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Senate

REGULATION OF SURFACE MINING

HON. LEE METCALF

OF MONTANA

IN THE SENATE OF THE UNITED STATES
Monday, March 19, 1973

Mr. METCALF. Mr. President, this week the Committee on Interior and Insular Affairs held hearings on two proposals pertaining to regulation of surface mining, S. 425 introduced by Senator Jackson and others, and S. 923, the administration's proposal.

Surface mining has been the subject of legislation for several years. Extensive hearings were held in the 92d Congress.

Mr. President, there is great demand for more coal development and the regulation of surface mining has become an urgent national priority. It is my No. 1 legislative priority.

Total coal reserves in the Nation have been estimated to be 1.3 trillion tons, with strippable reserves in Montana calculated to be more than 30 billion tons. The Fort Union formation, much of which lies in Montana, is perhaps the largest coal basin in the world, containing 40 percent of the U.S. reserves.

The Montana Bureau of Mines and Geology indicates that 1973 coal production in Montana will be about 16 million tons and will be expanded to more than 20 million tons annually by 1975. By 1980, 7 short years, coal production in Montana may be 75 to 80 million tons.

Mr. President, there are many unanswered questions about surface mining and the possible adverse effects on our air, water, and land. These questions which affect our social, economic, and environmental areas must be answered in order to properly control coal mining.

The people of Montana want and need the best surface mining reclamation law possible. Senator MIKE MANSFIELD, Congressman JOHN MELCHER of Montana's Eastern Congressional District, and I will do everything we can to insure early enactment of such legislation.

In Montana, Gov. Tom Judge has provided active leadership for the enactment of the strongest State surface mining reclamation law in the history of the Nation and a power facility siting law. He has proposed legislation to establish a resource indemnity trust fund and to increase the tax on coal so that Montana can conduct the planning and research necessary to have proper and acceptable methods of coal development. I commend the Governor and the Montana Legislature for their hard work and successful efforts toward the enactment of legislation to solve the problems associated with surface mining.

Mr. President, no testimony more eloquently describes the absolute need to enact a strong Federal surface mining reclamation legislation than the statements of three of my fellow Montanans: Senate Majority Leader MIKE MANSFIELD; Congressman JOHN MELCHER; and Gov. Tom Judge. I wish to associate myself with their remarks and share them with my colleagues in Congress.

I ask unanimous consent that their testimony to the Senate Committee on Interior and Insular Affairs be inserted in the RECORD.

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

STATEMENT OF SENATOR MIKE MANSFIELD MINING RECLAMATION LEGISLATION

Mr. Chairman, I am delighted to be here this morning to testify in behalf of what I consider to be one of the most important pieces of legislation introduced thus far in the 93rd Congress—S. 425—a strong Federal surface mine reclamation law which will supplement and support efforts underway in several States. The First Session of the 93rd Congress is off to a good start and the legislative process is moving faster than it has for sometime. We have much to do and one of the first matters of concern is the so-called "energy crisis"—how it can be alleviated and how we can protect those that have the vast energy resources necessary to meet these energy demands. I hope that the Senate Committee on Interior and Insular Affairs will be able to give immediate attention to S. 425 and its amendments after the conclusion of these hearings. This is a matter which must be brought before the Senate in the near future.

My State of Montana has a great stake in what happens to the vast resources of low-sulfur coal in the West. The potential and the hazards are astounding. I am indeed proud of my fellow Montanans because they are alerted to what the future portends. We, of the Big Sky Country, have made it abundantly clear that we are not interested in becoming another Appalachia with the problems and devastation associated with unregulated surface coal mining.

I am delighted to report that under the leadership of our new Governor, Tom Judge, the Legislature of Montana is considering, and will adopt, several strong measures designed to insure preplanning, reclamation, plant siting, and orderly development of coal resources. In addition, it is hoped that the State will adopt measures protecting the individual landowner who does not wish to be swallowed up by large corporate interests. Governor Judge is here this morning and will present testimony on what the State of Montana is doing and how best the Federal government can supplement and support these efforts. In the history of our Nation, far too often the less populated and rural states have found themselves "after the fact". Fortunately, today, Montana is aware of potential dangers of unregulated surface mining and is taking appropriate measures.

Mr. Chairman, I am somewhat dubious about the current "energy crisis". There are shortages of fuel in certain urban areas but I am not convinced that the answers are as simplistic as some would like us to believe. The low-sulfur coal fields of the West aren't necessarily the answer for the next twenty years. These coal deposits may be the easiest solution but we are not going to stand by and let the large fuel corporations dig up Eastern Montana until the reserves are exhausted or they have discovered an alternative.

First of all, we should look at some of the causes of the "energy crisis"—too little concern with conservation of energy; concentration on production of high-profit fuels such as gasoline. Why haven't we encouraged the production of engines that utilize about half as much gasoline? I understand they are available in foreign nations, where automobile and fuel energies are conserved.

The Federal government should be channeling more money into research and development of alternative sources of energy such as magnetohydrodynamics (MHD). It is working in Russia. Why can't the process be developed here? It provides better utilization of coal, takes much less water, and pollution is at a minimum when compared to existing gasification plants. The Federal government should be moving with dispatch in constructing a National Grid System which will connect all major power generating systems in the Nation, enabling better utilization of power resources. We should be planning the installation of addition generators at several of our large hydroelectric projects. Responsibilities for the "energy crisis" and its solutions are multi-faceted and I am opposed to any simplistic answer such as immediate, unregulated coal surface mining in Eastern Montana.

I see no need to rush into coal development in the West. We need extensive preplanning, strong reclamation requirements with appropriate enforcement, at both State and Federal levels. We need to know whether reclamation can succeed in Eastern Montana. There must be more than "roadside" reclamation. The National Academy of Science is now conducting an intensive study of the environmental implications of surface mining for coal in the western United States and the existing capability for rehabilitating the land, if it is mined. Even this prestigious group does not have the answers to many of the questions that plague those of us that are concerned. The Academy will not have its recommendations available before June, at the earliest.

The rights of the individual who owns the surface of the land must be given consideration. I still believe that if a man wants to be a rancher he should be able to do so except under very unusual circumstances and I am not aware of any in Eastern Montana. There are hundreds of thousands of acres in the eastern half of Montana, and there are portions of my State which obviously are not compatible with surface mining methods and reclamation; they should be left untouched.

Members of this Committee are aware that Montana is a State with a great heritage in mining. Mining was the incentive to settlement of the Lewis and Clark Country. Extractive minerals are the source of considerable wealth in the area. Until the 1970's we were concerned with deep, shaft mining which disturbed very little of the surface. Now we are faced with surface mining which strips away the topsoil and the surface to varying depths making thousands of acres useless and unproductive.

At the present time we have limited surface mining in Eastern Montana, it is now, as yet, of sufficient magnitude to generate deep concern. The reclamation procedures are yet unproven. A major utility is constructing a power plant at the site of its deposits. Two and possibly four plants are proposed for the future. They are presented as necessary to the electric energy needs of the area. Admittedly, their utilization of water resources and pollution will be insignificant if monitored. What concerns me, and many of my fellow Montanans, is what is forecast for the future.

Large acreages of the subsurface mineral rights have been leased in Eastern Montana. There is a flurry of leasing activity. They are anxious to have Federal and State lands opened up. The lease holders are generally large corporate interests, with little or no concern about Montana. They tell us little beyond their immediate leasing requirements. They will mine, export the coal or construct complex gasification plants. The latter is frightening. The consumption of coal, the pollution, and the associated socioeconomic problems are of great concern.

What is contemplated in the next twenty or thirty years? Too little information is available—no one wants to commit themselves. The now notorious North Central Power Study projected a series of some 50 gasification and generator plants with a 50,000 megawatt production level in Eastern Montana. The pollution would be unbelievable and reclamation would be of little consequence as nothing could grow anyway. Just recently new rumors have been circulating. A large corporation has made inquiries at the State level as to how they would like to see Eastern Montana grow with a new city of 200,000 inhabitants or ten cities with 20,000 citizens each! Predictions of this nature scare me. Montana is not prepared for this kind of boom and the many problems it brings. The most frightening aspect of such development is its temporary nature. What happens after the coal is extracted and the energy companies turn to other sources? Montana is left with the scarred earth, mass unemployment, and a depressed economy. If we can't get some guarantees that this de-

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velopment is going to last more than twenty years, it is not worth tearing up the State. As a Nation, we should have learned from Appalachia. This is not going to happen to Montana if I can help it.

Let us not hurry in the development of these coal deposits. We need extensive pre-planning. We must have strong protective laws at the State and Federal level. We must have financial support at the State level for proper enforcement. We need an open discussion about where we are going. All of this should be done before any further coal development. In fact, a moratorium may be the answer until all of the guarantees and proper mechanisms are in their place. The future well-being of Montana and its citizens are deserving of every consideration above and beyond the almighty profit motive.

Thank you, Mr. Chairman, and I look forward to the early recommendations of this Committee.

TESTIMONY OF GOV. THOMAS L. JUDGE,
MONTANA

Mr. Chairman, members of the committee—I appreciate this opportunity to present testimony on a matter of critical importance to the State of Montana.

Our fundamental objective in Montana is to protect the natural qualities of life that make our State a good and decent place to live, and at the same time provide employment opportunities and security for our people.

Eastern Montana was once a remote and forgotten area, lost in the vast interior of this country . . . a land of prairies, mountains, and pine hills . . . a land changed primarily by the passage of time.

Now, suddenly, Eastern Montana is the focus of national attention because of unprecedented demands for energy. There are an estimated 30 billion tons of stripable low-sulphur coal buried beneath our plains. And the industrial development based on this energy source could be one of the largest in the world.

Nearly a year ago, Mr. William Ruckelshaus, Administrator of the Environmental Protection Agency, pointed out the urgency of problems of Eastern Montana coal development. He said, "Both state and federal representatives agree that existing coal development in the region is creating problems for which solutions have yet to be demonstrated. Increased development can only compound these problems."

There is no question that substantial development has occurred in Montana, and it is accelerating at a precipitous rate. In 1969, one million tons of coal were mined. By 1975, 20 million tons is a conservative estimate of production.

Also in 1969, electrical generation by coal fired plants was 249 megawatts. By 1976, that total will have increased almost four times. And by 1980, there is a strong possibility that 4,000 megawatts capacity will be installed.

In addition, a one billion cubic feet per day gasification plant may be on line.

Applications for leases have been made for well over a million acres of state, private and Indian land in 12 of 22 counties in the Montana coal region. This figure does not include land owned by the Burlington Northern Railroad, where substantial coal deposits are located.

The area of land leased or proposed for leasing at the present time is equal in size to the State of Delaware.

The lease agreements make sinister reading for anyone who is concerned about preserving the land. For example, one agreement on file with the Montana Department of Lands assures the following rights: "including strip mining together with exclusive right to use and/or destroy so much of said lands as may be reasonably necessary in carrying out such exploration and mining full right."

There is a much publicized energy crisis in this country. Consumptive demands for power have resulted in shortages as limited energy reserves have been exhausted. And decisions at the national level have apparently assigned a high priority to coal development as a method of solving the energy crisis.

This creates a second crisis—impending environmental destruction in the region where the coal is mined and converted into energy.

I believe it would be contrary to the national interest to temporarily solve the energy crisis and at the same time create an accumulation of permanent environmental problems in Montana and the other coal states. There is also a fundamental inequity in requiring our state to make unreasonable sacrifices to solve a problem of national and global dimension.

Montana has three alternatives in the development of its coal reserves.

1. We can allow continuation and expansion of the haphazard development we have experienced in the past with all of the destructive effects.

2. We can initiate a comprehensive research and planning program to develop the information necessary for intelligent resource decisions and enact laws sufficiently stringent to protect the value of the land and the quality of the air and the water.

3. Or we can severely restrict or prohibit all further strip mining in Montana.

The first alternative, continued haphazard development, is totally unacceptable to the people of Montana. Since the coal region of Montana is primarily agricultural, uncontrolled destruction of the land and pollution of the air and water would have disastrous effects on the economic and social structures that have existed there since the time of the homesteaders.

The second alternative, comprehensive research and planning and strong controls, is the coal development policy we are attempting to implement.

In the State of the State Message I delivered to the Montana Legislature I urged passage of the strongest strip mine reclamation law in the history of this country. A bill meeting this criterion has been passed by the Legislature and I will sign it into law on my return to Montana.

I also recommended a power facility siting law to give the state the authority to regulate the location of generation and conversion plants, transmission lines, rail spurs and associated installations.

This bill, also the strongest in the country, has been passed and will be signed into law this week.

In addition, we have proposed an increase in the tax on coal and a Resource Indemnity Trust Fund to provide Montana with a more equitable return from the resource wealth that is removed from the land.

Last month we requested federal assistance to conduct the planning and research necessary to allow coal development to proceed in a manner acceptable to the people of Montana.

These programs and policies are the result of an irrevocable commitment that Montanans have made to preserve their state from unnecessary degradation and exploitation.

If the terms of this commitment cannot be met in any other way, we are left with the third alternative—severe restriction or prohibition of all further strip mining in Montana.

To this point Montana has stood virtually alone in its efforts to control coal development; to make it possible to alleviate the energy crisis without creating an industrial wasteland on the Great Plains.

I commend the members of Congress and this committee for their expression of concern regarding western coal development and for assuming leadership in establishing minimum standards of uniformity in surface mined land reclamation.

You are in the process of considering two surface mine regulation bills.

I consider one of these proposals, Senate Bill 923, grossly deficient and incapable of meeting present and future needs in surface mined land reclamation.

The other proposal, Senate Bill 425, is a sincere attempt to establish the regulations, and provide the assistance and coordination, essential to effectively reduce the ravages of strip mining.

This legislation will establish a framework for the promulgation of minimum standards of uniformity in the regulation of surface mining operations.

This bill will provide funding for land use planning to the states and create an Office of Land Use Policy, Reclamation and Enforcement.

It will establish generally adequate criteria for permits for surface mining and reclamation operations.

It will create a fund for acquisition and reclamation of abandoned and unreclaimed mined sites.

And it will protect the rights of the surface owner of proposed mining sites.

I also agree completely with the stated intent of the bill that, "because of the diversity of physical conditions in areas subject to mining operations, the primary governmental responsibility for controlling surface mining and reclamation operations subject to this act should rest with the States."

A major objection to this act, however, is that the state has absolutely no legal authority to regulate strip mining and reclamation on any Federal land unless delegated that authority by the Secretary of Interior, under Section 216.

The argument that if the state statutes are stronger, the Federal Government will delegate authority to the state, is not valid in all cases. Section 409 (a) stipulates that no state law shall be superceded "except insofar as such state law or regulation is inconsistent with the provisions of the act."

Section 205 (d) (2) provides that any state statutes or regulations which interfere with the Federal Program are preempted by the Federal Program. If the Federal administration policy is one of development at any

cost, stringent state provisions could be found inconsistent with the provisions of the act and/or Federal program.

A great deal of mining in Montana occurs on Federal land. It is in our best interests to have the state control that mining. We believe that nationwide minimum standards should be set, but in no case should a state that wants to enforce stricter laws be unable to do so on all of the lands within its boundaries.

Fundamentally, we disagree with the broad powers given to the President to suspend the requirements of this act. It is very difficult to conceive a national emergency or critical power shortage of the magnitude that would warrant such an action, since coal and mineral development is proceeding rapidly today. However, should such an emergency occur, provision should be made that when the problem has been alleviated, adequate reclamation will proceed.

We also have reservation as to the desirability of placing the administrative authority with the Department of the Interior. Up to this point all laws which deal with environmental degradation, such as the air and water pollution standards, have been placed under the administration of the Environmental Protection Agency. This law also properly belongs under the Environmental Protection Agency.

There are areas in this law that I believe do not respond to important needs in Montana and the nation.

Our state is unique. It is one of the last frontiers of prime agricultural, scenic and recreational land in the country. These values must be preserved and restored. And if we fail, the wonder of the land will be lost forever and Montana, as millions know it, will become a memory just like all of the other good things that are gone.

To protect this priceless land resource we need strong, specific minimum standards for the entire country. And I believe Senate Bill 425 can provide a sound basic framework to make it possible to achieve this objective.

Surface mine reclamation is only a piece of the huge energy puzzle.

To this point the administration has made only rhetorical commitments to solving the nation's problems in this area.

And if we are to avoid the catastrophic consequences of an industrial giant suddenly immobilized by a power void, we must act now.

We must balance distorted national priorities and modify consumer demands for energy.

We must appropriate funds for extensive research into this problem.

We must strictly enforce the regulations and laws needed to solve the energy crisis.

And we do not have much time.

TESTIMONY OF CONGRESSMAN JOHN MELCHER
Urgent Need for Federal Coal Strip Mining Regulations

Mr. Chairman: Our history books are filled with supposed instances of "man triumphing over nature." But it has been shown that victories over nature are seldom more than temporary.

You can chop down only so many trees, drain so many rivers, denude so much land before nature turns on you. We have seen this with increasing frequency in recent years.

Fortunately, man can and often does learn from his mistakes. Accordingly, we have turned the corner with excellent beginning legislation for cleaner air and cleaner water. Now it is the turn of maintaining the integrity of the land that is being strip mined for coal.

The legislation now before us represents a milestone in the growing concern of the American public for its land. I hope that it is only the beginning of steps to extend ironclad protection for our coal-bearing lands.

As the so-called energy crisis grows, so does the demand for coal. After ravaging countless acres in the Mid-West and East, strip miners are turning their attention to virgin lands in the West where vast amounts of coal lie near the surface. We are determined that the mistakes made elsewhere are not going to be repeated in our part of the country.

Legislation is badly needed. We need a strong national strip mining reclamation bill similar to, and in some respects stronger than, the bill passed by the House of Representatives last October 11 by a vote of 265 to 75. We need a bill which says to mint operators "If you can't take care of the land, don't touch it."

The bill recently transmitted by the Administration certainly is not the answer. It is a retreat of last year's recommendation—a gutless bill which lacks any conviction of commitment to the land. Among its provisions are these weaknesses; reclamation requirements could be delayed up to three years

or even longer. It lacks specifics to demand complete reclamation. It would be weak, ponderous, and slow in enforcement. In no way does it assure the detailed requirements for revegetation that are vital to reclaiming strip mined land in the West after the coal is gone.

In trying to walk the line between the mine operators and the ecologists, the President has fashioned a "business as usual" bill in disguise. The public won't buy it. And the Congress won't buy it.

There are several ingredients which must be present in a good bill.

First, it must cover all the lands in our 50 States, whether they be privately owned, Federal owned, State-owned or Indian lands. As the Woody Guthrie song says "this is your land, this is my land." Minimal land restoration standards should know no boundaries.

Reclamation must be defined as compete restoration of the land to as good or better condition than it was before mining.

Top soil must be saved and segregated to be available for resurfacing later. Reclamation requirements must be specific. Slope back fill, grade, and other requirements must be put down in black and white to avoid those sterile legal arguments whose only purpose is to delay and avoid reclamation.

Prospective mine operators must come to the Secretary of the Interior with a valid convincing reclamation plan which guarantees successful revegetation of the land. In the West, this would entail at least two or three years of proven re-growth to make certain it is permanent.

Progress reports on reclamation must be timely and be substantiated by inspections to prove the plan is being followed.

The Secretary of the Interior must have and use the power to ban strip mining in areas where reclamation cannot be proven, or where irrevocable damage to the environment might result, or where the mining would infringe in any way on public roads, streams, public parks, etc.

The bill should represent our best judgment of uniform care for our land. But it should allow for precedence of State law whenever that law is stronger.

A strong national law should provide protection for water tables and water quality. This is of critical importance for my District where our mountain waters run clear and deep but we receive only about 12 inches of rainfall per year on the plains. We must see that mining does not take water required for other important uses and we must also see that strip mining does not damage aquifers or surface water supplies.

The bill should have strong bonding requirements—much stronger. I might add, than the minimum \$500 per acre included in last year's House bill. Five times that would be more appropriate. Bonding is our surest guarantee that there will be resources for reclamation should a company prove negligible or incapable of the task.

The bill should contain ironclad assurances that violations by any operator anywhere in the United States will count against his operations elsewhere. To do this, it must establish the principle of strict accountability and enforce disclosure of parent-subsidiary relationships of mining companies, interlocking directorates, etc.

Your expertise in this field can make a unique contribution to drafting legislation

that will require identification and responsibility of the coal mining companies, regardless of being a separate corporate entity, if it is a part of a complex conglomerate. As William Shakespeare said "a rose by any other name smells as sweet." So, too, the satellites of a conglomerate smell and behave as does the parent or conglomerate of which it is a part, and conglomerates should not be allowed to escape responsibility for past delinquencies by taking out a new charter for a new subsidiary. Your work on identification of "who owns America," Mr. Chairman, can serve well in the preparation of a section in the bill to prevent avoidance of responsibility by hiding behind the complexities of conglomerate ownership. It is particularly significant in enforcement of reclamation requirements because failure of one company or subsidiary in one area of the country should revoke permits for strip mining held by associated companies in other areas of the country. That is one of the advantages of a federal law. We can put federal teeth into the enforcement of strict reclamation requirements.

Surface ownership rights must not be neglected or ignored in the bill. A citizen's right to bring legal action to make enforcement of reclamation by the Secretary of Interior in any area must be included in the bill.

In summary, Mr. Chairman, we need a strip mining bill which is national in scope, specific in detail, strict in its reclamation requirements and swift in its punishment of violations. I am confident this Committee can write such a bill, and am hopeful that we can get it through Congress and cleared for the President's signature before the summer is out.

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