how much I appreciate appearing before you this morning and I thank you for your attention.

Senator HASKELL. Thank you very much, Mr. Loesch. In your statement you say :

Depending upon administrative attitudes it is perfectly possible that the proposed exchange provision could become an additional impediment if used systematically to banning in certain areas.

Now we are not in this bill, or it is certainly not my intent in this bill to address the question of when and under what circumstances the Department can ban mining. That is under other statutes at least as far as I am concerned.

Mr. LOESCH. Yes.

Senator HASKELL. All we are trying to say in this bill is where the Secretary exercises that authority under other statutes, then he has this right of exchange.

Mr. LOESCH. Then you provide a mechanism.

Senator HASKELL. I am not trying to broaden or narrow or affect in any way, shape, or form the Secretary's authority under any other statute. I just want to make that clear. Merely where he has such authority and exercises it.

Mr. LOESCH. We understand that, Mr. Chairman, and I think this is sort of precatory language. If I may say so, the industry is a little gun shy these days because of the uncertainties of production or proposed production from Federal leases and I think we just worry about the way in which any program could be used.

But certainly we do agree that the initiation of an exchange system will be a help.

Senator HANSEN. Mr. Chairman, I was just wondering if it might tend to allay unfounded concerns on the part of industry if we invite their suggesting some report language that could be used for clarification. I am not at all implying, of course, that we would incorporate it but I think if we could find a clear distinction between what your views are and what the intention of the committee is perhaps it would—

Mr. LOESCH. I think it might be very useful if the report contained language that, in essence, simply repeats what the chairman just said and that is that this bill does not intend to decrease, increase, or in any way change the present authority of the Secretary to declare lands unsuitable or to declare or to determine that such-and-such a spot is alluvial valley, words to that effect.

Senator HASKELL. Well, it is certainly our intent and if it would be helpful to have the report language say that type of thing, I am sure that the majority and minority staffs can work something out.

Now, Mr. Loesch, in your statement you raised some new suggestions, at least to me. On these little pieces of property that are picked out, this bill addressed solely the monetary aspect of the royalty, the cash that was to be paid. I stated that there would be no change in the basic lease as to the amount of royalty and I think this was—I don't think you testified but I think someone on behalf of your association testified at an earlier hearing that that is what they were concerned about and we raised another question, a royalty question and I suppose that is something you have got to think about.

Mr. LOESCH. I didn't examine—I should have done my homework for this hearing, Mr. Chairman. I didn't examine all of the questions that were raised in previous hearings but I did believe that the question of modification other than royalty of the original lease had been read but maybe not.

Senator HASKELL. My memory is far from perfect too. Anyway, all I want to say to you, is not that it is wrong but all that I am saying is that as far as this particular bill, all I had in my mind was, that there would be no escalation of royalty under the basic lease and nothing else, but this is something at least as far as I am concerned I have to reserve judgment on.

That is all the questions I have of Mr. Loesch.

Senator HANSEN. I have nothing further.

Senator HASKELL. Thank you very much, Mr. Loesch.

Mr. LOESCH. Thank you, Mr. Chairman.

[The prepared statement of Mr. Loesch follows:]

STATEMENT OF HARRISON LOESCH, VICE PRESIDENT, GOVERNMENT RELATIONS,
PEABODY COAL CO.

My name is Harrison Loesch and I am Vice President, Government Relations of Peabody Coal Company. Today I am appearing on behalf of the National Coal Association, an organization which represents the major coal producers and distributors of the nation.

Last fall and again in February of this year your Subcommittee conducted hearings on Federal coal leasing policy to appraise existing law and to solicit proposals for change. The National Coal Association was grateful for the opportunity of testifying at those hearings, and is gratified at the prompt legislation which has resulted.

We support the objectives of S. 3189 and, with one significant deletion and the addition of a clarifying clause, the bill itself.

In the first place, we agree that a lease exchange arrangement is essential when a federal coal lease is precluded from full development as a result of conflicting and overriding environmental or other land use policy considerations. The most rudimentary tenets of equity call for such a result, and the constitutional protections of property rights demand it.

However, we do have serious reservations about the lease exchange program. Since our prior testimony did not outline these concerns, I will offer a few general but important observations, hoping they will be taken into consideration by the Committee.

As we have noted in numerous prior appearances before the Congress, there are at present myriad impediments to coal production on federal lands. Depending upon administrative attitudes, it is perfectly possible that the proposed exchange provision could become an additional impediment if used systematically to ban mining in particular areas. The condemnation language of the bill is certainly vague enough to allow such an interpretation, and the provision in the Surface Mining Control and Reclamation Act of 1977 for designating areas unsuitable for mining provides a logical basis for such an approach.

We are confident that it is not the intent of the sponsors of the bill nor of this Committee to allow the Department of the Interior to undertake a restructuring of the entire existing Federal leasing scheme based upon future perceptions of "unacceptable damage to other resource values," or because of conflicts with proposed alternative land uses arising after issuance of the lease.

We perceive the intention to be to provide equitable relief in the rare case when some valid public policy or circumstance requires the replacement of one federal lease by another of similar value. An example might be exchange for leased areas designated as unsuitable for surface mining pursuant to Section 522 of the Surface Mining Act. Another example might be exchange when the surface of lands under federal lease is needed for any one of a variety of multiple public land uses such as parks, recreational areas, roads or simply for urban development. The Surface Mining Act authorizes exchanges for leases in alluvial valley floors found to be unsuitable for mining. And in view of the requirement of the Mineral Leasing Act for competitive bidding on all federal leases, even this provision may be an illusory remedy for operators in alluvial valley floors.

May I repeat that an exchange program is needed. I would hope that we read your intentions correctly that this amendment will not in fact become another device to frustrate and hamstring future production operations. To assure that this bill's positive and equitable potential is realized and to guard against its misuse, we strongly urge that the condemnation authority granted the Secretary be stricken. Further, we suggest the addition of clear report language to the effect that this Amendment does not grant new authority to the Secretary to designate areas unsuitable for mining.

Unless this is done, it appears that the limited grandfather protections which were so painstakingly built into the Surface Mining Act could be eliminated. This is so because the Secretary's condemnation authority contained in S. 3189 is retroactive and, because it encompasses broader areas than those contemplated in the alluvial valley, prime farmlands and areas unsuitable provisions of that Act. If this authority is not deleted, the Association and its members may have to forego their approval of its other features and oppose the bill as a whole.

In addition, clarifying language is needed with regard to the mechanism of exchanging leases. In this regard, if mining on a particular federal lease should be foreclosed as a matter of sound and legitimate public policy, then to have the proper effect, S. 3189 should mandate the exchange of an equivalent leasehold whenever possible. Allowing the Department of the Interior merely to condemn or to "buy out" a particular operation would in many cases provide an inadequate remedy. The full value of a federal coal lease will often transcend the per ton worth of its underlying coal reserves because of long-term delivery obligations undertaken in reliance on anticipated production from it. Without providing a dispossessed federal leaseholder with access to equivalent coal reserves on another comparable tract, he cannot be made whole in an equitable sense. Indeed, if a parcel of leased federal land is crucial to the logical mining unit established by the operator, then its loss could well overturn the economics of mining a much larger area containing private or state-owned leaseholds. Under such circumstances, what would be the fair market value of the federal parcel?

Turning to the remaining two provisions of S. 3189, we support them. The proposed right-of-way amendment will facilitate access to both federal and non-federal coal lands and should be adopted. By making clear that competitive bidding is not required for acquisition of such rights-of-way, an unnecessarily cumbersome procedure can be eliminated.

Similarly, we endorse the proposed change in Section 3 of the Mineral Leasing Act and support its goal of discouraging the bypass of federal resources. Experience has shown the adverse effects of making an entire existing lease subject to the fixed, minimum royalty rate whenever such leases are modified to include limited additional acreage. This requirement clearly has resulted in the bypassing of significant federal coal reserves near existing mines simply because there was no economic justification for subjecting the production of an entire operation to the 12.5 percent royalty rate just to obtain a few additional acres of federal land. As a result, this provision of the 1975 Leasing Amendment Act has frustrated the intent of Congress to discourage the bypassing of federal coal reserves.

We believe that allowing for least modifications to add contiguous or corner-

ing acreage to existing leases without incurring royalty liability is one needed change to achieve the intent of Congress. However, the threat of royalty increases is not the only factor which encourages such bypasses. Another is the imposition of additional terms and performance conditions on an existing lease whenever, a modification is granted. This requirement is similarly counter-productive, and to restore Congressional intent, we urge the addition of the following language to Section 3 of the proposed amendment:

... and provided that notwithstanding any other provision of this Act, the terms and conditions in the existing lease shall not be changed as a result of such modification.

In concluding, Mr. Chairman, allow me to remind the Committee that we have other serious concerns about the federal leasing program which are not addressed in this bill. In testimony on behalf of NCA on February 8, 1978, Mr. Robert Quenon, President and now Chief Executive Officer of Peabody Coal Company, as well as Chairman of the National Coal Association, identified for this Subcommittee a series of areas in the Leasing Act and amendments which need revision. Since these concerns are a part of the record, I will not repeat them now. But, on behalf of NCA, I request that your next year's program include consideration of the other amendments to the law which we have identified and which are necessary to the implementation of the national goal of substantially increased coal production.

I appreciate the opportunity of presenting the views of our industry and thank you for your kind attention.

Senator HASKELL. I understand that Ms. Cary Ridder of the Environmental Policy Center is not here. I assume that she submitted something for the record.

[The prepared statement of Ms. Ridder follows:]

STATEMENT OF CARY RIDDER, ENVIRONMENTAL POLICY CENTER

Mr. Chairman and members of the Subcommittee, the Environmental Policy Center has been an active participant in the debate on Federal coal leasing, particularly in the House-Senate effort to amend the Federal Coal Leasing Amendments Act of 1975 in the 94th Congress. Since its enactment, the implementation of that law has been interrupted by the *NRDC v. Hughes* court suit and further by the decision of that case which found the Department of the Interior in violation of the National Environmental Policy Act when, in 1975, under Secretary Kleppe, the Department issued the final draft of the environmental impact statement on its coal leasing program. Even with the settlement of the Hughes case in June of this year, it is still difficult to speculate as to the earliest opportunity the Department will have to reopen the leasing process to new leases.

The Center agrees with the Department of the Interior and the Senate that certain situations may exist which warrant amendments of the Public Law 94-377 to accommodate special needs. The Center also supports the efforts of the Secretary of the Interior to exchange environmentally unsuitable leases for leases in areas where coal development will have fewer long-term damaging effects. The Center, however, is concerned about several aspects of the bill and recommends that there be several changes in the language of these amendments.

The Center is in favor of the concept of trading leases which are seemed to be located in environmentally sensitive areas. Transfers of these lands for more acceptable lease tracts are in the best interest of the public and should be authorized in S. 3189. The language, though, should be clearer in defining the limits of the exchange authority. The exchange authority should only apply where the Office of Surface Mining has determined that the proposed mining plans have met the requirements of Public Law 95-87. We agree, however, that other factors may exist—such as economic, social and other environmental impacts—which are not taken into consideration under the new stripmine law and which should be considered in granting leaseholders a permit to mine. We, therefore, suggest that language be inserted in section (1) (i), page 2, line 11, after the word "upon" and before the word "determination" which says:

"... a finding by the Office of Surface Mining that the proposed coal mining plan meet the requirements of Public Law 95-87 and other Federal laws and only upon a ..."

While it is important that leaseholders who have met all the requirements of the law get equitable treatment, this language is necessary to insure that only after it has been determined that a coal mining plan has indeed fulfilled such requirements will a lease exchange be considered.

The Center also recommends that the current language of section (1) (i) (a) and (b) remain in the final version of the bill. We do not support the new language suggested by the administration for this section. It is the position of the Center that social and economic impacts are as important as environmental impacts and should be considered in the exchange process. Furthermore, the Center supports giving the Secretary the broad authority he needs in this case to develop a sound policy of public land management.

The Center would also like to include in section (1) language which requires the preference right lease applicant to meet all the requirements for a lease under the Mineral Leasing Act of 1920. The administration has proposed such language and we are in agreement with it.

Section (2) of S. 3189 is designed to allow coal operators who have been granted a right-of-way through a federal tract of land so that they may more efficiently mine a privately held tract of land to keep the coal that is mined as the right-of-way is used. The Center has no objections to section (2) except in situations where federal coal is under privately owned land. It is the position of the Center that in order to protect surface owner rights, section (2) must include, at the end of the paragraph, a sentence which says that the provisions of this section shall be consistent with the provisions of section 714 of Public Law 95-87.

The Center supports the provisions of section (3).

Senator HASKELL. Now, we will hear from Mr. Donald Humphreys, senior counsel of Utah International. He represents the American Mining Congress.

STATEMENT OF DONALD HUMPHREYS, SENIOR COUNSEL, UTAH INTERNATIONAL, REPRESENTING AMERICAN MINING CONGRESS

Mr. HUMPHREYS. Thank you, Mr. Chairman, Senator Hansen. My name is Donald Humphreys. I am senior counsel with Utah International which is a San Francisco based mining company with producing coal mines in Colorado and New Mexico and nonproducing coal properties in those States and elsewhere in the West.

I am appearing today on behalf of the American Mining Congress but would like to point out that Utah International shares the same concerns as I hope I will illustrate.

The American Mining Congress wishes to comment on S. 3189, a bill which would amend certain provisions of the Mineral Lands Leasing Act of 1920. The development of coal on Federal lands in the West is of great importance to the solution of the energy problem currently facing the United States and the coal industry and the Mineral Lands Leasing Act as amended will be a major determinant of the timing of and extent to which western coal will be made available to satisfy United States energy requirements.

S. 3189 recognizes, and the American Mining Congress emphatically agrees, that certain changes are needed in the Federal Coal Leasing Statute in order to accommodate the geologic and economic realities of coal mining. The American Mining Congress generally supports the amendments included in S. 3189. We do, however, feel that S. 3189 can be improved upon somewhat from the standpoint of remedying the full range of concerns of the coal mining industry, and I would

like to offer for your consideration some suggested changes to S. 3189 as introduced.

Several of our suggestions relate to the exchange authority provided for in S. 3189 but we also have some significant suggestions regarding the balance of the bill.

First, the bill (section 1) would amend section 2(a)(1) of the Mineral Lands Leasing Act to give the Secretary of the Interior broad authority to exchange Federal coal rights. We generally support this grant of authority, however, we do feel that this authority should be expanded slightly to permit the Secretary to give or take cash in connection with any exchange, since it may not be possible or practicable to exchange properties of equal value in all cases. Moreover, valuation problems may be difficult.

Senator HASKELL. Excuse me. If I understand you and the Secretary are in accord on this particular point?

Mr. HUMPHREYS. That is correct, Mr. Chairman.

Senator HASKELL. And we are in accord with you.

Mr. HUMPHREYS. I guess it is well known that similar authority was conferred about the Secretary by the Federal Land Policy Management Act of 1976 relative exchange of properties other than mineral lands.

Second, section 1 of the bill grants the Secretary a power of condemnation or a power to purchase coal rights at a value as determined by him. We believe that these powers of condemnation should be eliminated from the bill, and the holder of Federal coal rights should not be forced to either sell or exchange his property in other than a voluntary manner.

I might add apart from my statement here that, I suppose, to the extent that the condemnation powers are somehow intended to supplant the provisions of the Surface Mining Control and Reclamation Act whereby lands are to be declared unsuitable for coal mining, perhaps they wouldn't be so objectionable. We assume, or I should say at least I assume that these powers are in addition to those and to that extent they would appear somewhat redundant and in any event would add uncertainty to the tenure of a Federal coal lessee.

Third, in paragraph (i) of section 1 of the bill the Secretary's exchange authority is limited to those cases where certain determinations are made by him with respect to other resource values, "including archeological values." We question why archeological values should be singled out for special mention and would suggest the deletion of this phrase as implying the need for some special consideration of archeological values apart from other values.

We also note that clause (b) of paragraph (i) includes the concept of lease development conflicting with a specific proposal for use of the land for a public purpose as a basis for exchange. This would apply to such public purposes as highways, airports, flood control structures, et cetera. The final clause of paragraph (i) which states "and such use was not considered by the Secretary prior to issuance of the prospecting permit or lease" appears to indicate that exchange would be authorized if the public purpose use occurred after the issuance of the lease or prospecting permit including public purpose uses now existing.

We would hope that the committee report would amplify this interpretation.

We think it should be clarified there that the public uses should not merely be proposed but should also include uses presently in effect on the lands.

Fourth, in paragraph (iii) of section 1 of the bill, there is a provision that the Secretary may determine the value of the lease which he offers in exchange for an existing coal lease. We question the meaning of this phraseology and believe that it should be clarified to reflect the fact that values must be agreeable to both the Secretary and the holder of the Federal coal rights participating in the exchange. We also believe that the statute should include a provision that the new lease issued by the Secretary should contain terms comparable to those of the lease being relinquished to the Secretary. Or obviously the terms and conditions of the lease will have a larger bearing on the value of the lease.

Fifth, we feel that a provision should be added to section 1 of the bill to confer certain exchange rights on Federal coal lessees and persons having a right to a Federal coal lease. Such a provision should provide that if the current holder of a Federal coal lease, or a right to a Federal coal lease, is prevented from mining on a portion of the areas which he holds because they are declared unsuitable for coal mining or are in alluvial valley floors per the provisions of the Surface Mining Control and Reclamation Act of 1977, or any regulations thereunder, then such lessee or permittee shall be entitled to exchange the lands which he is so prohibited from mining for other Federal coal lands not unsuitable for coal mining. We feel that such exchanges should be authorized under the provisions of this act.

Senator HASKELL. Isn't that exactly what we are doing? The Secretary says under existing law you can't mine your lease and you have a right to exchange for something you can mine. Isn't that what we are doing?

Mr. HUMPHREYS. Well, Mr. Chairman, that wasn't clear to me. If that is the intention then we would certainly support that.

We might wish to suggest some language to clarify that that is, in fact the intention. It was my impression that this exchange provision related largely to the Secretary's discretion that the coal lessee may not have a right in every instance to acquire an exchange.

Senator HASKELL. It does relate to the Secretary's discretion but the Secretary, God knows, can't exchange one lease you can't mine for another lease you can't mine and I thought that is what you were objecting to?

Mr. HUMPHREYS. No. We were suggesting here that a coal lessee, a holder of an existing Federal coal lease which is declared unsuitable for surface coal mining within the meaning of the Surface Mining Control and Reclamation Act should be afforded the right to exchange that leasehold or portion thereof for a leasehold of equal value.

Senator HANSEN. Mr. Chairman, if the witness would permit an interruption on my part, I have read the statement and it seems to me that you make a valid point when you suggest that if, in exercising the right to condemn or to acquire the economics of a large lease is changed or titled differently, then there should be full consideration given to that fact.

I would just observe that, let's say, one-fourth of the lease were to be determined by the Secretary as coal that was unsuitable for mining for a variety of reasons, you mentioned some of them here. I can see where the economics of the operation could be upset by taking out part of it and to that extent I would assume that an appeal would be made to the Secretary to consider such events but the economics of the operation could be jeopardized by mining less coal available than would otherwise be the case.

I am aware of the great investment that has been made, say, in the building of silos, railroad silos, the acquisition of mining equipment and all of those things have to be figured out on the basis of the number of tons of coal that will be mined and I concede that economic justification cannot ignore that factor and I would ask would you also feel, Mr. Chairman, that—

Senator HASKELL. This may raise an entirely new subject and I quite agree with you, Senator Hansen, that if, say, this gentleman here has what you would call a lease block and if a portion of that lease block is prevented from mining which, in turn, renders uneconomical balance, he certainly is entitled to something and I think this may be outside the scope of this bill.

This is an idea that I think is very valid. I don't think that is fair for the Secretary to render useless a lease block by saying you can't mine what may be the pivotal point but this may raise a whole new question we will have to examine because I hadn't thought of it in the context of this bill at all.

Senator HANSEN. Thank you, Mr. Chairman. Thank you.

Mr. HUMPHREYS. Thank you, Senator.

Sixth, we endorse the concept of section 2 of the bill which would authorize the Secretary to grant access through Federal coal deposits, but we would recommend that it be made clear that this section supersedes any requirements of the Federal Land Policy and Management Act of 1976 and that the Secretary's authority to grant such access is solely pursuant to this provision of the bill. The way the provision reads now it is not altogether clear that the authority by section 2 is intended to supersede the Federal Land Policy Management Act.

Seventh, we support the concept of section 3 of the bill which would amend provisions of the Mineral Lands Leasing Act permitting the addition of lands to existing coal leases. However, we believe that the lands added should not have to be contiguous or cornering to those lands already embraced in the lease. The Secretary should be granted discretion to add lands to a lease if logically the lands should be mined in connection with the lands already embraced in the lease, even though they may be separated physically from them by other lands.

As you know, Federal lands may be separated by State or private lands which are underlain by the same coal formations and which should logically be mined as a unit. There would seem to be no reason for requiring scattered Federal parcels in the same logical mining unit to be separately leased rather than added to an existing lease.

To require separate leasing and competitive bidding as would be the case under Federal Lands Leasing Act could result in the bypass

of those isolated Federal parcels. In fact, such lands may be bypassed and never mined, thereby resulting in a loss of resources.

Also in the same section, the bill provides that the royalty provisions of 7(a) of the Mineral Leasing Act as amended in 1976 need not be applied to the lands already embraced in the lease to which the addition is made. We endorse this provision, but we urged that the same principle be applied to the production requirements of the 1976 amendment to the Mineral Lands Leasing Act (requiring production within 10 years and exhaustion of logical mining unit reserves within 40 years of approval of a mining plan). Accordingly, the bill should be amended to provide that the Secretary can add lands to an existing lease without requiring, as to the lands embraced by the existing lease, the imposition of the minimum royalty provision of the 1976 amendments or the provisions of those amendments (paragraph 2(D) (2), 7(A) and 7(C) of the Mineral Lands Leasing Act) requiring production and mining plans by specified dates. These are factors which can also lead to the bypass of Federal coal in small parcels.

The need for relief from the requirement that as a condition to a lease modification the entire modified lease be made subject to the production requirements of the 1976 amendments is, I think, well illustrated by a situation at Utah International's coal operations near Craig, Colo. Near Craig, Utah controls contiguous coal leaseholds containing an estimated 300 million tons of mineable coal in several seams. Some are surface mineable and some are deep mineable. The leaseholds include Federal, State, and country and private leases.

A surface mine undertaken pursuant to an approved mining plan embracing all the leases is in operation. Utah has also prepared a mining plan to recover certain of the deep seams within the same leases. In connection with the underground plan, Utah desired the right to drive entries through Federal coal lands adjacent to one of our existing Federal leases in order to get access to the deep seam in that lease.

Apparently, because the entries would pass through coal, we could acquire the right only pursuant to the Mineral Lands Leasing Act, and while we presumably could have negotiated in addition to our existing Federal lease to include the area required for our entry, to do so, under the existing state of the law, would result in our existing Federal lease becoming subject to the requirement that any mining plan for that lease (or that lease and other leases which taken together are deemed to be a logical mining unit) provide for mining all the mineable reserves within not more than 40 years.

The realities of coal mining and marketing make that, as a practical matter, an impossible requirement. At Craig, there are surface-mineable reserves overlying underground-mineable reserves, and the surface reserves must be mined first. To mine the deep reserves before or contemporaneously with the overlying surface reserves such that they would be lost (uneconomic to recover), hardly a good resource conservation practice. Similarly, the mining of a lower deep mineable seam frequently must await the mining of an upper deep mineable seam.

At Craig, certain of the surface-mineable seams will not be mined for some 30 years (to supply a generating station pursuant to a long-

term fuel agreement). Underground mining of the seams underlying the surface seams could not be commenced until then. Moreover, there are economical limits to the ability to mine the surface mineable seams. It may be possible to deep mine the extension of the surface mineable seams once the economic limits of surface mines have been reached but again the deep mining must await the completion of the surface mining.

Obviously all of the seams could not be mined in 40 years. While one might argue the coal lessee should surrender certain of the seams, that is a poor solution in that the surrendered seams may never be mined either because they are economically unattractive to a potential lessee (being too deep, containing too few mineable reserves, or requiring an entirely new infrastructure) or physically unmineable due to previous mining activity.

Moreover, the surrendered seams could not be made available in any short time frame given the fact that the seams could not be mined coextensively with other seams in the same lands. Finally, forcing the surrendering of reserves is unfair to a coal lessee who expended its resources in establishing the worth of the reserves. In short to force a surrender of reserves is not a sound solution to the 40-year requirement. Because of the obligation to submit to the production requirements of the 1976 amendments it is very difficult for a mining company to seek to add by the lease modifications provision of the Mineral Lands Leasing Act to the existing lease.

Senator HASKELL. Mr. Humphreys, this part of your testimony relates to the bill under discussion?

Mr. HUMPHREYS. Well, we are suggesting, Mr. Chairman, that in addition to an exception from the royalty provisions in the case of the lease modification whereby an existing lease is modified to include some additional acreage we suggest that the additional acreage not have to be contiguously cornered. But in that instance assuming that the lease modification is effected S. 3189 would provide an exception as to the lands under existing lease from the royalty provisions and we are suggesting that the exception should also apply to the production requirements of the 1976 provisions.

Senator HASKELL. You are talking about the same thing Mr. Loesch was talking about?

Mr. HUMPHREYS. Well, I believe that is correct.

Senator HASKELL. Well, we will study this. I am very much confused.

Senator HANSEN. Mr. Chairman, if I could be permitted an interruption, I didn't gather that you were addressing precisely the same point that Mr. Loesch did make but rather a new one. Now, I don't mean to imply that Mr. Loesch might not agree with you but I didn't think that he had raised this particular issue.

Maybe I missed it in his testimony. You are talking about where you have a surface mining operation going and the coal that is contained within the lease that can be surface mined is under contract but committed to a power operation that is presumed to fulfill the energy requirements for 40 years. But you recognize that under that coal that can be surface mined are other seams that will have to be deep mined

and the most efficient way is to recover all of the resources so far as public policy would be to recognize the validity in a sequential mining effort would remove, first, the surface mined coal and then the shallower deep mined coal and then the more deeply deposited coal, is that essentially what you are saying?

Mr. HUMPHREYS. Yes.

Senator HASKELL. How does that relate to this bill?

Mr. HUMPHREYS. Well, again, as I understand it section 3 of S. 3189 would exempt, because of the concern to not accept the existing leasehold from certain provisions of the 1978 amendment certain Federal coal mines would be bypassed. Section 3 provides for an exemption from the royalty provisions of the 1976 amendments and we are simply asking that a similar exemption be accorded from the production requirements for the very same reason to subject an existing lease to the production requirements of the 1976 amendments for the reasons I stated would make a lease modification unattractive and Federal coal lands would be bypassed for those reasons apart from the question of the royalty.

I am simply trying to illustrate how that would be the case by citing specific examples with which I am familiar.

Senator HASKELL. We will take your comments into consideration.

Mr. HUMPHREYS. Thank you, Mr. Chairman.

We are grateful for the opportunity to offer our comments on S. 3189. While it is a welcome effort to remedy some of industry's concerns, we must observe that it fails to address the major difficulties of the Mineral Lands Leasing Act as amended in 1976. One of the major difficulties is the production requirements alluded to earlier. Another is the minimum 12.5-percent royalty, at least insofar as it is generally inflationary and makes new or renewed coal leases uncompetitive with existing leases at lower royalties with long periods left to run. We hope you will consider additional amendments to the Mineral Lands Leasing Act to remedy what we perceive to be additional problems, and we have appended to this statement a discussion of those additional problems.

We appreciate the opportunity to appear today. Should the subcommittee be receptive to our suggestions we have prepared some language which we would be pleased to submit, language which we think implement those suggestions.

Senator HASKELL. Well you might do that. I appreciate your additional suggestions. You understand we are not attempting anything very heroic in this particular piece of legislation. We are just trying to clear up the administration around the edges but I do appreciate receiving what you perceive to be the basic problems in the 1976 Act but that is not what we are getting at in this particular piece of legislation.

Mr. HUMPHREYS. I understand that. We would just like to offer it for your consideration and we reiterate your concerns.

Senator HASKELL. I understand. Well thank you, Mr. Humphreys. I have been asking questions as I go along and I have none further. Senator Hansen.

[The appendix to Mr. Humphreys' statement follows:]

APPENDIX 1

1. APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

The vague language of NEPA has caused much delay, expense and litigation and the statutes should be amended to specify when an environmental impact statement must be made with respect to the issuance of a federal coal lease or operations thereunder. The Surface Mining Control and Reclamation Act of 1977 has removed much of the environmental importance associated with the issuance of a lease, or with the approval of a mining plan for that lease, since permits to mine must be acquired under the Reclamation Act. Consequently, it would seem that the actions of BLM, USGS, the new Office of Surface Mining and any other agencies involved in the leasing process should be exempted from NEPA and that impact statements would be required only for additional industrial developments associated with the mines, the consequences of which are not covered by the Reclamation Act.

2. DILIGENT DEVELOPMENT

The provisions of the statute requiring that a lease be producing within ten (10) years after issuance, that an operation plan be submitted within three (3) years after lease issuance and that a mining plan require that reserves be mined within forty (40) years, are all undesirable and not in accordance with the requirements of the mining industry or its customers.

The language of the statute is presently very confusing as to the length of the term of a lease, referring to a primary term of twenty (20) years but stating that any lease not producing at the end of ten (10) years shall be terminated. We would suggest that the ten (10) year production requirement be omitted. The provision in 30 USC 201(a) that a lessee who has held a nonproducing lease for ten (10) years is ineligible for a new lease should also be omitted.

The requirement for a mining plan within three (3) years is entirely unrealistic since the Lessee may not have a customer within that time and cannot create a realistic plan until the customer's needs are known. Since mining plan approval is required under the Reclamation Act we suggest that this provision of the leasing statute be removed.

The requirement that reserves be mined in forty (40) years has caused, and will cause, great confusion since a single lease may contain both surface-mineable and underground-mineable reserves which would require completely separate operations and the calculations of a reserve is a process upon which reasonable men may differ in any event. These requirements already have an effect on coal marketing efforts since coal buyers must evaluate the security of tenure of those selling coal to them. We would suggest that the forty (40) year limitation be omitted. Many mines have lives much longer than forty (40) years and the production rate of a given mine will depend on its own particular geological circumstances.

The requirements of the statute that a lease be producing within ten (10) years after issuance and that reserves be mined within (40) years works a particular hardship on the steel-making industry. Long-range reserves of metallurgical coal are needed by the industry to support continuing steel producing operations. The annual coking coal requirements for a steel plant are, typically, fixed within narrow volume limits. It is impracticable and uneconomical to steel plant economics to activate the mining of metallurgical coal on scattered leases, and it is clearly wasteful to utilize this limited commodity for other than steel-making purposes.

The statute should provide that activities other than production shall constitute diligent development and should authorize the Secretary to define diligent development requirements for each new lease prior to offering the lease for sale. Such requirements could vary depending on the particular situation of the lease. It should be noted that the Interior Department itself proposed such a definition of diligent development in the December 11, 1974 Federal Register, 39 Fed. Reg. 43229.

3. LOGICAL MINING UNITS

The concept of a logical mining unit comports very well with the realities of geology and the industry, but some of the provisions in the statute do not comport with such realities.

The statutory requirement that the land in the logical mining unit be contiguous is unrealistic since there may be geological discontinuity due to surface erosion or pinch outs, and in some instances reserves from several different areas may in fact be committed to the same sales contract. Likewise, coke-making depends upon the blending of coals from several sources in order to attain the strict chemical and physical characteristics required for steel-making.

The strict limitation of 25,000 acres on the size of the logical mining unit is not desirable and there would seem to be no purpose for this arbitrary limit if otherwise the unit makes geological or economic sense.

There is a substantial problem with respect to requiring that the reserves in a logical mining unit be mined within a given period, the definition of a "reserve" being very difficult in any event. Some logical mining units may contain both underground and surface-mineable reserves.

In any event, the formation of a logical mining unit should require the consent of the Lessee and should not be solely discretionary with the Secretary. In addition, the Secretary should not be authorized to modify the terms of a lease just because it is placed in a logical mining unit.

4. ROYALTY

The present statute establishes a 12½ percent floor for royalty on surface-mined coal. We feel that the Secretary should not be bound by such a floor but should have more discretion in establishing royalty. The requirement of a 12½ percent royalty for all new leases will put them at a competitive disadvantage with respect to old leases, which have a much lower royalty. Moreover, the 12½ percent floor is inflationary in that it is becoming the minimum royalty requirement of the owners of private coal.

Currently the 12½ percent is to be applied to the "value" of the coal as defined by regulation. It is quite often the practice in long-term sales contracts for the price of the coal to include reimbursement by the Buyer to the Seller of royalty, taxes and certain other government levies. The statute should provide that such reimbursement of government charges is not to be included in the "value" of coal for the purpose of royalty computation.

5. ACREAGE LIMITATION

The statewide and nationwide acreage limitations are not logical, nor is the 160 acre limit on the Secretary's right to negotiate an addition to an existing lease. Coal volumes per acre vary tremendously from location to location on the federal lands.

With respect to the state and nationwide limits we would suggest that, due to the other antitrust review provisions of the Leasing Act, they will not have much practical effect and consequently should be omitted. Moreover, such limits do not take into effect acreage already committed to existing sales contracts. Your attention is called to the recent GAO and Department of Justice reports finding that there is no monopoly in existence in the coal industry.

With respect to the Secretary's right to negotiate additions to an existing lease, the acreage limitations should be omitted and in lieu thereof the Secretary should be given authority to negotiate additions if he finds that the added lands would more properly be developed in conjunction with the existing lease than by themselves.

6. HEARINGS

The present statutes are unwieldy in that they require numerous public hearings in the lease-issuance process and in the process of approving a mining plan. Not only are hearings required under NEPA and the Leasing Act but also under the Reclamation Act. We suggest that the statutes be amended to remove at least half of the hearings presently required.

Senator HANSEN. Mr. Chairman, Senator Domenici who wasn't able to be here this morning does have a question that he would like to have raised. I am not certain if I can articulate it. I am quite certain, as a matter of fact I cannot articulate it as clearly as could he were he here. I will do my best.

In New Mexico a lease has not been developed because of environmental concern. The people who hold the lease down there have attempted to get an exchange for a number of years. How will the due

diligence requirements work in this case? Would you care to speculate on that?

Mr. HUMPHREYS. Just so I am clear on the facts, this is an existing lease that has not been in production because of environmental considerations?

Senator HANSEN. Mr. Chairman, if I might be permitted I would like to ask that Darla West be recognized and be able to pose a question. I think she can pose it better than I can.

Ms. WEST. Yes. It is an existing lease and the Department thought they could give an exchange at one point and we worked with them in attempting to get an exchange and they found that the Department didn't have the authority.

Mr. HUMPHREYS. Well I think S. 3189 would perhaps remedy that problem if the prohibitions against the development of the lease are such that it falls within the meaning of the suggested amendment, that is, again if, a coal lessee is accorded exchange rights as would be the Secretary pursuant to S. 3189 and in fact these coal mines are unsuitable for surface coal lands, for example, say within the Reclamation Act of 1977 then it would seem that an exchange could be affected.

Otherwise it might be at the discretion of the Secretary and the Secretary would have to determine whether or not this particular coal lease would fit the criteria of S. 3189.

If not, presumably there wouldn't be any exchange. That would be my reading on it.

Senator HANSEN. If I understand the situation the lease was issued and the lessee was engaged in a good faith effort with the Department to exchange a lease after it becomes known that environmental problems developed.

They were not known or recognized or identified at the time of the leasing but when they became known. A good faith effort was entered into to affect the lease and time is about to run out then. Is that the situation, Darla?

Ms. WEST. Yes.

Senator HANSEN. On the due diligence clause, because there hasn't been any monitoring and obviously with the environmental problems having now been recognized after the issuance of the lease, the mine is in a bind.

Mr. HUMPHREYS. Well, one quick observation. It has been pointed out to me and probably quite properly that perhaps the best person to address the question to would be the Secretary. It is a little difficult for me to respond.

Apparently I gather the appeal has gone to the Secretary, would that be a fair statement?

Mr. LOESCH. Well, Mr. Chairman, you will recall that Secretary Martin in particular reports that he turned in with his testimony specifically stated that the exchange authority granted by S. 3189 would not be used by the Secretary to relieve a lessee of the diligent development requirements.

So I seriously question whether it is in the interpretation on the department in its testimony and its report would offer the lessee any relief in this situation.

Senator HASKELL. May I make this suggestion?

Perhaps this is something that should be addressed to the Secretary and not to you gentlemen. Do you think ma'am that Senator Domenici would be interested in submitting to the Secretary some questions in writing? The hearing record is going to stay open for 10 days and if you receive the answers within that time, we will place them in the record. If they are not to Senator Domenici's satisfaction then we can ask the department to come back. How would that be?

Ms. WEST. Yes, sir.

Senator HASKELL. I think we will do that then. Mr. Humphreys, thank you very much for appearing. I have no further questions.

Senator HANSEN. I might just make one further observation in order to attempt a verification, Mr. Chairman. As I understand the situation, a lease was granted and after the granting of the lease an environmental question was raised that had not earlier been raised.

It was not recognized at the time of the granting of the lease. The lessee was assured that the Secretary and the Department would enter into an exchange agreement but time is about to run out now and he is caught up with, perhaps, a year or two remaining on the 10-year lease so that if he now is forced to comply with the due diligence provision; he has blessed little time in order to try to do that and it would seem to me that in that situation, equity would require an extension of time, given the facts as I spelled them out.

Senator HASKELL. Let me see if I do understand the facts. Let's say I have a lease and at the end of 4 years the department says, you can't mine because of environmental things and 4 more years go by and they say Floyd, we were wrong, you can mine but you only have 2 years to go and I believe your suggestion would be that equity would require that I be given an additional 4 years for the time which was suspended.

Well, I must say, Senator, that certainly appears to me as the fair and proper result. Now I don't know what the Senator from New Mexico's exact problem is but that would seem fair and proper but whether that is what the situation is under existing law I have absolutely no idea.

Senator HANSEN. I don't either, Mr. Chairman. I do think though that given the situation as was suggested in the example, if the operator first having been apprised after the issuance of the lease and environmental problem was recognized and did exist and then being assured by the Secretary that an exchange was worked out I think that consideration should be given to the passage of time and the shortening of the period during which the operator could demonstrate due diligence. Failing to do that, I should think would pose a problem.

Maybe we could check that with the Department and see what might be worked out.

Senator HASKELL. Let's check that with the Department and certainly Mr. Craft mentioned something to me that comparable value, we might be able to work it out in the report because if I have had a lease that is gone for 4 years and then I have been suspended from operation an exchange lease of comparable value should be at least a 6-year term.

Now how we are going to work this out I don't know but I agree there is a problem there and let's look into it and see if we can work it out.

Senator HANSEN. Good enough.

We might invite some suggestions from industry witnesses too in trying to help us.

Senator HASKELL. Thank you, Mr. Humphreys. We have gotten a little far afield from you but thank you very much indeed. I appreciate your testimony.

Mr. HUMPHREYS. Thank you, Mr. Chairman.

[Subsequent to the hearing the following information was submitted for the record:]

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C., July 3, 1978.

HON. CECIL ANDRUS,
Secretary, Department of the Interior, Washington, D.C.

DEAR MR. SECRETARY: I was not able to be present at the hearings on S. 3189, Mineral Leasing Act. However, my staff indicated that I had some concerns pertaining to the due diligence requirement in an exchange situation.

First, it is my understanding that the Department has given consideration to giving the Secretary discretion to extend the due diligence requirement dates from the effective date of trade rather than the date of acquisition of the original lease. The written testimony submitted by the Department indicates you are opposed to this concept.

Does it not make sense given the lead time and capital investment required to open a mine, a prudent operator will not be in a position to cooperate with the Department in making an exchange and still meet the original due diligence date? In other words, if the conditions of subsection (i) (a) or (b) of S. 3189 are present in an existing lease, isn't it true that no mining plan involving such lands would have been approved the last 3-5 years? If the answer is yes, isn't it fair and reasonable to allow a company which is interested in exchanging its lease in a sensitive area to a less sensitive area additional time to engineer and develop a new mining plan?

As an example, a New Mexico company, Western Coal Co., has recognized that some of its lease in the Fruitland formation was in a sensitive area and has long indicated its willingness to exchange for less sensitive properties. Both the Company and I have been in contact with the Department of Interior about effectuating an exchange. On four occasions over the past several years we have been given different answers as to whether the Secretary had the authority to make such an exchange—twice we were told the authority existed, twice we were told it did not. Now I am informed that Western Coal Co. will have major difficulties in effectuating an exchange, developing a new mining plan and beginning production within its original due diligence requirement dates; therefore, for Western to consider an exchange some accommodation in due diligence dates will probably be necessary. Having worked on this matter with both Western Coal Co. and environmental groups for the past several years, I am sympathetic to both their concerns and believe that some authority to the Secretary to exercise his discretion on a case by case basis is the best solution. If the Department's position is contrary, would you please advise me how you would propose to address this situation?

My second question is: Do you feel that there should be some specific time limit the Secretary has to act on an exchange?

Best regards.

Yours very truly,

PETE V. DOMENICI,
U.S. Senator.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 14, 1978.

HON. PETE V. DOMENICI,
U.S. Senate, Washington, D.C.

DEAR SENATOR DOMENICI: This is in response to your letter dated July 3, 1978, which requested our views on two questions that you raised about S. 3189.

1. Should S. 3189 be amended to give the Department on a case-by-case authority to extend the diligent development requirements? I would recommend

against an amendment of this type because the five-year extension authority already provided, and the Department of Energy's (DOE) authority to amend diligent development regulations, provide sufficient flexibility to deal with development delays attributable to lease exchanges.

At the present time there are two types of diligence requirements. First, the Mineral Leasing Act was recently amended to bar the Department from issuing a lease to anyone who holds a coal lease for more than 10 years without producing coal in commercial quantities. The provision applies to existing leases; the 10 year period, however, runs from August 4, 1976. This provision does not affect the existing lease directly—it only prevents acquisition of new leases. The Department has no authority to exempt someone from this requirement and we do not believe this authority is necessary since it does not affect the existing lease and it appears to be an appropriate self-enforcing incentive for production.

Second, on December 29, 1976, the Department issued revised diligent development and continuous operation requirements for existing (and new) leases. These regulations give existing leases 10 years to achieve diligent development (production of one-fortieth of the reserves). This period may be extended for five years in certain specified situations. The Department may seek cancellation in an appropriate federal district court of a lease which does not meet this standard.

Congress has transferred the authority to amend these regulations to the Department of Energy.

The current diligence regulations do not authorize extensions for the circumstances described in your letter. However, it is our opinion that DOE could, at any time, amend the regulations to deal with those kind of problems should the need to do so become evident. Your suggested amendment would, therefore, appear to duplicate existing authority.

2. Is there a need for S. 3189 to have a specific time limit during which the Secretary must act on an exchange?

I believe that imposition of a time limit, on either party to a potential exchange, would be inconsistent with the voluntary nature of the exchange process, and would be unnecessary because where exchange might be considered, the Department would share with the lease holder an interest in the earliest possible action.

First, as I said earlier, any delay attributable to an exchange proceeding would be forgiven in considering a lease holder's diligence compliance. A lease holder would not be penalized for having participated in an exchange negotiation. On the other hand, we would have to proceed carefully so as not to reward those who will use the exchange provisions to avoid the diligence requirements.

Second, unless Congress is willing to mandate that an exchange application will be automatically deemed to be approved unless acted upon within a set time, the courts tend to excuse an agency's failure to comply with this type of provision.

To sum up, I am confident that existing statutory authority will permit lease holders to enter into exchange negotiations, under the circumstances I have described, without prejudicing their ability to comply with diligence requirements, and that, where exchange proceedings do take place, the mutual and voluntary interests of both parties will be satisfied without imposition of time limits.

Please let me know if I can be of any further assistance.

Sincerely,

GUY R. MARTIN,
Assistant Secretary, Land and Water Resources.

TEXACO INC.,
Washington, D.C., July 26, 1978.

HON. FLOYD K. HASKELL,
*Chairman, Subcommittee on Energy Production and Supply,
Senate Energy and Natural Resources Committee,
Russell Senate Office Building, Washington, D.C.*

DEAR SENATOR HASKELL: I respectfully request that this letter be included in the hearing record on S. 3189, a bill to amend certain provisions of the Mineral Leasing Act. The purpose of this letter is to apprise the Subcommittee of a situation similar to that addressed in Section one of S. 3189 which the Subcommittee may wish to consider in connection with further action on S. 3189.

In December, 1973, Texaco purchased the interests of the Reynolds Metal Company in 37,000 acres of bituminous and subbituminous coal-bearing lands located near Buffalo, Wyoming. This property is known as the Lake DeSmet property and is managed by Texaco's Coal and Energy Department in Denver, Colorado. Texaco acquired the property for its unique combination of available water resources and proven coal reserves. Since acquisition, Texaco has developed the water resources on the property, performed geological surveys, environmental assessments and other preparatory work for mining the property, and has actively pursued the development of a coal gasification facility and/or a mine-mouth electric power generating plant on the property.

In early 1975, Congressman Roncalio of Wyoming proposed an exchange of Texaco's Lake DeSmet coal interests for federal coal interests located near Gillette, Wyoming, or elsewhere in the State of Wyoming. Congressman Roncalio's proposal was based on his stated desire to protect certain recreational, scenic and wildlife values in the foothills area of the Big Horn Mountains from industrial development.

Texaco's plans for the development of the Lake DeSmet properties fully comply with all applicable environmental laws and regulations. We are confident that our planned activities on the property will be of major benefit to the nation and will be conducted in a manner which will not unreasonably disturb environmental values of the area. Texaco has, however, cooperated with Congressman Roncalio in exploring with the Department of the Interior the feasibility, timing and terms of such a proposed exchange of coal properties.

The alluvial valley floor provision of the Surface Mining Control and Reclamation Act of 1977 may prohibit the mining of some as yet undetermined amount of the most desirable coal reserves on the Lake DeSmet property. However, the alluvial valley floor prohibition contains a provision which requires the Secretary of Interior to "... develop and carry out a coal exchange program to acquire private fee coal precluded from being mined by the restrictions of [the alluvial valley floor prohibition] ... in exchange for Federal coal which is not so precluded." (Section 510(b)(5)). The Lake DeSmet property is eligible for such an exchange. In the circumstances presented, there is reason to believe that it may be in the public interest to expand the area of the lands to be exchanged beyond the alluvial valley floor to the larger area proposed by Congressman Roncalio. The Subcommittee may wish to consider granting the Secretary of the Interior the authority to consider, and upon a properly supported determination, to implement such an exchange. This could be accomplished through an amendment to the Surface Mining Control and Reclamation Act of 1977, an amendment to Section one of S. 3189, or the addition of a new section to S. 3189 similar to the provision Congressman Roncalio incorporated into H.R. 13553, introduced on July 20, 1978, as a companion bill to S. 3189.

The exchange provision of the alluvial valley floor will, as a practical matter not be fully implemented and operative for approximately seven years according to the Department of the Interior. A similar delay is faced in connection with the exchange provisions of the Federal Land Policy and Management Act of 1976 (section 209).

The exchange authority provided for in Section one of S. 3189 deals in part with the kind of problem facing the DeSmet property, but the exchange authority is limited. S. 3189 grants the Secretary authority to exchange leases and rights to federal leases; but does not grant the Secretary authority to exchange for fee ownership interest. Most of Texaco's interests in the Lake DeSmet property are fee ownership interests. This could be dealt with by broadening the Secretary's authority in Section one to cover exchanges of private lands or interests in lands for Federal leases or Federal lands or interests and lands. Alternatively, a new Section four could be added to the bill to provide this authority.

On July 20, 1978, Congressman Roncalio introduced H.R. 13553, a bill to amend the Mineral Leasing Act of 1920, as amended. H.R. 13553 parallels with the provisions of S. 3189 in general. It goes beyond S. 3189 in that it specifically provides authority for exchanges of Federal lands or interests in lands for private lands or interests in lands where such an exchange is found to be in the public interest.

Texaco's interest in this matter is to proceed to an orderly development of its property at Lake DeSmet or, pursuant to Congressman Roncalio's proposal, to exchange its DeSmet property for equivalent interests in Federal coal properties elsewhere in the State of Wyoming where development may proceed.

Texaco believes it is important that the Subcommittee, during its consideration of the exchange provisions of S. 3189 be aware of the situation affecting the Lake DeSmet property.

Thank you for your consideration in this matter.

Sincerely,

WILLIAM K. TELL, JR.,
Vice President.

Senator HASKELL. We will adjourn with the hearing record to stay open for 10 days.

[Whereupon, at 9:40 a.m. the hearing was adjourned.]

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