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Senate Democratic Conference

Mike Mansfield 1903-2001

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Honorable Henry Jackson
Chairman
Committee on Interior and Insular Affairs
United States Senate
Washington, D. C.

August 2, 1974

Dear Mr. Chairman:

Both Houses of Congress have taken significant action in passing strong surface mine reclamation legislation which is vital to the protection of large areas of the Nation. This action is applauded and, when signed into law, it will give support to state reclamation laws and regulations now in force.

I am taking this opportunity to make an appeal in behalf of my amendment to S. 425, which was approved in the Senate by a vote of 53 to 33. The amendment added part (b) to Section 612, Protection of the Surface Owner: "All coal deposits, title to which is in the United States, in lands with respect to which the United States is not the surface owner thereof, are hereby withdrawn from all forms of surface mining operations and open pit mining, except surface operations incident to an underground coal mine."

The House of Representatives in approving S. 425 adopted the "surface owner consent provision." I respectfully ask that my amendment be adopted by the Conference on S. 425. I feel strongly on this matter and offer the following observations in support of my amendment.

During the Senate consideration of S. 425, one of my prime concerns has been the welfare of the surface owner, the rancher or farmer who did not wish to have his land subjected to surface mining and a desire to see
surface mining of coal proceed at a slow and deliberate pace. Originally the surface owner consent provision appealed to me but, upon further study, it did not appear feasible or practical.

Some of the best legal minds have serious questions about the constitutionality of "surface owner consent." Even advocates of "written consent" can recognize that the Homestead Act did not anticipate strip mining. Can the Congress give absolute control of the utilization of the subsurface to a single party? Owner consent encourages the surface owner to hold out for an excessively high price for title to his land. The only coal interests that can meet these offers are the large corporate giants, thus, excluding the smaller coal developing companies and contributes to monopolistic conditions. No one interested in farming or ranching will be able to buy property at these inflated prices. While I like the concept of owner consent, I don't think it will work, and, it is basically anti-agriculture. Eastern Montana and much of our neighboring states are predominantly agricultural. World conditions indicate that we are going to become more dependent on expanded agricultural production, and we should not, at this time, be converting agricultural lands to other purposes.

My amendment does not stop the surface mining of coal in the West or any other part of the country. The amendment, in my estimation, offers protection for the surface owner that does not want to sell and controls massive coal development in the west.

I am interested in the well-being of the ranchers and farmers in the West who do not wish to sell or lease or be forced to commit their surface rights to strip mining. It may be hard to believe, but many of these people, some who have lived on their ranches and farms for generations, do not want to change their mode of living regardless of the price. They are successful at what they are doing and want to continue. They and their children should be permitted to do so. Owner consent may appear to be the answer but it only protects the owner who wishes to sell and gives little protection to the surface owner who is concerned with off-site damages and access rights.

Water is the most precious resource we have in the West. Surface mining of coal naturally leads to the construction of coal gasification plants near the source. The plants, as now designed, consume large quantities of water. The process is a consumptive use and the water is not returned
to the stream. The situation is so serious in my state that the Montana Legislature approved a three-year moratorium on the allocation of water from the Yellowstone River Basin, one of the major river basins in the state. Montana is not willing to make advance commitments to the use of vast quantities of water for coal gasification when it ultimately will be to our detriment.

The adoption of my amendment will maintain a checkerboard pattern of coal development in states like Montana with large acreages of public land. This may create an inconvenience for the coal companies who might have to move large equipment from time to time. This financial consideration is far less important than the future of these states which would be committed to open end development of coal and the obliteration of a rural-agricultural economy.

Limited surface mining of coal with strong reclamation and environmental controls can be lived with, but I am concerned about the socio-economic effects of constructing a network of coal gasification plants in the West. I have seen predictions of thirty to forty such plants in my own state. These plants create sight pollution; they consume vast quantities of water and bring an influx of 5,000 to 10,000 people for each gasification plant. The effect of 100,000 new people in eastern Montana would be devastating. The impact would destroy the rural-agricultural economy. In the instance of one of our Indian Tribes, it may destroy a whole culture. The entire section of Montana east of Billings does not have a city of more than 15,000 people. These communities and cities are not equipped emotionally, physically, or monetarily to absorb such an impact. The developers have offered little. Who is going to pick up the pieces? The coal industry and the utilities have been less than candid about what plans they have for coal gasification plants in the West. Questions have been asked about the virtues of coal gasification plants. To date, I have been supplied with no answers.

The switch from deep-mining of coal and abandonment of surface mines in the East for the less costly low-sulphur coal of the West, if allowed to continue, will create a dislocation of a large working force and economic interests. The coal industry must be convinced to give more attention to new technology in deep and surface mining and less to the quick and easiest way to make large profits from the easily stripped mine coals of the West. Also, we should not overlook the fact that the overwhelming majority of the coal in this country can be deep-mined.
These are some of the concerns which prompt me to ask that the
Conferees on the Surface Mining Reclamation Act of 1974 accept my amendment. I also wish to take this opportunity to clarify some misconceptions about my amendment. The prohibition would not apply to existing leases on Federal coal where the surface has already been acquired. The lessee of Federal coal deposits could, however, deep mine the coal. According to the Geological Survey, the rate of deep to strippable sub-bituminous coal is 40 to 1 in Montana.

Recently, the American Mining Congress states, "The Nation needs all the coal it can get from underground mining - and all of the coal it can get from surface mining as well. Even with all this coal, we will still be hardpressed to meet our needs." This statement ignores the alternative sources, subverts the interests of the surface owner, subjects many of the eastern states to economic depression and opens up several western states to a development contrary to their traditions. Individual coal and energy companies have been making appeals in their own behalf. They present volumes of information on the limits of their coal development, pleading that the effect on locale will be minimal. However, they avoid any reference to the big picture, and that is what worries me, when you look at a composite of all of these coal development plans it is frightening.

S. 425 sets the basis for a truly strong reclamation program. However, I do not believe the Congress should give the coal industry carte blanche to strip mine as much coal as they like, wherever and whenever they wish. Coal is not the only answer to our energy needs. Within the next decade, I would hope we will have a better idea of how we can achieve "Project Independence." We will soon know the value of alternative sources of energy: nuclear fusion, underground gasification, MHD, geothermal, solar, wind, methane and upgraded hydroelectric power systems. I am confident that we will succeed in many of these areas. I see absolutely no need to sacrifice the interests of the surface owner, and encourage the demise of a vital western agricultural economy and dislocation of an eastern coal industry to the west.

They say coal is the easy way out of the energy crisis. I am not impressed. We cannot permit states like Montana to be converted into the "utility backyard of the Nation." The retention of my amendment in S. 425 will provide this protection and support a reasonable approach to the Nation's coal policy.
In the states of Montana, Wyoming, and North Dakota, there are at the present time 253,000 acres of Federal coal leases with an estimated 9 billion tons of coal. This does not include the vast deposits held by private interests and the states. Total U.S. production of coal in 1972 was 600 million tons. There is enough coal in this area to provide the Nation's growing energy needs for a minimum of ten years. This is only a very small part of our Nation's total coal reserve in the east and west which can be deep mined and strip mined. I see no reason to panic and give any interest the green light to control the destiny of this part of our Nation.

In a very few years the western coal will be less attractive when processes are put into operation which will permit the use of high sulphur coal mined in the eastern states under environmental standards.

With best personal wishes, I am

Sincerely yours,

RJL/rlr