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Additional Thoughts on Coal Development

Mike Mansfield 1903-2001

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As I have stated repeatedly, coal is not just for the energy crisis. We should be expanding and perfecting our hydroelectric facilities. The Federal Government has a responsibility to push forward the development of some energy sources such as nuclear power; utilizing the sun and wind as sources of energy; the methane process which might be most practicable here where we are developing large lopt operations and creating livestock refuse problems; a crash program to perfect the MHD process, a more sophisticated source of power which uses little water and a minimum of pollution.

As my colleagues are aware, one of the most compelling reasons for my continuing opposition to surface mining of coal is the total disregard being given to the interests of the surface owner. I firmly believe that if a rancher in eastern Montana wants to continue to produce livestock for the remainder of his life, and that of his children, he should be able to do so. Surface mining and ranching are in no way compatible. The owner's consent alternative to the Mansfield amendment is being considered.

Owner's consent is misleading in its terminology. The only owner that it protects is the one who wishes to sell at an inflated price. This practice occurs with which the Federal Government and the individual taxpayer should not be associated. I understand one Montana rancher sold 160 acres of his land for $15 million for his property but he refused the surface owner who does not want to sell does not have to but he will be plagued with off-site damage when his neighbor does lease or sell—dislocated water supplies and access routes. Coal development—whether planned or unplanned—is one of the many off-site problems for the Indians. Also the owner consent theory is subject to questions of constitutionality.

The State of Montana has enacted some strong surface mining laws. The purpose of these laws is to make sure that the surface mining from our State's eminent domain laws. It is the latter subject I would like to discuss briefly. Montana has a very loose eminent domain law which has not been abused to date but now there is evidence that the statute is being utilized to bring about strip mining in a roundabout way.

Wally McCune, owner of the Rocker Six Cattle Co., at Forsyth, Mont., was recently threatened with the acquisition of his ranch through eminent domain by a newly formed water storage company whose major stockholders are known as coal and oil lease brokers. The announced intent of the acquisition is for water storage purposes—agricultural, domestic, industrial, irrigation, and municipal uses. The State law is ambiguous in its definitions and requirements. It would appear that the machinery involved in this case is speculation. We know that stripping of coal for shipment does not require individual supplemental permits. Montana and the construction of coal gasification plants require vast amounts of water which is consumed and not returned to the streams. A large reservoir of water is a natural inducement to the location of a gasification plant. This same water storage company applied to the State of Montana for a beneficial water use permit for a large allocation of water from the Yellowstone River. The permit application was rejected as were several others. The pressures to tie up supplies of water in eastern Montana are great and I am pleased to report that the Governor of Montana has responded in a constructive manner in asking the legislature to enact a 3-year moratorium on all allocations of water from the Yellowstone River Basin. I am assuming that the House and Senate will respond accordingly. This 3-year moratorium will give the State additional time to seriously consider the future of our most valued resource—water.

Mr. President, I ask unanimous consent to have the Governor's communications to the president of the Senate and the speaker of the House of Representatives in the Montana Legislature printed in the Record at the conclusion of my remarks.

THE PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MANSFIELD. Mr. President, eminent domain laws are statutes which must be guarded carefully. The enactment of this legislation should be severely limited to public purposes. As an extension of the eminent domain issue, one of Montana's Indian tribes has considered the possibility of holding both on and off the reservation, proposed that the tribal authority be granted the right to take surface over mineral rights in a large area. The tribe was interested in obtaining title to large surface areas so as to consolidate some leases for a coal company. The surface operator has refused to negotiate a lease. I would not agree to extending the right of eminent domain to any one interest—this could only mean trouble. Earlier I indicated that the State of Montana has adopted a new law governing the siting of utilities, including coal gasification plants. This is vitally important to us. We are to protect against a proliferation of gasification units and the many problems that are associated with this kind of development. The State is to be complimented for this action but I am concerned about reports that the Department of Interior has circulating a draft of legislation which would give the Secretary of the Interior a veto power over State laws governing the location and building facilities that produce electricity. This prospect alarms me and I wish to go on record in opposition to any effort to usurp any State's authority to provide for orderly planning and development.

Mr. President, I ask unanimous consent to have a new story on this subject from the Washington Post, January 29, 1974, printed following the Governor's communication.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, one final matter I wish to discuss is the recent report appearing in Montana that the Atomic Energy Commission was planning to become actively engaged in the
research, development, and marketing of large coal deposits in Montana. This report generated considerable concern in Montana and I immediately asked the Chair of the Senate Committee on Energy, Dixie Lee Ray, for an explanation. I now have a lengthy report dated February 4, 1974. Mr. President, I ask unanimous consent to have this printed and following the Washington Post article.

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

Mr. MANSFIELD. In conclusion, Mr. President, these are some of the concerns I feel deeply about the rush westward to strip mine our State and others of valuable deposits of low-sulfur coal. The Big Sky Country is willing to do its share in meeting any number of problems we have here at hand, but we ask for some compassion and understanding for difficulties that face a large, rural State in a complex and mechanized age.

February 1, 1974

STATE OF MONTANA
OFFICE OF THE GOVERNOR

HON. GORDON MCMURRY,
President of the Senate, Helena, Mont.
HON. HAROLD GERKE,
Speaker of the House of Representatives, Helena, Mont.

DEAR PRESIDENT MCMURRY AND SPEAKER GERKE: When I addressed the Legislature in January, I pledged that the first essential goal of this Administration would be to ensure the continuation of Montana's increasingly unique way of life. You responded by enacting laws that brought Montanans much closer to gaining control over their own destiny.

Both the people of Montana and I are proud of your record and achievements in this direction.

But few people in January 1973 could have foreseen the magnitude of the energy crisis which presently grips this nation. Nor could we have imagined the depth to which the crisis affects almost every aspect of American society—our institutions, our foreign policy, our economy, our environment.

Recognition of the impact of the crisis has led to an announced national policy of attaining energy self-sufficiency during the 1980's. But this policy is facing staggering challenges from which the nation must emerge. Only those areas of Montana's natural resources, dependent on low-sulfur coal, are truly independent of the national energy policy. All others are of concern. None of these could exist without sufficient water.

Yet that is the prospect we may well be facing in one of our most important river systems—the historic, free-flooding Yellowstone. With a massive river containing about 9 million acre feet of water at our border, options, applications and requests have been made for approximately 3,000,000 acre feet. From waters in the Yellowstone Basin. In 1972, the Bureau of Reclamation estimated that 2.5 million acre feet would be needed annually for coal development by the year 2000. In less than two years, this three year goal has nearly been far exceeded, and all indications are that this amount will grow significantly within the immediate future.

The Department of Natural Resources and Conservation, in accordance with the responsibility under the Montana Water Use Act, has become increasingly concerned with this problem during the past few months. Within the past six weeks, applications and notices of applications for almost 1/2 million acre feet of Montana's water from the Yellowstone have been received. Last Friday, a request to divert over 90,000 acre feet annually was received.

The effect of accommodating all these intended uses in an area that is generally described as the stagecoach route. The National Academy of Sciences has cautioned that, "...not enough water exists for large-volume, low-sulfur coal energy forms..." and that, "...potential environmental and social impacts of the use of this water could be far beyond the anticipated impact of mining alone.

The manner in which we respond, or fail to respond, to these unprecedented demands, will largely determine our ability to meet our finite, resources, and to the challenges that demands pose to our environment and to the destiny of the kind of state Montana will become. The shaping of our future should not be done in a recession fashion. Our destiny should not be forsworn through a series of decisions made on a case by case basis without regard to the cumulative magnitude, without thought of the total gain of alternatives, without consideration of the overall impacts or of long-range acceptability of the actions taken. Certainly these decisions should not be made until we have defined the objectives for our State, and any objective we may articulate is inextricably interwoven with and dependent on our water resources.

The Montana Water Use Act was a significant step forward in protecting this invaluable resource. Act the Department of Natural Resources must shortly rule on applications for new and large diversions, although neither to evaluate existing water rights nor to determine the long-range impacts of the new requests.

I am convinced that more time is needed to evaluate adequately the Yellow­stone, and that time for deliberation and planning is critical to the public welfare. I am today presenting a bill which will buy us that time by postponing actions on applications for permits to appropriate water for three years, until the final determinations of existing rights have been made, whichever occurs first. Only those larger applications for water over 20,000 acre feet or for flows of more than 30 cubic feet per second, would be included. Diversions from the Missouri River or other major rivers and diversions from the Yellowstone Basin would be exempt during the three year period.

I am submitting this bill with the hope that you will act favorably on it. The bill further provides that the Montana Water Use Act is subject to a utility permit only if the Utility Board issues a certificate of need. At the end of the three year period, the law would be revised to conform with the then existing conditions. This latter provision would allow the Board to act only if the existing conditions have changed significantly.

I am also submitting a bill which will provide that the Board of Control for the Missouri River Basin have the power to request additional permits to divert Missouri River water in addition to the permits that were issued last year.

During that three year period, if you approve this legislation, state agencies will be directed to speed up the compilation of information necessary for a realistic inventory of alternatives which are compatible with the long-range goals and best interests of Montana and the American people. This period of resource planning will be accelerated. Plans by Montana's State Water Commission on the use of our state water resources must be prepared.

Agricultural, municipal, recreational and wildlife reservations of water will be made. Impacts on our economy, values, and way of life from resulting large scale diversions will be studied. The need for additional legislation will be considered.

The three years should give us the time to heed the warning issued by the Senate Interior Committee in its report concerning the Southwest energy issue. The report noted that, "The present Poor Corners situation reflects the cumulative effect of numerous resource management decisions, each of which was linked in its scope to the objectives and of its geographic concern. These decisions...were made to achieve limited, relatively short-term goals and...were made without full knowledge or adequate consideration of the consequences of the alternatives, the potential regional impacts, or the long-range desirability of the actions involved."

The problem is critical and urgent. We must act accordingly. This proposal will require a two-thirds vote in each House for a waiver of the rule on the introduction of bills. I know that you are already burdened by the need for consideration of other important measures. I know that you are attempting to carry out your responsibilities to the people of Montana in as short a time as is humanly possible.

But the impact of this measure will have on the people of Montana. This water mandate that we discard the labels of "environmental", "landowner", "developer", "rancher", and that the State has no interest in the land, but that we unite in support of this bill to ensure a Montana worthy of this and future generations.

Sincerely,

THOMAS L. JUDEN,
Governor.

BILL NO. 9

A bill for an act entitled: "An act providing for the suspension of action on certain applications for permits to appropriate surface water in the Yellowstone River Basin, and for three (3) years or until existing rights have been determined, whichever occurs first; making reservations for the use of water and for the purpose of protecting the water supply of the State; authorizing an annual report on the status of the Montana Water Use Act preferred uses over such permits; and providing for an immediate appropriation for a committee of investigation.

Be it enacted by the legislative assembly of the State of Montana:

Section 1. Statement of legislative findings and policy. The legislature, noting that applications have been filed for, and that there is further widespread interest in making substantial appropriations of water in the Yellowstone River Basin, finds that these applications threaten the depletion of Montana's water resources to the significant detriment of existing and projected agricultural, municipal, recreational and other uses, of wildlife and aquatic habitat.

Be it enacted by the legislative assembly of the State of Montana:
clares that it is the policy of this state that before these proposals are approved, the state, acting through its appropriate agencies, shall have no comment on the bill until the Army Corps of Engineers has had a chance to study the proposed choice of a site. It is further declared that the state shall have the right to make a determination of the suitability and desirability of the site and to approve or disapprove the plan of the bill for a project aimed at demonstrating energy facilities.

Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part(s) are severable from the invalid application.

Section 9. Effective date. This act is effective on its passage and approval.

CONGRESSIONAL RECORD — SENATE

February 7, 1974

HON. MIKE MANSFIELD, U.S. Senator, Washington, D.C.

DEAR SENSORS MANSFIELD: Dr. Ray has asked me to reply to your inquiry of January 21, 1974, concerning your questions as to the adequacy of the reports and accounts of the Atomic Energy Commission's apparent interest in the State of Montana as a site for a demonstration project for demonstrating effective land reclamation techniques following strip mining. I am pleased to present to you the opportunity to review the inaccuracies contained in the news reports which led to your letter, and to provide you with the facts.

The news articles you enclosed were derived from a meeting held in Montana in January. The accounts of that meeting were inaccurate. AEC does not plan to mine and/or market coal. In fact, no AEC plans at all exist in this regard for eastern Montana or you may be assured your office would have been advised. The facts of the matter are outlined below.

As you know, the Administration is considering ways of using today's technology to meet and overcome the present energy crisis, and to be responsive to Project Independence. As an outgrowth of Dr. Ray's December 1, 1973, report to the President on Energy Research and Development, an AEC Task Force is currently studying a number of possible concepts for energy demonstration projects. Among these are concepts for land reclamation techniques, and mining reclamation, liquefaction and gasification of coal. We are also looking at the possible production of methane for use in automobiles, a large demonstration of the application of solar heating and cooling of buildings, and the desirability of nuclear power centers to reduce siting and licensing delays. If our studies indicate the concepts are both feasible and responsive to Project Independence, they will be recommended to the appropriate government agency for their consideration for further action. Under present organizational arrangements, the AEC will direct the actual execution of only the nuclear power center projects.

To accomplish these studies, several AEC task groups have sought the views of other government agencies and industry in formulating a full range of concepts. A demonstration of effective land reclamation in the semi-arid Western coal fields is one of the concepts they are considering. Since we wanted to be as realistic as possible, we decided to select a specific site and study it in depth as an illustrative
example. The reclamation task force identified Montana, Wyoming and North Dakota as possible sites for a demonstration. It was soon recognized that the reclamation research conducted in the State of Montana would provide the most promising techniques for an effective demonstration. The group felt it essential to visit Montana. The task group met for two days in January with a group of Montana representatives selected and chaired by Lt. Governor Christensen.

It is unfortunate that press accounts of this meeting overstated the scope of the potential project and the degree of involvement of the Atomic Energy Commission and did not reflect the progress achieved at the meeting in determining feasibility of the concept.

Under the concept being considered, the Federal government will not mine and market coal. Basically, the study contemplates a project that would encourage maximum industry participation through a government-industry cooperative arrangement to conduct a reclamation demonstration project on a commercial mine. In addition, participation by state representatives, environmental organizations and local citizens would be actively sought and encouraged to gain the widest possible acceptance of the results and findings of the project upon completion. Since suggestions for reclamation research and related studies would be supported and coordinated with the project, such a project would provide a demonstration of the cost-effectiveness of several alternative and advanced reclamation techniques for returning the land to beneficial uses. A convincing demonstration of successful land reclamation could help mitigate land- and resource-use conflicts between surface mining and other economic activities on Federal, state and private lands. This would facilitate development of coal resources in a manner that assures both environmental quality and continued productive use of the land.

As our efforts at this very early stage only involve feasibility studies of several concepts, we did not consider it of sufficient impact to warrant contact at this time with congressional delegations. This would, of course, be done at future stages of consideration if it were determined that the projects should be pursued. However, in response to your stated interest in the reclamation project, I would be happy, along with the Project Officer of this particular study, to meet with you or your staff to discuss further details. Be assured that we will keep you informed of any further developments concerning this project.

Sincerely,

Edward B. Gillett,
Assistant General Manager
for National Security.