The original documents are located in Box 48, folder "7/3/76 S391 Federal Coal Leasing Act of 1975 (vetoed) (1)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

Vetoed - Delivered to Sec of Senate 7/3/76 - 11:31 pm

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 2, 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 391 - Federal Coal Leasing Amendments Act of 1975
Sponsors - Senator Metcalf (D) Montana and Senator Jackson (D) Washington

Last Day for Action

July 3, 1976 - Saturday

Purpose

Makes numerous basic changes to the Mineral Leasing Act of 1920 relating to the development of Federal coal.

Agency Recommendations

Office of Management and Budget	Disapproval
Department of the Interior	Disapproval (Informally)
Department of Commerce	Cites concern
Department of Justice	Cites concern
Department of Defense	Cites concern
Federal Energy Administration	Disapproval
Environmental Protection Agency	Defers to Interior
Department of Agriculture	Approval; defers to Interior on non-USDA provisions
Council on Environmental Quality	Approval

Many Members of Congress and industry and public interest representatives have written concerning this bill. Their views are attached in the Appendix.

Discussion

This enrolled bill memorandum sets forth the following relevant factors concerning the Federal Coal Leasing Amendments Act of 1975: A. Background; B. S. 391 - Provisions and Analysis; C. Congressional views; and, D. Agency views.

A. Background

1. Existing Law

- Coal leasing is currently authorized under the Mineral Leasing Act of 1920. Under this Act, the Secretary of the Interior may lease coal competitively or by issuing prospecting permits which ripen into a lease if the applicant demonstrates he has found a coal deposit with commercial quantities. The 1920 Mineral Leasing Act provides the Secretary of the Interior broad discretion on how he administers the law.

2. Legislative History

- The Nixon Administration submitted to both the 92nd and 93rd Congresses comprehensive legislation to modernize the 1890 Mining Law and the 1920 Mineral Leasing Law. The legislation dealt with all minerals including oil and gas, and was intended to modernize Interior's leasing procedures by requiring competitive leasing, eliminating preference right leases, requiring diligent development, and assuring fair market prices for Federal coal.

- On May 5, 1975, the Department of the Interior advised the Senate Interior Committee that while it favored more comprehensive legislation it would approve of enactment of S. 391, if amended. At that time, S. 391 was patterned after the coal portions of the amendments to the Mining and Mineral Leasing Acts proposed by the Nixon Administration. On the Senate floor, portions of the vetoed surface mining bill that would apply to Federal lands plus a provision increasing the State share of Federal mineral leasing receipts to 60% was added to S. 391 and it passed by 84 to 12. Senators Metcalf, Jackson and Hansen were the primary

advocates in the Senate.

- Last November, the House Interior Committee reported H.R. 6721, a coal leasing bill similar to S. 391 as now enrolled. In January of this year, Interior wrote a letter to Chairman Haley of the House Interior Committee saying that unless the bill was significantly amended, the Administration would oppose enactment.

- In March 1976, OMB concurred with Secretary Kleppe's recommendation not to resubmit comprehensive legislation amending the mining and mineral leasing laws.

- The House, in a vote of 344 to 51, passed the reported bill and accepted none of the Administration proposed changes. Representatives Melcher, Mink, Seiberling, and Roncalio were the primary advocates in the House. On June 21, 1976, the Senate by unanimous consent, considered the House bill and enacted it by voice vote.

3. Interior's recent actions

- On January 26, Secretary Kleppe announced a new Federal coal leasing policy. After it becomes fully implemented later this year, the virtual moratorium on leasing that has been in effect for several years would be lifted. To implement this policy, the Secretary has issued a series of regulations that cover the following:

  -- requiring stringent reclamation standards on all Federal coal leases;

  -- requiring production on all leases within 10 years, but retaining the flexibility to extend this by 5 years when conditions warrant;

  -- requiring advance royalties so as to encourage rapid and diligent development of Federal leases;

-- establishing an average royalty of 8% with a floor of 5% (contrasted with average 4% royalty in the past). The royalty will vary up and down depending on conditions;

-- leasing only competitively, i.e., no more prospecting permits. However, legal commitments to issue pending preference right applications will be met;

-- issuing testing (drilling) permits to permit exploration of Federal lands that do not ripen into leases; and

-- leasing only when the value of the coal exceeds the total cost of production including environmental costs.

Thus by regulation, Interior has put into place most of what the Nixon Administration and this Administration had sought in its earlier legislative positions to modernize coal leasing procedures.

B. S. 391 - Provisions and Analysis

As enrolled, S. 391 contains provisions directed at modernization of coal leasing procedures substantially in accord with the Administration's objectives in that the bill (a) requires competitive leasing, (b) eliminates preference right leases, (c) requires diligent development, and (d) is intended to assume fair market prices for Federal coal. However, the manner in which the bill attempts to achieve diligent development and assure fair market prices and certain other provisions in the bill essentially unrelated to such objectives are inconsistent with Administration positions heretofore taken. An analysis of the key amendments to the Mineral Leasing Act of 1920 follows:

1. Increased payments to States

This provision increases the State's share of revenues from Federal leases from the present 37 1/2% to 50% -- on both coal and other minerals, including gas and oil. These additional funds could be earmarked by the States for social and economic impacts related to mineral development. Furthermore, the State share of payments made under the Geothermal Steam Act of 1970 would increase from 5% to 50%

Advocates of this position argue that the States bearing the social and economic impact which results from mineral development within their borders both need and are entitled to a larger share of the Federal receipts derived from such operations. Moreover, with the establishment of a minimum royalty of 12 1/2% as discussed below, federal receipts will still increase from present levels over time even though a greater proportion is shared with the States, and the loss to the Federal Government from the change is not a huge number.

The Administration's position has been that royalty payments determined by a arbitrary formula will likely bear no relationship either in amount or timing to problems of social and economic impacts -- state-by-state or project-by-project -- generated by energy development of Federal lands. Further, although the federal receipts loss is not huge viewed in the context of the total federal budget, the loss is substantial. In FY 1976, payments to the States would increase from $126 million to $168 million. Such payments can be expected to increase rapidly in future years as Federal coal development expands and coal, oil, and gas prices increase. For example, under S. 391, the States are estimated to receive $300 million in FY 1980, or $75 million more than under existing law. In later years the loss could be expected to be greater.

The Administration acknowledges that the Federal Government should give assistance to alleviate the impact of coal development projects. In this regard, the Administration has proposed the Federal Energy Development Assistance Act which would provide communities impacted by the development of Federal energy resources with $1 billion in planning grants and loans and guarantees for public facilities. Although the $1 billion applies to off-shore Federal oil as well as inland Federal minerals, estimates are that about one-half would go to coal. This approach would provide ample assistance in a timely, equitable, and fiscally responsible manner, principally through the use of loans and loan guarantees, with provision for loan forgiveness if the project failed to generate the expected local and state revenues necessary to pay off the loans.

The Administration approach provides assistance that is both equitable and timely -- equitable in giving the assistance to those that need it and in the amount needed, and timely in that it provides the assistance for the community impacted at the outset of the particular project. However, it also contemplates that the economic gains from the project will enable and justify the collection of state or local tax revenues (whether by severance, property or other taxes) to pay off the loans over time.

Advocates of S. 391 note that the state's royalty share is in effect a grant that doesn't have to be repaid and that this eases the state and local tax burden. The countering argument is that it is unfair to the taxpayers of all the other non-coal states to give the coal states more than is necessary to help them meet the impact and that as the coal states and communities realize the economic growth that eventually comes from the particular projects, the federal assistance through loans can and should be repaid.

Notwithstanding efforts by coastal states to get a royalty-sharing approach on development of off-shore federal oil and gas leases, the coastal zone bill completed by Congress two days ago subordinates the royalty concept to the Administration approach. It is not improbable that even if the 12 1/2% state share add-on in S. 391 becomes law, the coal states will also later try for, and get, the coastal zone-type of assistance as well.

2. Minimum 12 1/2% royalty on coal

This provision requires royalties of not less than 12 1/2%, except the Secretary may determine lesser amounts in the case of underground mining.

Supporters of the bill argue that a 12 1/2% minimum royalty would: (1) generate a fair return on a public resource and increase Federal receipts over the long run; (2) make coal royalty levels more equivalent to those for oil and gas; (3) reduce the front end bonus paid on coal leases, thus minimizing the required initial investment and encouraging coal development; and (4) permit greater sharing of revenues with the States without a decrease in Federal revenues.

Advocates also point out that the Secretary has discretion under Section 39 of the Mineral Leasing Act to reduce the minimum royalty below 12 1/2% during the course of a lease if economic conditions so warrant (i.e., the remaining coal under the lease is marginal). We think it probable that the cognizant Committee Chairmen in both the House and Senate would give Interior assurance in writing that prospective lessees could be assured before entering into a lease that such reductions would occur automatically during the lease life under prescribed circumstances.

The Administration's position has been that royalties should not be set legislatively at or near their historic highs -- the present ceiling should not become the floor. Depending on the market prices, such a minimum royalty could prevent production from vast acreages of Federal coal. This problem is accentuated in those areas which have imposed State severance and local taxes in addition to Federal royalties. Also, it is unwise to favor underground mining because of its lower recovery rate and greater safety hazards. As noted above, in contrast, Interior's new regulations provide royalty levels fitted to the relevant factors (location, topography, royalty rates on private coal within the same area, size and quality of coal deposit, nature of payment, etc.) associated with each lease sale. The industry also points to increased electricity costs to energy consumers.

3. Deferred bonus payments

S. 391 requires that no less than 50% of the total acreage offered for lease by the Secretary in any one year be leased under a system of deferred bonus payment. A bonus is a lump-sum amount for the purchase of all or part of the leasehold. Payment of the amount is usually made at the outset, but can, of course, be deferred.

Advocates of this position argue that it would foster competition by reducing the front-end capital outlay necessary and thus enabling smaller corporations to compete with the larger firms.

The Administration's position has been that the Secretary presently has authority to lease under a deferred bonus scheme and this new requirement would unduly and arbitrarily limit his discretion as to how Federal coal is to be leased. The

Secretary should be free to use the deferred bonus procedure depending on economic conditions and the amount of interest in leasing Federal coal. Further, deferred bonus is an untried procedure.

4. Federal exploration program

This provision by its terms would require a comprehensive Federal exploratory program to evaluate the extent, location, and potential for developing known recoverable coal resources (stratigraphic drilling authorized).

Advocates of this position argue that it would: (1) assist Interior in determining the value of tracts which are up for lease sale; and, (2) be useful in estimating reserves for logical mining units and advance royalty payments.

Although the language of the bill would seem to call for a very comprehensive program, Senator Metcalf and Congresswoman Mink have written you stating that this provision "essentially extends and codifies the on-going evaluation program (presently) carried out by the Geological Survey.... This program does not prevent the Secretary from issuing coal leases where he believes he already has adequate information about the nature and extent of the coal, nor does it require that all known coal be evaluated before any is leased." Both of these Members appear, on the basis of conversations yesterday, to be willing to give the Administration and the Appropriations Committees written assurances that a modest program -- in the $10 to $30 million range, annually -- would satisfy the law and that Interior could rely heavily on data submitted by bidders.

Notwithstanding such assurances, there is an appreciable risk that courts would construe the mandatory language of the bill to be much broader. Current Interior program of drilling is in known coal areas for the selection of tracts for leasing and to determine fair market value and is not for exploration. The Administration's position has been that comprehensive exploration: (1) is not an appropriate Federal function; (2) could entail large costs with little benefit in terms of Federal revenues -- Interior has not made any cost estimates, but the Congressional Budget Office has estimated a 5-year comprehensive program at $1.2 billion based on U.S. Geological Survey procedures and cost data; and (3) could create significant delays in the discovery and development of Federal coal. It could be added that such Federal

exploration duties on coal would be a bad precedent for oil and gas and that the provision is unfair in that the Federal Government bears all the exploration cost but the States get 50% of the royalties under the bill.

5. Production requirements

The bill requires coal lease terms of 20 years and so long thereafter as coal is produced in commercial quantities. Any lease not producing within 10 years shall be terminated. Lease terms would be subject to readjustment at the end of the primary 20-year term and at the end of each 10-year period thereafter if the lease is extended.

Advocates of this position argue that it would assure diligent development of the coal lease, which coincides with Administration objectives. They point out that Interior's current requirement that 2 1/2% of the 40-year production be accomplished over the first 10 years may be more stringent than requiring coal to be produced "in commercial quantities" by the 10th year.

They also argue that if the 10 years prove to be impractical in some cases, Congress will amend it.

The Administration position has been that it is unrealistic to require production within 10 years. It is important to have the discretion to extend a lease for an additional 5 years, as Interior's regulations allow, under certain conditions. Specifically, in the case of very large mines, synthetic fuel plants or other plants built at the mine site, it is necessary to do several or all of the following: (1) find a market for coal; (2) develop mining and reclamation plans; (3) arrange for financing; (4) procure long-lead time equipment; (5) build railroad spur lines or arrange for other modes of transportation; (6) obtain numerous local, State or Federal permits; and (7) build the mine site plant. In some cases, 10 years could prove insufficient and thus very massive, complex projects will not be initiated for fear of not meeting the 10-year deadline.

The 10-year limitation was added by Congressman Hechler -- the most active opponent of your synthetic fuel proposal. Senator Metcalf has stated that he, Senator Jackson and Senator Hansen would sponsor an amendment to the synthetic fuel bill to exclude projects thereunder from the 10-year restriction.

6. Tracts reserved to public bodies (rural electric co-ops, etc.)

This provision of the bill reserves a "reasonable number" of leasing tracts for public bodies. It would also authorize the Secretary, with the concurrence of the Secretary of Defense, to lease coal or lignite underlying acquired military lands (such leasing is currently prohibited).

Advocates of this position argue that it would encourage and promote rural electrification and help serve areas which private industry has passed by.

Opponents argue that this provision discriminates in favor of public bodies which can, under existing authority, receive a license from the Secretary to mine coal. Considerable difficulty could be encountered in defining a "reasonable number."

7. Acreage limitation for logical mining units (LMU)

The bill prohibits any one entity from controlling and mining LMUs -- including non-Federal lands -- in excess of 25,000 acres.

Advocates of this provision argue that it would assist in preventing a concentration of holdings while nonetheless assuring that large powerplants have ample coal reserves.

Opponents argue that this is an arbitrary restriction which could result in: (1) multiple discrete mines where one large mine is most economic; (2) higher coal production costs; and (3) non-development of economically valuable coal. This is true because non-Federal coal is included within the definition of an LMU and a number of such areas now exist or have been identified by Interior in excess of that

size. In such cases, and assuming a 25,000 acre limit, the issuance of two leases to cover what would otherwise be one LMU will require essentially concurrent production from both tracts. Also, synthetic fuel production operations may require more than 25,000 acres.

8. Mining and reclamation plan

This provision requires Secretarial approval of an operation and reclamation plan within three years of lease issuance.

Proponents argue that this would assure the diligent development of coal leases, which again coincide with Administration objectives. However, the three-year period may be impractical. Since the lessee must, under existing procedures, have an approved plan before beginning production, this requirement serves no useful purpose and adds to paperwork burden both in and out of Government.

9. Anti-trust review

S. 391 requires the Attorney General to review all coal leases being issued, renewed, or readjusted as to their consistency with the anti-trust laws (30 days allowed). If leases are deemed to be inconsistent with the anti-trust laws, they may not be issued, nor renewed or readjusted for more than one year, unless the Secretary finds that such action is in the public interest or is not subject to any reasonable alternative.

Advocates of this provision argue that it is in response to a Justice Department concern about the possibility of violations of anti-trust laws by the coal-energy industry. There is precedent, e.g., in the nuclear field.

However, this provision is administratively cumbersome and Justice is extremely reluctant to offer conclusions on anti-trust questions in advance of a particular activity. It would also increase the paperwork burden and create a troublesome further precedent for other economic areas.

10. Public hearings

The bill requires public hearings or comment at four different stages pertaining to any one lease sale: (1) development of land use plan; (2) before lease sale; (3) formulation of logical mining units; and (4) prior to determining the fair market value of coal in an area.

Advocates of this position argue that multiple public hearings or opportunities for comment have been sought by western Governors because of their and local concerns regarding the adverse impacts of surface coal mining.

The Administration position has been that four potential hearings on one coal lease sale are excessive. Hearings at the point of developing a land use plan are appropriate and are required under current regulations, but the additional three hearings will not usually produce benefits commensurate with the additional burden. The requirement will slow down, at least to some extent, implementation of Interior's coal leasing program.

11. State delay of national forest leasing

This provision requires that prior to any coal leasing on national forest lands the Governor of such State be notified; within 60 days of such notification, the Governor may request a 6-month delay and reconsideration of any coal leasing.

Advocates of this position argue that it would assure adequate consideration of competing surface uses within the national forests, and they assert that such special consideration is warranted because of the unique nature of forest lands as opposed to other lands.

The Administration's position has been that the Governor and local officials have the same or better opportunity than others do during land use and environmental impact hearings to register their views concerning coal leasing within the national forests.

In addition, the enrolled bill requires the following -- all of which are less controversial than the provisions set out above:

- completion of comprehensive land use plans (very similar to what Interior now requires) before the sale of any coal leases;

- mining operating plans which assure maximum economic (underground vs. surface) recovery of the coal (similar to Administration proposal);

- individual licenses issued for each State in which coal exploration is to be undertaken;

- elimination of preference right leases (Administration proposal);

- diligent development and continuous operation of the mine or mines with authorization of specific advance royalty payments in lieu of continuous mine operation (similar to Administration proposal);

- that no one person hold leases in the aggregate that exceed 46,080 acres per state or 100,000 acres nationally;

- competitive bidding in lease sales and fair market value payment (Administration proposal);

- no coal mining in any area of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National System of Trails, and the Wild and Scenic Rivers System, including study rivers.

C. Congressional views

In reporting on the enrolled bill, a majority of the House Interior and Insular Affairs Committee expressed the belief that the Federal coal leasing program under the Mineral Leasing Act of 1920, as interpreted and enforced by the Department of the Interior, has the following basic deficiencies:

- lease terms, preference rights, and royalty requirements that encourage speculation and do not assure a fair return to the public;

- bidding procedures that lead to a concentration of lease holdings;

- inadequate environmental protection, planning and public participation; and

- a lack of mechanisms to alleviate social and economic impacts in areas affected by mineral development.

Eight members (Ruppe, Skubitz, Sebelius, Lagomarsino, Smith, Pettis, Bauman, S. Steiger) of the 43-member Committee voiced additional views that strongly urged reconsideration and adoption of essentially the Administration's viewpoint concerning the following provisions of the bill: (1) anti-trust review; (2) comprehensive Federal exploratory program; (3) minimum 12 1/2% royalty; (4) multiple public hearings; (5) 25,000 acre LMU acreage restriction; and (6) increasing the States' share of mineral receipts. However, such reconsideration was not undertaken, and neither the House nor the Senate appeared to give serious consideration to Interior's new coal leasing and reclamation programs which

were in the final stages of being implemented. (House passage of the bill occurred shortly before Secretary Kleppe announced the Department's new coal leasing program.)

D. Agency views

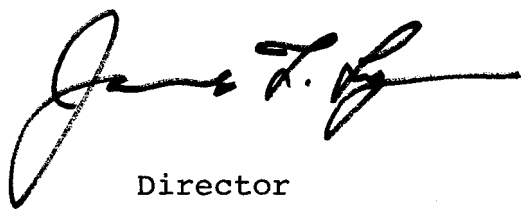
Agriculture and CEQ recommend approval generally on the grounds that the enrolled bill would provide the necessary environmental assessment, land use planning, and other procedural safeguards to assure the resolution of potential resource value conflicts in advance of development decisions. Agriculture considers the requirement to notify Governors in advance of Forest Service leasing as superfluous. While EPA defers to Interior, on balance it appears to view the bill more favorably than negatively.

Commerce, Justice and Defense all express serious concerns in their enrolled bill letters on S. 391. Commerce believes that the bill will retard the exploration and development of Federal coal reserves while Justice sees the anti-trust provisions as burdensome and unproductive. Defense is fearful that the authority to lease coal and lignite underlying acquired military lands would be "inimical to the operational integrity of the military installation."

Finally, Interior, EPA and this Office all recommend veto. Interior has serious concerns with respect to most of the bill's deficiencies as they have been discussed in this memorandum. The Department fears that the enrolled bill will seriously interfere with the present program. FEA believes that the Federal exploration program is most inappropriate and unacceptable. FEA agrees with Interior's conclusion that the bill's provisions will seriously complicate our coal leasing program. While sharing the agencies' concerns, we also note that the bill provides absolutely no new authorities that we really need to manage the Federal coal leasing program in an efficient, productive and effective manner. As pointed out above, it could very likely interfere and hamper the present program.

Finally, it is possible that your action on this bill will affect future Congressional consideration of strip mining legislation. Although approval of the enrolled bill would probably lessen the risk of a bad strip mining bill coming to your desk (either separately or as a part of a new effort on coal leasing legislation), we are not in a position to judge how important action on S. 391 is in this respect.

Likewise, we are not in a good position to assess the chances that a veto would be sustained. The lopsided votes indicate that an override is a real threat (Interior believes it will be difficult to sustain a veto). However, the manner in which the legislation was passed and the timing thereof vis-a-vis Interior's subsequent new regulations lessen the utility of such votes as an accurate barometer on a veto vote.



Director

Enclosure

APPENDIX

1. Letter to you from 74 Senators urging you to sign S. 391

2. Letter to Secretary Simon from Senator Hansen explaining the return to the U.S. Treasury under S. 391 and urging Secretary Simon to join in asking the President to sign S. 391

3. Letter to you from Senator Metcalf and Congresswoman Mink urging you to sign S. 391

4. Telegram to you from the United Mine Workers urging you to sign S. 391

5. Letter to you from 11 House members urging you to veto S. 391

6. Letter to you from the American Mining Congress urging you to veto S. 391

CLIFFORD P. HANSEN
WYOMING

United States Senate

WASHINGTON, D.C. 20510

June 23, 1976

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

We urge you to sign into law the Federal Coal Leasing bill, S. 391, as amended and recently passed by Congress.

S. 391 is designed to eliminate the speculative holding of Federal coal leases and to ensure that they will be developed on a timely basis and in a manner which is of benefit to the public. These lands are owned by the people and subject to the Mineral Leasing Act of 1920. We must have an equitable coal leasing policy. We must have increased coal production from our public lands to help meet our national energy needs. We must set environmental parameters for the taking of coal from these lands.

We also must have a fair and decent return from coal and mineral production to the U. S. Treasury and to the states which are and will be most affected by Federal coal mining.

There is no other substantial Federal assistance available to the coal producing states to deal with the projected and already occurring population increases occasioned by mineral extraction. The new financial assistance provision in this bill could help with an orderly, stable transition and mitigate the dramatic and often traumatic social changes.

In short, the help offered in S. 391 is badly needed. Again, we respectfully request that you sign this bill.

With kind regards,

Sincerely,

Frank E. Moss

Henry M. Jackson

John Sparkman

Vance Hartke

Mike Mansfield

Lee Metcalf

Edward Kennedy

Alan Cranston

Frank Church

Thruston Morton

Strom Thurmond

Joseph M. Montoya

James B. Allen

Hubert H. Humphrey

Russell B. Long

Herman E. Talmadge

Robert Morgan

Ralph W. Yarborough

Earl K. Hollings

John Sparkman

Patrick J. Leahy

Daniel K. Inouye

Philip A. Hart

Walter D. Huddleston

Jesse Helms

John Tower

Carl T. Curtis

Robert Taft, Jr.

Edward J. Gurney

Paul Laxalt

Lloyd Bentsen

Hugh Scott

Jennings Randolph

James B. Pearson

John Sparkman

[illegible]

Bob Packwood

Charles H. Percy

[illegible]

Harrison Williams

Dick Clark

Geo. McGovern

Lawton Chiles

[illegible]

Walter D. Huddleston

United States Senate

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

June 28, 1976

2

Honorable William E. Simon
Secretary of the Treasury
Washington, D. C. 20220

Dear Mr. Secretary:

In a letter signed by 74 of my colleagues in the United States Senate and delivered by me to the President on June 25, urging him to sign S. 391 into law, the issue of a proper return to the U. S. Treasury was mentioned but not fully explained.

The question of overall increase to the Treasury, vis a vis the Reclamation Fund, is in my estimation open to speculation, if viewed in the long run based on the known reserves of the minerals involved. We are considering in this letter the return to the U. S. Treasury as it applies to the leasing and mining of coal.

I wish to assure you that Section 7 of this bill does in fact provide for a net increased return to the Treasury as illustrated by the following example:

	Interior Regulations (current)		S. 391
Fair Market Value of Coal	$1.00		$1.00
*Federal Royalties (highest possible)	8¢		
**Federal Royalties (actual to 1975FY)		4¢	
Federal Royalties minimum under S. 391			12.5¢
Return to the Treasury	5¢	2.67¢	6.25¢
Return to the States	3¢	1.33¢	6.25¢

*Increase to the Treasury would be 1.25¢ or 25% assuming the highest possible return under current regulations.

**Increase to the Treasury would be 3.58¢ or 71% under current, actual rates of return.

I would earnestly ask your support in light of the above to join with me in asking the President to sign this bill. The bill was enrolled and delivered to the President on June 22. I appreciate any assistance given to coal producing states.

With best regards,

Sincerely,

Clifford P. Hansen
U S S

CPH:tbc
cc: Honorable James T. Lynn

6-28

S 391

United States Senate

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

24 June 1976

The President
The White House
Washington, D. C.

3

Dear Mr. President:

We respectfully urge you to approve S. 391, the Federal Coal Leasing Amendments Act. S. 391 is designed to eliminate the speculative holding of Federal coal leases and to insure development of Federal coal on a timely basis and in a manner beneficial to the public. It would not only increase coal production to fulfill national energy needs, but also guarantee a decent return to the United States Treasury and to States impacted by Federal coal mining.

While the Administration has supported the concept of amendments to the Mineral Leasing Act dealing with coal, in January, Secretary Kleppe expressed some concerns about the bill. We believe that the major provisions of the bill are compatible with the new policies and regulations of the Department of the Interior.

1. Minimum Royalty. During the past 54 years, the Federal Government has collected an average of only 12½ cents per ton of leased coal in royalty payments. This is a ridiculously low rate of return. Recognizing this fact, the Interior Department has now raised its royalty rate to 8%. S. 391 would go further in rectifying this inequity by establishing a minimum royalty of 12½%, a rate generally in line with coal taxes and royalties of western States and Indian tribes.

The Secretary would be given discretionary authority to set a lower rate for coal produced by underground mining, which is a relatively costly method of recovery. In addition, Section 39 of the Mineral Leasing Act would continue to allow the Secretary to reduce the minimum royalty below 12½% "for the purpose of encouraging the greatest possible recovery of coal". Thus,

an operator could pay a lesser royalty on a portion of his coal lease which might otherwise be uneconomical to mine, while overall the return to the public treasuries will substantially increase.

2. Payment to States. S. 391 would increase from 37½% to 50% the portion of revenues going to the States from mineral leasing, and reducing from 52½% to 40% the portion deposited in the reclamation fund. The additional 12½% returned to the States would be available for use in planning, construction and maintenance of public facilities, with priority to be given to areas impacted by coal development. The U. S. Treasury would continue to receive the remaining 10%, as under existing law. The western coal-producing States must deal with the problems of population influx triggered by Federal coal development. For these States, new financial resources provided by S. 391 could spell the difference between a chaotic disintegration of traditional rural lifestyles, and the orderly transition to urban and semi-urban living patterns.

3. Federal Coal Evaluation Program. The Department has been seriously handicapped in determining the actual value of coal tracts which are leased. However, through the Geological Survey it has begun to correct this deficiency. In Fiscal 1975, $1.9 million was spent for stratigraphic drilling and other evaluations of Federal coal lands. According to the amended budget request now pending before Congress, Interior's program would increase from a projected $2.5 million to $7.6 million for Fiscal 1977.

The Department has stated that "expansion of this (coal drilling) program is necessary to supply the Government with additional data to facilitate the coal leasing program". Section 7 of the bill essentially extends and codifies the on-going evaluation program carried out by the Geological Survey by directing the Secretary "to evaluate...the known recoverable coal" on Federal lands. This program does not prevent the Secretary from issuing coal leases where he believes he already has adequate information about the nature and extent of the coal, nor does it require that all known coal be evaluated before any is leased.

4. Logical Mining Unit. Considering that the multiplicity of land holdings and the failure to consolidate varying types of holdings under a single control can lead to wasted resources where coal tracts are too small for profitable mining separately, the Department has produced the so-called "logical mining unit", an administrative construct now incorporated into its regulations. The definition of a logical mining unit (LMU) in S. 391 and the Department's definition are essentially alike, with the exception of the term "contiguous". The bill would provide new discretionary authority to the Secretary to require the formation of LMU's and (as in the Department's regulations) require mandatorily the mining out of the coal reserves contained in the LMU within a 40-year period. A 25,000-acre limitation in the bill would provide ample coal reserves within an LMU to supply even the largest electric generating plants, calculated on the basis of tonnage yield averages in the major coal-producing counties of the western coal States.

5. Competitive Bidding. In suspending the future issuance of preference right leases, Secretary Kleppe has adopted a cardinal principle of S. 391, namely confining leasing to competitive bidding only. The Department's regulations now contain requirements for competitive bidding on coal leases and for determination of fair market value which -- although not as detailed -- are generally comparable to provisions in S. 391. S. 391 would require that half of all acreage leased in any one year be leased under a system of deferred bonus bidding. Deferred bonus bidding would prevent domination of the field by the largest coal companies and the multinational oil corporations.

6. Diligent Development. Both S. 391 and the Interior Department's regulations require actual production from coal leases within 10 years. The Department's regulations, while containing a possible 5 year extension of the ten year limit, also require production of 2 1/2% of the 40 year coal reserves of the LMU by the end of year 10 of the lease - a requirement which is arguably more stringent than the provision of S. 391 calling only for production "in commercial quantities" at the end of the tenth year.

In both cases, leeway is provided for interruptions by strikes, the elements or casualties not attributable to the lessee. Both systems combine flexibility with a mechanism for ending the wasteful speculative holding of Federal coal leases which has frustrated the intent of Congress over the past few decades.

7. Other Provisions. In passing, we would mention several other provisions of S. 391 which are comparable in most respects to those contained in the Department's regulations. These are as follows: (1) In Section 3, requirements for a land use plan, public hearings, consultation with other Federal agencies, mineral assessment, review of likely community impacts, public notice, compliance with Federal environmental statutes; (2) In Section 4, the exploration license and data; and (3) In Section 16, exclusion of the National Park and similar Federal-protected areas from coal leasing.

In sum, Mr. President, we are convinced that S. 391 would strengthen the hand of the Secretary of the Interior in carrying out his mandate to bring about the orderly and equitable development of Federal coal resources upon which this Nation will more and more come to depend in the foreseeable future.

Respectfully,

Lee Metcalf, Chairman
Subcommittee on Minerals,
Materials and Fuels
Senate Interior Committee

Patsy T. Mink, Chairwoman
Subcommittee on Mines and Mining
House Interior Committee

The White House
Washington

MWHD025 620P EDT JUN 29 76 WAF416(1530)(1-028052C181)PD 06/29/76
1976 JUN 29 PM 6 22
TWX UMWA WASH
001 WASHINGTON, DC 6-29-76
PMS THE HONORABLE GERALD FORD
PRESIDENT
UNITED STATES OF AMERICA
THE WHITE HOUSE
1600 PENNSYLVANIA AVE.
WASHINGTON, DC 20004

4

DEAR PRESIDENT FORD:

THE UNITED MINE WORKERS OF AMERICA STRONGLY SUPPORTS S. 391, THE FEDERAL COAL LEASING AMENDMENTS ACT, AND RESPECTFULLY REQUESTS THAT IT BE SIGNED INTO LAW. THERE IS A GREAT NEED TO REFORM THE ENTIRE COAL LEASING PROCESS AND THIS BILL WILL BRING THE LONG OVERDUE

CHANGES.

IN LIGHT OF OUR NATIONAL ENERGY PROBLEMS AND THE PROPOSED SOLUTIONS, THERE IS A NECESSITY FOR THE OPTIMUM UTILIZATION OF OUR DOMESTIC ENERGY SOURCES. HOWEVER, THIS UTILIZATION SHOULD BE CONSISTENT WITH THE PUBLIC INTEREST. S. 391 NOT ONLY HELPS ASSURE THE DILIGENT PRODUCTION OF FEDERAL COAL BUT ALSO ASSIRES THE PUBLIC AN EQUITABLE RETURN ON THIS VALUABLE RESOURCE.

THE UMWA URGES YOU TO SIGN S. 391 SO THAT THE NATION MAY ONCE AGAIN BEGIN TO DEVELOP ITS FEDERAL CCOAL RESERVES, BUT IN A MANNER GIVING DUE REGARD TO THE PROBLEMS THIS DEVELOPMENT WILL CAUSE FOR THE WESTERN PUBLIC LAND STATES.

RESPECTFULLY YOURS,

ARNOLD MILLER, PRESIDENT
UNITED MINE WORKERS
NNNN

PHILIP E. RUPPE
11TH DISTRICT, MICHIGAN

COMMITTEES:
MERCHANT MARINE AND FISHERIES
INTERIOR AND INSULAR AFFAIRS

Congress of the United States
House of Representatives
Washington, D.C. 20515

203 CANNON OFFICE BUILDING
WASHINGTON, D.C. 20515
CODE 202: 225-4735

FEDERAL BUILDING, ROOM 102
ALPENA, MI 49707
CODE 517: 356-2028

FEDERAL BUILDING, ROOM 32
MARQUETTE, MI 49855
CODE 906: 228-8250

June 29, 1976

The Honorable Gerald R. Ford
The White House
Washington, D.C. 20500

Dear Mr. President:

The undersigned strongly urge you to veto S. 391, the federal coal leasing bill, as we believe it is not in the best interest of the nation and will severely hinder the achievement of your administration's objective of energy independence.

S. 391 will have a devastating impact on the development of our critically needed low-sulphur western coal reserves because it is not likely that any new leases can be issued for up to eight or ten years after enactment. A major cause of the delay will be numerous public hearings required specifically by the bill and by the application of NEPA to this proposed legislation. It specifically calls for four hearings, namely, upon completion of the land use plan; prior to the issuance or approval of a lease by the Secretary; upon the creation of logical mining units; and upon the advice of the Attorney General that an antitrust problem may exist. The National Environmental Policy Act will require additional hearings: a hearing on the promulgation of the regulations under the act; a hearing on the exploration drilling program; a hearing on the land use decision; a hearing on the issuance of a lease; and possibly a hearing on the mining and reclamation plan. Clearly this enormous and repetitive hearing process, assuming there is no litigation to cause further delay, will consume several years.

Of greater significance, however, are the delays inherent in the federal exploration program. Sec. 7 of the bill directs the Secretary to conduct a comprehensive exploratory program

to obtain the resource information necessary for determining whether commercial quantities of coal are present, and the geographical extent of the coal fields, in order to estimate the amount of such coal that is recoverable by underground mining as well as surface mining. In order for the Secretary to carry out this program he must submit a plan to the Congress within 6 months, request appropriations, and let drilling and other exploration contracts.

The cost of the comprehensive exploratory program has been estimated to be $1.2 billion over the next five years by the Congressional Budget Office. The time required to complete the program in order to permit the commencement of leasing cannot be easily estimated because there are too many variables such as the appropriation of funds, the design and approval of the exploration program, and the availability of drilling rigs and laboratories. However, if there are around 90 million acres of federal coal lands, the process could take decades, during which time coal leasing would be halted. Exploration has been traditionally carried on by the industry with data being made available to the government at no cost to the taxpayer.

S. 391 establishes a minimum royalty on federal coal of 12½ percent. We do not believe that royalties should be set by legislation which are at or near the historic high. The current ceiling should not become the floor. The 12½ percent royalty could have the effect of making large acreages of federal coal lands uneconomical to mine. Your administration recommended a 5 percent minimum royalty. This increase in royalty will be reflected in higher fuel costs for electric utilities and in turn, higher costs to energy consumers.

Under the logical mining unit section, no logical mining unit may exceed 25,000 acres, including both federal and non-federal lands. This is an arbitrary restriction and flies in the face of testimony from Department of Interior witnesses outlining logical mining units in excess of 25,000 acres. The facts support logical mining units of a larger size in order to economically and efficiently recover the coal resources. This requirement may force inefficient operations, thereby unnecessarily increasing the cost of coal, and may very well preclude the mining of significant amounts of federal coal.

S. 391 requires that all leases issued pursuant to it must be producing in commercial quantities by the end of the tenth year or be subject to cancellation. There are many reasons why a lease may not be in production by the end of ten years; for example, delays in equipment deliveries, permit approvals, railroad spur construction -- to name just a few. With respect to gasification or liquifaction plants, the coal reserve for the entire life of such plants must be secured prior to construction. Because of the very long lead times in construction of such plants, including financing, technological developments, obtaining of FPC permits, and the actual construction time, and the fact that commercial production of coal cannot commence until the plant is complete, such a ten-year production requirement could well lead to the exclusion of federal coal for such plants. Experience indicates that well over 10 years will be required to put in operation a gasification plant.

Section 9(a) amends Sec. 35 of the Mineral Leasing Act and increases the state's share of total federal revenues from the leasing of federal coal, oil, gas, phosphate, sodium, potassium, oil shale, native asphalt, sulphur, etc. from the present 37½ percent to 50 percent. Admittedly, social impacts will be felt in states in which coal development is substantial. However, no evidence has been presented to demonstrate that the current level of revenue sharing is insufficient to meet these adverse impacts. Additionally, increased revenue sharing from resources other than coal is unrelated to the adverse impacts caused by coal development.

S. 391 contains cumbersome antitrust review procedures which require the Secretary to submit all decisions on the issuance, renewal or readjustment of every coal lease to the Attorney General for his assessment of possible violation of the antitrust laws. These provisions only serve as another mechanism to delay the leasing of federal coal.

The Department of the Interior has recently finalized its new coal leasing and reclamation regulations after working on them for well over three years. The enactment of this bill

would require significant changes that would necessitate a major revamping of Interior's program with NEPA and public hearing requirements, promulgation of a leasing program could be delayed three years or more.

For all of the above reasons we respectfully urge you to return S. 391 to the Congress without your approval.

Sincerely,

Philip E. Ruppe, M.C.

Sam Steiger, M.C.

John Breaux, M.C.

Robert E. Bauman, M.C.

William M. Ketchum, M.C.

George Hansen, M.C.

Joe D. Waggonner, Jr., M.C.

David C. Treen, M.C.

Theodore M. Risenhoover, M.C.

Don Young, M.C.

James M. Collins, M.C.

AMERICAN MINING CONGRESS
1100 Ring Bldg., Washington, D.C. 20036
Telephone: 202/331-8900
TWX 710-822-0126

June 28, 1976

COPY

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

On June 21, the Senate agreed to the House amendments to the Coal Leasing bill, S. 391. The American Mining Congress respectfully urges you to veto the legislation.

In Secretary Kleppe's letter of January 19, 1976, to Chairman Haley of the House Committee on Interior and Insular Affairs, he raised thirteen important objections to H. R. 6721 (the House bill which ultimately became S. 391) as reported by the Committee, and urged the adoption of amendments on the House floor to correct those identified deficiencies. We note that none of your Administration's proposed amendments was adopted on the House floor.

Because of the following requirements contained in the bill, the American Mining Congress opposes S. 391:

(1) The bill will cause inordinate delays in the leasing of coal;

(2) The bill requires repetitive and costly hearings -- four separate hearings are specifically required by S. 391 and an additional four or five would be required by the National Environmental Policy Act;

(3) The bill requires a costly and time-consuming Federal exploration program;

(4) The bill requires production in ten years, which is far too short;

(5) The bill increases royalties to a minimum of 12.5 percent;

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Continued . . . .

84

(6) The bill places an unrealistic 100,000 acre nationwide limitation on the holdings of any one lessee;

(7) The bill places an artificial restriction on logical mining units of 25,000 acres; and

(8) The bill contains a cumbersome and unnecessary anti-trust review requirement.

In summary, S. 391 appears to be designed to make the burdens of Federal coal leasing so onerous that little or no new leasing will occur, at least for many, many years. For these reaons, which are set forth with greater particularity in the attached, the American Mining Congress believes that S. 391 is not in the national interest and will endanger the achievement of significantly reducing this nation's dependence upon foreign energy sources. Therefore, Mr. President, the American Mining Congress respectfully urges that S. 391 be vetoed.

Sincerely,

J. Allen Overton, Jr.

J. Allen Overton, Jr.
President

AMERICAN MINING CONGRESS

1100 RING BUILDING • WASHINGTON, D. C. 20036 • TELEPHONE 202/331-8900
TWX 710-822-0126

ESTABLISHED 1897

J. ALLEN OVERTON, JR., President

June 28, 1976

Attachment to
Letter to
President Ford
Re:
S. 391, Coal Leasing Act

No Administration Amendments Adopted:

Secretary of the Interior Thomas Kleppe set forth thirteen important objections in his January 19, 1976, letter to Chairman Haley with respect to H. R. 6721 (the House bill which ultimately became S. 391), and urged the adoption of corrective amendments on the House floor. None of the amendments offered to correct the identified deficiencies was adopted.

Inordinate Delays in Coal Leasing:

The most damaging aspect of S. 391 to the achievement of energy independence is the inordinate delays it will cause in the leasing of Federal coal. The source of these delays is two-fold: first, the fact that at least four public hearings are provided for by the terms of the bill, and another four hearings will likely be required by the National Environmental Policy Act, for a total of eight or nine public hearings; and second, the requirement for a comprehensive exploratory program under section 7 of S. 391.

The bulk of the Federal coal lands are located west of the Mississippi River. The government owns about 60 percent of the western coal lands, but because of the existing checkerboard land ownership patterns, the leasing of Federal lands can influence the development of another 20 percent bordering on Federal lands. The effect of inordinate delays in leasing Federal coal lands can preclude the development of non-Federal adjoining coal lands by preventing the creation of an efficient, logical mining unit.

Public Hearings:

The bill requires a hearing upon completion of a land-use plan (section 3), a hearing prior to the issuance of a lease (section 3), a hearing upon the creation of a logical mining unit (section 5), a hearing upon the advice of the Attorney General that an antitrust problem may exist with respect to the issuance, renewal, or readjustment of a lease (section 15), and the requirement that the Secretary ". . . give opportunity for and consideration to public comments on the fair market value . . ." of the coal may lead to or result in the requirement for another public hearing. All of the above hearings are specified in the bill, and in no way obviate the public hearing requirements of the National Environmental Policy Act.

At least four more hearings would be required by NEPA: an environmental impact statement and a hearing on the promulgation of regulations, a hearing on the proposed exploratory drilling program required under section 7, a hearing on the land-use environmental impact statement, and a hearing on the environmental impact statement for the lease sale. Very probably, a fifth hearing will be required on a mining and reclamation plan. While it is possible that some of these hearings could be held concurrently, nevertheless, the public hearing requirements are repetitious, unnecessary, costly, and seemingly designed to delay coal leasing.

Federal Exploration Program:

The Federal "comprehensive exploratory program" required by section 7 is the second source of major delay. It should be noted that the exploratory program is a prerequisite for the land-use plan required under section3, which, in turn, is a prerequisite for the holding of a lease sale. As a consequence, the bill is subject to the interpretation that no lease sale can be held until all the Federal coal lands have been drilled and evaluated, and a "comprehensive land-use plan" has been prepared.

The language of the bill requires that the comprehensive exploratory program ". . . be designed to obtain sufficient data and information, to evaluate the extent, location and potential for developing the known recoverable coal resources within the coal lands subject to this Act. This program shall be designed to obtain the resource information necessary for determining whether commercial quantities of coal are present and the geographical extent of the coal fields and for estimating the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations . . . ."

The following paragraph quoted from page 25 of House Report No. 94-681 (H. R. 6721) on this legislation relative to section 7 is of significant interest:

> Stratigraphic drilling must be carried out so or in such a manner that information pertaining to all recoverable reserves is obtained. All information regarding results of test borings is to be supplied to the Secretary. The purpose of this requirement is to assure that lands are not leased for surface mining development when greater amounts of coal could be recovered through deep mining operations.

According to the final environmental impact statement prepared by the Department of the Interior for its proposed Federal coal leasing program, 92.1 million acres of land overlie Federal coal reserves in eight western states (Table 1-31, "States With Major Federal Coal Acreages", page I-85).

If drill holes are spaced every 160 acres, roughly 575,000 holes will have to be drilled, probably to a depth of 1,000 feet in order to obtain the information needed to determine the amount of coal which "is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations." The cost of the drill holes will obviously depend upon the depth to which they are drilled, the terrain, drilling conditions encountered, and whether blowout protectors are required, but the total cost of the drilling program would be measured in billions of dollars.

Experience indicates that for drilling to depths of 1,000 feet (a depth usually used for calculating underground coal reserves), a cost of $10 per foot would be very conservative. However, applying $10 per foot to the drilling program outlined above would result in total drilling costs of $5.75 billion. The costs of laboratory work would, of course, be in addition to the drilling costs.

Regardless of the cost per hole, considering the number of holes that will have to be drilled, the amount of time required to complete the program could be very long, thereby contributing to what the Department of the Interior terms the "probability of significant delays in discovering coal and in developing coal."

Production in Ten Years:

An amendment was adopted on the House floor which had the effect of reversing a previous decision in the House Interior Committee to extend to

fifteen years the time period for commercial production from a lease. The fifteen-year time period was adopted by the Committee because the Department of the Interior made a persuasive argument therefor. The ten-year time period for commercial production from a lease was a floor amendment offered by Congressman Kenneth Hechler, who does not serve on the House Interior Committee.

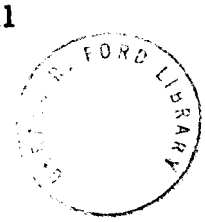
Because of this provision, it is highly unlikely that Federal coal leased in the future would be used for gasification or liquefaction plants, because the coal resource for such plants must be secured prior to planning, construction or even the obtaining of financing. Ten years is simply not enough time, and the prospect of cancellation of the lease and forfeiture of all bonus, rental and advance royalty payments will deter the acquisition and committal of Federal coal for such plants, should the bill become law.

Royalty:

S. 391 sets the minimum royalty at 12.5 percent. Your Administration recommended a 5 percent royalty to permit flexibility where needed, and has recently adopted a policy of setting royalties at 8 percent, except where circumstances indicate that a higher or lower royalty is appropriate. S. 391 sets the current highs in royalties as the floor. The increased royalty will be evident in increased fuel costs for electric utilities, and ultimately in increased costs for electricity to the energy consumer.

Acreage Limitation:

The bill, S. 391, imposes a new nationwide acreage limitation of 100,000 acres on any one lessee. Current law has an acreage limitation of 46,080 acres in any one state. This existing limitation has worked well in the past and will continue to do so. The 536 existing Federal coal leases are held by 167 lessees. Of the top twenty Federal coal lessees, only one holds more than 6 percent of the leased acreage, with the median of 2.4 percent of the leased Federal coal acreage. It is difficult to discover any valid reason for any concern over concentration in the coal industry from these figures. The 100,000 acre nationwide limitation is unnecessary and will likely result in hardships and the cancellation of development plans of companies having the expertise and the capital to achieve early production of the needed low-sulphur western coal deposits.



Logical Mining Unit:

Section 5, relating to logical mining units, places a limit of 25,000 acres, including both Federal and non-Federal lands, upon any logical mining unit. This restriction is arbitrary and flies in the face of examples of larger logical mining units outlined by the Department of the Interior. This restriction may force operations to operate in a less efficient manner, thereby unnecessarily increasing the cost of coal, and could preclude the mining of substantial amounts of Federal coal.

Effect on Coal Leasing Program of the USDI:

The Department of the Interior, after three years of intensive work, has recently issued regulations revising and revamping its coal leasing program. While the American Mining Congress has expressed some concerns and reservations with regard thereto, if this bill should become law, it would appear that most of that work would have been fruitless, and the Department would be required to start all over on the laborious process of drafting regulations and environmental impact statements, holding hearings, analyzing comments, designing and conducting the comprehensive Federal exploratory program, etc., before a new leasing program can be developed. S. 391 appears to be designed to make the burdens of Federal coal leasing so onerous that little or no new leasing will occur, at least for many, many years.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

June 25, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget

Dear Mr. Lynn:

In reply to the request of your office, the following report is submitted on the enrolled enactment S. 391, "To amend the Mineral Leasing Act of 1920, and for other purposes."

Taking into consideration only the provisions of S. 391 which specifically refer to this Department and the National Forest System lands which it administers, we recommend that the President approve the enactment. We defer to the Department of the Interior for a recommendation as to whether the other provisions of the bill embody suitable procedures and policies for administration of the Nation's Federally-owned coal resources.

S. 391 would significantly and comprehensively revise existing law governing the leasing of Federally-owned coal.

Our specific interest in this bill relates to the fact that the Department of Agriculture through the Forest Service is responsible for the administration of 187 million acres of Federal land within the National Forest System. Approximately 6 1/2 million acres of land within the National Forest System are known to be underlain with coal.

Provisions of S. 391 which specifically refer to this Department and National Forest System lands include the following:

1. Section 3 provides that prior to the issuance of a coal lease within the boundaries of a National Forest the Governor of the State shall be notifed and given an opportunity to object.

2. Section 3 also provides that no coal lease sales shall be held on National Forest System lands unless such sales are compatible with land use plans prepared by the Secretary of Agriculture.

3. Section 3 also provides that coal leases covering lands under the jurisdiciton of this Department may be issued only upon our consent and upon such conditions as we may prescribe with respect to the use and protection of the nonmineral interests in those lands.

4. Section 4 provides that exploration licenses covering lands under the jurisdiction of this Department may be issued only upon such conditions as we may prescribe with respect to the use and protection of the nonmineral interest in those lands.

5. Section 6 provides that this Department must consent to the terms of operation and reclamation plans where the surface of the land involved is under our jurisdiction.

6. Section 16 would have the effect of withdrawing units of the National Wilderness System, National System of Trails, and the Wild and Scenic Rivers System (including study rivers), from the application of the Mineral Lands Leasing Act and the Mineral Leasing Act for Acquired Lands. Many such units are located within the National Forest System.

With the exception of item 1. above, we believe these are good provisions. We believe the decision as to whether a particular coal development lease should be issued on National Forest System lands should rest with this Department on a consent basis. We have the responsibility to administer the various surface resources and uses to which the lands are dedicated. We are therefore in the best position to evaluate the merits of a mineral development proposal in relationship to its impacts on other resources and uses, and also to evaluate how such development might be accommodated in conjunction with those uses.

In regard to item 1., we consider the requirement of notifying the State Governors as superfluous.

Sincerely,

John A. Knebel
Acting Secretary

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

JUN 26 1970

MEMORANDUM FOR JAMES M. FREY
OFFICE OF MANAGEMENT AND BUDGET

ATTN: Ms. Ramsey

SUBJECT: Enrolled Bill S391, "To amend the Mineral Leasing Act of 1920, and for other purposes."

This is in response to your June 22 request for our views on the subject enrolled bill.

This bill would make several basic changes in the Mineral Leasing Act of 1920 as it applies to the leasing of coal. Among these changes are requiring competitive leasing except for a provision to add contiguous acreage to existing leases, non-preference right exploration licenses, compatibility of coal development with land use plans, and provisions for surface management agency concurrence.

The Administration has recognized that essential changes are necessary in the coal leasing system to assure environmental protection and other public interest considerations. These were reflected in Administration bills submitted to Congress in 1971 and 1973, and most recently, in extensive changes made by the Interior Department in its coal leasing regulations.

While much has been accomplished through regulatory change, we believe it is important to have a solid statutory basis to assure these reforms are carried out as long-term policy without the prospect of future reversal. S.391 will accomplish this and facilitate development and implementation of a high standard of environmental protection.

At the same time it should facilitate the Administration objective of improved energy self-sufficiency and expanded production of coal.

A system of competitive leasing only as provided in S.391 will assure that full environmental assessment takes place prior to leasing activities. By providing that leasing is compatible with land use plans, and requiring surface

management agency concurrence the bill involves the surface management agency in the leasing decisions and provides the mechanism for resolving potential resource value conflicts in advance of development decisions.

For these reasons, the Council strongly recommends that the President sign this enrolled bill.

Gary Widman
General Counsel

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

JUN 28 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning S.391, an enrolled enactment

"To amend the Mineral Leasing Act of 1920,
and for other purposes."

S.391, the "Federal Coal Leasing Amendments Act of 1975", would amend existing Federal law relating to Federal coal resources and establish new procedures and requirements concerning exploration for and development of these resources.

While this legislation's basic objective is stated to be modernization of the management of Federal coal resources, its provisions are such that it will in fact probably retard the exploration for and development of these resources. More specifically, the royalty provisions, the lease size provisions, and the planning and development requirements are such as to act as a disincentive to prompt development of Federal coal resources. These provisions are also likely to increase to some extent the price of Federal coal. Further, the bill would restrict the discretion of the Secretary of the Interior to such an extent that it may be difficult in future years to adjust Federal coal leasing policy in response to national energy needs.

We are particularly concerned by the new minimum 12½% royalty provision. While this provision permits the Secretary to determine lower royalties in the case of underground mining, it in effect sets a minimum royalty at a point close to the maximum which has up until now been exacted. This kind of minimum royalty could significantly reduce development of Federal coal resources.

Of perhaps greatest concern to the Department is the provision which provides for a 12½% increase in the state share of mineral leasing revenues for social and economic impacts related to mineral development. After lengthy negotiations, the Administration was able to obtain agreement by the Conferees on the Coastal Zone Management

Act amendments to limit similar automatic payments to the case where facilities provided under the Act were unavailable. Presidential approval of S.391 will in effect provide the inland states with an additional source of revenues essentially unrelated to economic and social needs. The lion's share of this increase would go to Wyoming in which most Federal coal is currently being produced. Since the increased share is based on production, the revenues would be available only after impacts have occurred. Since most mineral leasing revenues are derived from onshore oil and gas production, it is unlikely that these additional revenues will do much to stimulate coal production. In sum, providing an increased share would not be equitable in terms of needs, and Presidential approval could be interpreted by coastal states as a preference for the inland states, thus, giving credence to Louisiana's argument of discrimination.

For these reasons, then, we believe that S.391, as passed by the Congress, would have a negative affect on Federal coal development and would constitute an undesirable precedent, politically and fiscally, in connection with the provision of Federal assistance to states and localities impacted by Federal energy development. S.391 also constitutes an undesirable precedent regarding possible Federal involvement in OCS exploration. In this context, we would be inclined to recommend that the President veto the legislation.

On the other hand, there are substantial state and privately owned coal resources which will be developed in response to increased demands for coal. And, as demand for coal rises and prices increase, even Federal resources will become more attractive, notwithstanding the requiremements of S.391. Thus, while the bill will retard the development of Federal coal resources to a degree we believe undesirable, it may not substantially affect the price of coal or restrict the nation's coal supply.

Further, one has to consider the legislative history of S.391. It was passed by the Senate last year 84-12, and by the House this year 344-51. On June 21, 1976, the Senate by unamious consent enacted the House bill by voice vote. Given these facts, and Senator Hansen's strong support of the bill in its present form, it is highly questionable whether the Administration could in fact sustain a veto. Further, there is other less desirable legislation pending with respect to which it will be more imperative to assure that the Administration's views prevail.

For these reasons, the Department of Commerce will not object to Presidential approval of S.391. The Secretary, as Chairman of the ERC, would, however, wish to consider Interior's position paper prior to making a final recommendation to the President.

Enactment of this legislation would not involve any additional expenditure of funds by the Department of Commerce.

Sincerely,

J. T. Smith

General Counsel

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

June 28, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a copy of the enrolled bill S. 391, "To amend the Mineral Leasing Act of 1920, and for other purposes."

This bill, revising existing law controlling the development of coal resources owned by the United States, is designed to provide a more orderly, expeditious and environmentally sound development of Federal coal leases. The Department of Justice takes no position on the effectiveness of this legislation in meeting that goal.

Of particular interest and concern to the Department of Justice are sections 15 and 8 of the bill. Section 15 first requires the Secretary of the Interior to consult with and give due consideration to the views and advice of the Attorney General at each stage in the formulation of rules and regulations concerning coal leasing. This is a generally useful and probably one-time-only requirement which may help ensure a procompetitive orientation in the federal coal leasing program.

The second part of section 15, however, in effect requires the Attorney General to conduct a case-by-case antitrust review of every proposed coal lease issuance, renewal or readjustment to determine whether it would create or maintain a situation inconsistent with the antitrust laws. While no formal report from the Attorney General is required in each case, he is given 30 days notice by the Secretary of the Interior of each proposed lease. If adverse advice is transmitted by the Attorney General, it is tantamount to a veto of the lease unless the Secretary of the Interior, after a public hearing, concluded that its issuance, renewal or readjustment was necessary in the public interest and that there were no reasonable alternatives thereto. Finally, the bill conveys no immunity from civil or criminal liability under the antitrust laws, nor does it create any defenses to actions under those laws.

The Department questioned during the pendency of this legislation, and we continue to question, whether a seriatim antitrust review of every proposed coal lease is necessary or appropriate. Our view is that preclearance antitrust reviews of this type should be confined principally to significant licensing events or major transactions and that a requirement to review numerous small-scale applications with de minimis competitive effects could be both burdensome and unproductive.

Presented, notwithstanding our reservations, with an antitrust review requirement covering every proposed coal lease, we have no particular objection to the procedures spelled out in section 15. We believe it may yet be possible, in our required consultations with the Department of the Interior, to develop implementing regulations which promote an orderly, efficient and productive antitrust review.

Section 8 requires a comprehensive annual report to Congress by the Secretary of the Interior on the federal coal lands leasing program. Each such report is required to contain a report by the Attorney General:

> on competition in the coal and energy industries, including an analysis of whether the antitrust provisions of this Act and the antitrust laws are effective in preserving or promoting competition in the coal or energy industry.

The Department has previously expressed reservations about this type of provision, and we continue to view elaborate and extensive reporting responsibilities as an unwise, inefficient expenditure of resources which would otherwise be committed to our primary role of law enforcement. Although we necessarily observe economic trends in American industry in the context of carrying out our responsibility to detect violations of law, we seriously doubt whether a survey of competition on such a broad scale as the "coal and energy industries" (which goes far beyond the basic subject matter of this legislation) would be useful or even feasible.

Despite these reservations, however, we do not believe sections 15 and 8 of the bill are of such critical concern to this Department as to warrant a recommendation of disapproval. Accordingly, the Department of Justice does not object to Executive approval of this bill.

Sincerely,

Michael M. Uhlmann
Assistant Attorney General

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 29 1976

OFFICE OF THE
ADMINISTRATOR

Dear Mr. Lynn:

This is in response to your June 22, 1976 request for a report on S. 391, an enrolled bill "To amend the Mineral Leasing Act of 1920, and for other purposes".

The bill amends provisions of the Act dealing principally with leasing of Federal coal. Provisions governing the division, apportionment, and price of leasable lands are provided, including the ineligibility of existing lessees who have failed to produce coal on the lease. Only land covered by a land-use plan could be leased, with the Departments of the Interior and Agriculture responsible for such plans for lands under their control. Plans are required to include an assessment of minable coal in the area covered.

The bill would authorize licenses for coal exploration but a license would not carry a preferential right to lease land on which coal is found. Consolidation of leases into a "logical mining unit" would be authorized, no unit to exceed 25 thousand acres and all coal in the unit to be mined within 40 years of lease issuance. Provisions governing diligent development and royalties are contained in the bill.

The Secretary of the Interior would be directed to determine all recoverable coal under lands subject to the Act for stated purposes, and the results would be available to the public.

The bill provides that 50 percent of the money from lease sales shall be returned to the States, to be used for specified purposes. A ceiling would be placed on the amounts of State land and National land any one coal company may have under lease at the same time. Other administrative provisions are also contained in the bill.

The Environmental Protection Agency finds that the bill is directed almost entirely to administration of Federal coal leasing and has little direct impact on the environment. The bill does have certain economic implications discussed below. For these reasons, we defer to the Departments of the Interior and Treasury, but will comment on several provisions of the bill, including those having an indirect environmental impact.

The bill raises certain economic questions. For example, preference right leasing often enabled small coal companies to participate in the Federal leasing program from which they otherwise would have been precluded, given the risk of entirely losing exploration costs. Thus, erasing that right could tend to keep small companies out of Federal land coal leasing. However, the bill's provision requiring that 50 percent of the leases shall be issued on a deferred bonus bid basis tends to balance the adverse impact on small companies.

Another concern is the provision protecting geological, geophysical, and core drilling analyses as confidential until involved areas are leased or the Secretary determines a company's competitive position would not be damaged. Such information should be available to other governmental agencies and to public interest groups to help them participate in the leasing process. For example, the determination of priority for surface mining, and the nomination of an area as surface-mining exclusive by an interested party, depend on the availability of adequate information.

The bill in fact responds to the problem by mandating a comprehensive Federal exploration and analysis program, resulting information to be made public. While the advisability of Federal minerals exploration programs is generally open to question, such a program would ensure that at least some information is available for any one site, which is one stated purpose of the program. Further, while the cost of such a comprehensive program is troubling, especially where it duplicates privately-generated information, we note that decisions as to which areas are to be mined in what order or not mined at all given various economic, social, and environmental considerations, are best made with the complete coal reserves picture in hand. That picture will not be produced by the companies; and in fact, absent that picture the companies' exploration policies will tend to determine Federal leasing policy, which is converse to Congressional intent. To illustrate, the bill directs that Federal exploration be done as a basis for land use planning, and Interior's EMARS program is aimed at imposing Federal goals on leasing.

The bill has features which bring new advantages to Federal coal leasing. Certain provisions assure a more fair and realistic return to the public treasury for the value given up, and will provide much needed funds for dealing with the economic and social impacts of large-scale mining on rural States with limited resources. These include the competitive bidding requirement, exclusion of bids for less than fair market value, higher royalties, and provisions which discourage speculation. These latter include, in addition to the foregoing, diligent development provisions, such as the exclusion from leasing of lessees who have failed to produce coal on a lease in commercial quantities within 10 years, requiring an operation and reclamation plan within 3 years of lease issuance, and the diligent development, operation, and production requirements of mining plans.

Finally, the bill's land-use planning requirements improve the leasing process in that leasing must be in accord with planning, which will have incorporated the views of all levels of government, as well as those of the general public.

Sincerely yours,

Russell E. Train

Russell E. Train
Administrator

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

June 30, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for the views of the Department of Defense on an enrolled bill, S. 391, an Act "To amend the Mineral Leasing Act of 1920, and for other purposes".

This legislation, among other things, would make substantial changes in the Mineral Leasing Act of 1920 as it pertains to the exploration and exploitation of coal deposits. These would include: (1) the requirement for a Federal comprehensive land use plan, (2) consideration of the effects of leasing on communities and on the environment, (3) the submission by the lessee of an operation and reclamation plan and (4) authority and direction to the Secretary of the Interior to conduct a comprehensive exploration program designed to obtain sufficient data to evaluate the extent, location and potential for developing the known recoverable coal resources within the coal lands subject to the legislation. Of specific interest to the Department of Defense is Section 12 which would provide that "Coal or lignite under acquired lands set apart for military or naval purposes may be leased by the Secretary (of the Interior), with the concurrence of the Secretary of Defense, to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located."

The Acquired Lands Act of 1947 (30 USC 352) which would be amended by Section 12 of the enrolled bill now provides that "Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of 1944, all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States (exclusive of such deposits in such acquired lands which are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set aside for military or naval purposes or (c) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof." This provision, which exempts

military and naval installations, was included in the 1947 Act to protect the operational integrity of military installations since exploitation of minerals also requires use of the surface for extraction of the underlying minerals, and the two requirements are usually incompatible. Despite the exemption of 30 USC 352 the Department of Defense has assigned the rights in the subsurface migratory minerals such as oil and gas to the Department of the Interior under an Attorney General opinion which recites the implied authority in the Executive to take protective measures when lands acquired by the United States are found to contain oil which is being drained by adjoining owners.

The Department of Defense, which was not afforded an opportunity to testify on S. 391 or H.R. 9725 or to comment on Section 12 which was added as an amendment to the House bill, prefers to defer to the position of other agencies on the general merits of the enrolled legislation. However, we believe it essential that we record our objection to the language of Section 12. This objection is based on the rationale for the 1947 exemption that extraction of the subsurface minerals is incompatible in most cases with the use of the surface. In this instance, exploitation of coal or lignite would be inimical to the operational integrity of the military installation. Despite the language of Section 12 which is permissive, we are realistic enough to know that pressures can be brought to bear to influence a decision to lease at the expense of the military mission. We also believe that the legislation is discriminatory in that it is preferential to the State in which the deposits are located at the expense of the other states whose tax dollars contributed to its original acquisition. Rather we believe that coal or lignite deposits are "non-wasting assets" whose time will eventually come when the land is no longer needed for military purposes.

We realize that while the objection to Section 12 is of importance to this Department it goes only to a small segment of the overall legislation and is not of sufficient import for us to recommend a veto message. Since the President must also consider all national benefits of the legislation we reiterate our deferral to more directly affected Departments and agencies.

Sincerely,

Richard A. Wiley

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 2 - 1976

Dear Mr. Lynn:

This responds to your request for our views on the enrolled bill S. 391, "To amend the Mineral Leasing Act of 1920, and for other purposes."

We recommend that the President veto the enrolled bill S. 391 because the bill has major deficiencies and the authority for accomplishing an effective program of coal leasing is presently available. Indeed, the Department has announced the development of a comprehensive new coal program designed to: create a careful balance between the need for coal and the need to protect the environment; assure a fair market return to the public for the sale of this public resource; assure that we lease only that coal which is needed by the Nation and only when it is needed; assure the leasing of that coal whose value exceeds the total cost of production, including environmental costs; eliminate excessive lease holdings; and assure participation in the Federal coal leasing process by the respective State Governors and the public. We believe that the program we have announced will accomplish all these goals and provide a rational and sound basis on which leasing decisions can be made. We do not believe that the enrolled bill offers any new authority, and it appears to seriously interfere with the present program.

Enrolled bill S. 391 is identical to H.R. 6721, as amended and sent to the Senate by the House of Representatives on January 21, 1976. H.R. 6721 was previously H.R. 3265, as amended and sent to the House Interior and Insular Affairs Committee by the Subcommittee on Mines and Mining. H.R. 3265 was similar to the Committee Print of S. 3528 in the 93d Congress as issued by the House Committee on Interior and Insular Affairs, Subcommittee on Mines and Mining.

Secretary Kleppe sent Congress a message on January 19, 1976, before floor action on H.R. 6721, stating that:

> ". . . we believe the Department presently has adequate authority to fully implement our coal development program, however, we are in general agreement with the basic thrust of H.R. 6721 to provide policy

direction in coal leasing. In assessing the impact of the bill as reported, we are concerned that there are a number of provisions in H.R. 6721, as amended, which we feel would have a seriously adverse effect on our coal program. We urge that appropriate amendments be accepted during consideration of H.R. 6721 on the House floor so that we might fully support enactment of this legislation. Without these amendments, however, the Administration opposes enactment of the bill."

None of these amendments were adopted, and H.R. 6721 passed substantially unchanged. Similar recommendations were made in the Departmental reports to the Interior Committee on H.R. 6721 (July 22, 1975) and to the Mines and Mining Subcommittee on H.R. 3265 (March 13, 1975).

The Bill

S. 391 would amend the Mineral Leasing Act of 1920 (30 U.S.C. §§ 181-287) to require that coal leases be issued by competitive bidding; eliminate the authority to lease coal by deposit rather than by tract (both types of leasing are now authorized); require that 50 percentum of the total acreage offered for lease be issued under a system of deferred bonus payment; require a reasonable number of leasing tracts be reserved and offered to various public bodies, including Federal agencies and rural electric cooperatives; require opportunity for public comment on fair market value of coal subject to lease; prohibit the issuance of a lease to any person holding a Federal lease not producing coal in commercial quantity within 10 years of issuance of a lease; repeal authority to issue prospecting permits and provide for issuance of exploration licenses after approval of an exploration plan; prohibit leasing of lands unless they are included in a land use plan; require a 6-month period for reconsideration of leasing if a Governor objects to a lease proposal which permits surface coal mining within boundaries of a National Forest in his State; require the maximum economic recovery of the coal within the tract; direct a written evaluation and comparison by the Secretary of the effects of recovery of coal by deep mining, surface mining or by any other method; require public hearing prior to lease sale; provide for consolidation of coal leases into logical mining units of up to 25,000 total acres (Federal and non-Federal), after a public hearing, if requested; require termination at the end of 10 years of any lease which is not producing in commercial quantities; require 12 1/2 percentum royalty on the value of the coal, except in case of underground mining; require diligent development and continuous operation of the mine or mines, and also provide for the payment of advance

royalties in lieu of continuous operation on the condition that advance royalties shall not be paid for more than an aggregate of ten years and no credit for royalties paid during the initial twenty years shall be allowed for the twentieth year; require submission and approval of an operation and reclamation plan prior to any significant disturbance of the environment and not later than 3 years after a lease is issued; direct a comprehensive Federal exploration program including stratigraphic drilling; require an annual report to the Congress containing a report by the Attorney General on the coal and energy industries; provide an additional 12 1/2 percentum of the revenues from mineral leasing receipts and the Geothermal Steam Act of 1970 be paid to States; require the Director of the Office of Technology Assessment to conduct a complete study of coal leases; limit holding leases to 46,080 acres per State and 100,000 total acres in the United States; provide for modification of coal leases up to 160 acres; provide for an anti-trust review by the Attorney General at each stage in the formation and promulgation of rules and regulations, and at each stage in the issuance, renewal, and readjustment of coal leases; and provide that nothing in the bill, Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands be construed as authorizing coal mining on any areas of the National Park System, the National Wilderness Preservation System, the National System of Trails, and the Wild and Scenic Rivers System.

Discussion:

The vast Federal coal resources of the American west constitute a vital source of energy for a Nation too heavily dependent on foreign sources of petroleum. Coal is our most abundant fossil fuel, yet it provides only 17 percent of the energy Americans consume each year. It is obvious that these Federal coal deposits must be developed so that coal can take its rightful place in the Nation's energy matrix.

After years of intensive work and research, the Department has implemented a comprehensive new coal program designed to achieve maximum environmental protection and to provide access to the Nation's most abundant fossil fuel energy resource. We believe the Department has adequate authority to fully implement our coal development program. Enrolled bill S. 391 would not add to that authority. Indeed, we are concerned that there are a number of provisions in S. 391 which would seriously interfere with the present program. The following features are the most undesirable:

1. Ten-Year Production Requirement.

The House Interior Committee, after extensive debate, decided to require production in commercial quantities from the lease in 15 years or the lease would be automatically terminated. A floor amendment further restricted the time period to 10 years with no provision for an extension in special circumstances. The Department believes that the period of time is too short and too inflexible. We must remember that after a coal lease is granted on Federal lands, there are still a number of problems to be resolved. The operator must define his reserves. He must develop a mining and reclamation plan. He must arrange financing. He must order equipment the nature of which has lead time of up to 5 years. Transportation must be taken into consideration. A railroad spur line may have to be built. The operator must find a market for the coal. In the case of fossil fuel utility plants or synthetic fuel plants, there will be a myriad of Federal, State, and local permits to be obtained. The plant itself must be financed and built before there is any need for the coal. The Department understands that it may not be possible to accomplish all these things in a period of 10 years.

Under the new diligence regulations the Department will require 1/40th of the reserves to be produced within 10 years, unless the period is extended for specified circumstances. These circumstances would take into account those special cases where an operator is close to production but for justifiable operating reason cannot make it within 10 years. In no case would the new regulations allow an extension for longer than 5 years.

2. Payment to States.

S. 391 increases the States' share of the total Federal revenues derived from mineral leasing from 37 1/2 to 50 percent. Current law restricts the use of the 37 1/2 percent share to construction and maintenance of public roads or for support of public schools. S. 391 leaves these restrictions unchanged. The Department is sympathetic with the problems faced by the State and local governments in meeting increased demands for public services because of expansion of the Federal mineral leasing program. The Department has helped develop and on behalf of the Administration has transmitted to the Congress, on February 4, 1976, the Federal Energy Development Impact Assistance Act of 1976, a bill designed to help solve the front end money problems of States having to deal with the socio-economic impacts of development of Federal energy resources. The bill would give to the States and communities impacted by the development of Federal energy resources maximum flexibility in using the loans, guarantees, and grant funds provided by the bill to plan, build, and equip needed

public facilities. However, as we earlier recommended to you, the increase in the States' share of revenues from 37 1/2 percent to 50 percent can have two very significant and beneficial effects. First, it would better equip State and local governments to adequately deal with increased growth and the resultant impact on public facilities and services arising from new coal development. Second, it would tend to lessen State and local opposition to much needed increased coal development. We therefore favor this provision of the bill.

3. 12 1/2 Percent Royalty.

S. 391 requires that a royalty of not less than 12 1/2 percent be charged on Federal coal leases. Ten percent is the current ceiling on highest rate now charged in Federal coal leases. It is not realistic to set as a minimum a rate so much higher than that presently charged by the Department. Such a rate could very well have the effect of making large acreages of Federal coal lands uneconomical to mine. This will especially be true in those areas which have imposed State severance and local taxes in addition to Federal royalties. Such a policy would also reduce the amount of the bonus bids for Federal leases.

Most of the western coal is going to go to utilities or the private consumer, directly or indirectly. A 12 1/2 percent minimum royalty will mean that the American consumer will have to pay an even higher price for energy.

4. Acreage Limitations for Logical Mining Units (LMU).

Under the logical mining unit section adopted by S. 391, no LMU may exceed 25,000 acres (including both Federal and non-Federal lands). The Department believes that the restriction is arbitrary and unnecessary in the face of the limitation of 46,080 Federal acres that any one company can hold in a State and the total limitation of 100,000 Federal acresnationwide provided in the bill. The House Subcommittee on Mines and Mining has heard testimony from officials of the Geological Survey who indicated that coal mines

in excess of 25,000 acres are already being planned. Restricting the size of logical mining units to 25,000 acres will limit the efficiency of the mine and will result in leaving behind much of the coal in the peripheral areas that otherwise would be mined.

The 25,000 acres is an artificial restriction which will require in some cases, multiple discrete mines where one large mine is most economic. Surface mining is highly capital intensive and subject to major economies of scale. Restricting mines to 25,000 acres will prevent the full economies of scale from being realized, and in some instances, prevent realization of the full value of equipment utilized. It will thus lead to unnecessarily high costs of production for coal. The higher costs of production will mean that coal, which would without the restriction be economic to mine, will not be economic to mine. This will lead to nondevelopment of some socially valuable deposits and early abandonment of others.

5. Federal Exploration Program.

S. 391 contains a section that directs the Secretary of the Interior to conduct a comprehensive exploration program within the Federal coal resource lands.

We do not believe the Federal Government should play a major role in the exploratory phase of coal development. The Department has carefully considered this issue, and we have concluded that the claimed benefits either are small, as in the case of better information, or may be obtained without resorting to major Government exploration, as in the case of increased public control over development. We believe a major role for the Government in exploration would entail large costs with little benefit in terms of federal revenues and the probability of significant delays in discovering coal and in developing coal.

The Congressional Budget Office estimates that the program would cost at least $1.2 billion over the next 5 years. It does not seem to be worth that dollar amount when most of the information that would be garnered is otherwise now being made available to the Government by the companies themselves.

6. Anti-Trust Provisions.

S. 391 contains an antitrust section that requires the Secretary of the Interior to consult with and obtain the advice of the Attorney General at each stage in the issuance, renewal, and readjustment of

every coal lease to determine whether such lease would create or maintain a situation inconsistent with the antiturst laws. This is administratively cumbersome and the Department of Justice is extremely reluctant to offer conclusions on antitrust questions in advance of a particular activity. This would only serve as an additional impediment to coal leasing.

The Secretary presently and continuously examines antitrust questions in coordination with the Federal Trade Commission. These added requirements amount to regulatory overkill.

7. Public Participation.

S. 391 provides for a public hearing or gives opportunity for public comment at four different stages in the leasing process: one on a land use plan; another before a lease sale; another on the formation of a logical mining unit; and, finally, one prior to determining the fair market value of coal. A lease sale hearing would have considered the environmental and social impacts of mining in the area, the maximum economic recovery of the coal, the effects of different recovery methods on the area, the effects of consolidation of leases to form logical mining units, and the fair market value of the coal to be leased.

The Department manuals and the new EMAR's program program require a series of public meetings during various stages of the land use planning process. Before a land use plan is adopted public hearings would have been held.

Also, in preparing an Environmental Analysis Report, BLM instructions (Manual 1791) call for consultation with the public and public hearings may be held.

Moreover, an environmental analysis is done on all leases. If the conclusion of that analysis is that major Federal action is involved an Environmental Impact Statement (EIS) pursuant to subsection 102(2)(c) of the National Environmental Policy Act of 1969 is prepared. Interior's present EIS process requires public hearings.

We believe that one formal public hearing before a lease sale would be appropriate. Such a hearing would not lead to unwarranted delays and would provide a thorough public review of the most important issues.

8. Tracts Reserved to Public Bodies.

We object to the provisions in S. 391 which would reserve a "reasonable number" of leases for public bodies, and thus discriminate in favor of entities which can now receive a license to mine coal (30 U.S.C. 208). Considerable difficulty would be encountered in defining "a reasonable number," and we see no reason for issuing leases to other Federal agencies. We also feel that coal on acquired lands set aside for military purposes should be available for leasing with the concurrence of the Secretary of Defense. As an alternative to this provision in S. 391, we would recommend that the Secretary of Defense consider offering inactive installations to qualified recipients such as States, so that leasing could occur.

9. Deferred Bonus Payments.

S. 391 would require that no less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. The Secretary presently has the authority to lease under a deferred bonus scheme. We object to legislative specification of how he should exercise that discretion and we find no basis for concluding that it is in the public interest to offer 50 percent of the total acreage under a deferred bonus payment.

10. Mining and Reclamation Plans.

The requirement in S. 391 that a lessee submit an "operation and reclamation" plan by the third lease year is impractical. This schedule will not allow a lessee, in many cases, sufficient time to market the coal. We believe that there is no need for this provision since the lessee must begin producing coal under the Department's new diligence regulations by, at the latest, the 15th lease year and such production cannot begin until a mining plan is approved.

11. Study of Recovery Methods.

We believe the study of recovery methods directed by S. 391 is unnecessary. There are only two methods currently used to mine coal: surface and underground mining. Since the method used is largely a function of economic decisionmaking on the part of the developer and since there is already authority to evaluate the operation and reclamation plans to insure environmental and personal safety, we believe such studies would be unnecessary.

New Departmental Coal Program:

Early in 1971, coal leasing on the Federal lands was halted because large amounts of coal were already under lease, little coal was

being produced, and there was widespread concern that the Department's leasing processes were not environmentally adequate. In February 1973, this moratorium was modified to permit leasing when coal was needed to maintain existing mining operations, or as a reserve against production in the near future. This limited leasing was allowed only when the environment could be protected and when the provisions of the National Environmental Policy Act had been complied with. Only ten leases have been issued under these criteria.

For the past 4 years, the Department has been working to devise a new policy and new procedures, utilizing existing authority, that would permit resumption of Federal coal leasing, as the need arises, and in a way that would be responsible to the taxpayers who own the resource, to the energy consumers who will benefit by its use, to the environment, and to the public at large.

A part of the process of developing a new coal policy was the creation in June of 1972 of the Northern Great Plains Resource Program, a cooperative effort of the Departments of Interior and Agriculture, the Environmental Protection Agency, and the States of Montana, Wyoming, Nebraska, North Dakota and South Dakota. Seven interagency working groups spent 2 years gathering data on resource and environmental values in the five-State area, using these data to project the implications of various assumed rates of development of the coal resource. Their report was issued in August of 1975.

Also during this time, the Department prepared the Coal Programmatic Environmental Impact Statement, which was released in September of 1975. This statement is intended to be a general analysis of the environmental impacts of major leasing alternatives. It will not, however, satisfy the requirement for future, site-specific or regional environmental analyses as individual coal-related actions are proposed.

Another element in the development of this program has been the process for consultation with the governors of the western States and their staffs. Several meetings have been held with the governors or their representatives and continuing close consultation with the Western Governors Regional Energy Policy Office on all aspects of Federal coal development in the west is contemplated.

On January 29, 1976, the Department announced its intention to take steps to implement a new policy for Federal coal leasing and to adopt a process based primarily on the proposal contained in the Coal Programmatic Environmental Impact Statement. In this regard the Department has taken the following steps:

1. The adoption of EMARS, the Energy Minerals Activity Recommendation System, a procedure by which the various offices of the several Federal agencies involved in coal leasing, in cooperation with State agencies, will gather and combine resource and environmental information, regional and national policy considerations, and input from the general public to provide recommendations to the Secretary on where, when, and how much coal should be offered for lease.

2. The adoption of a totally competitive leasing system, under which no new coal prospecting permits will be granted.

3. The development of final regulations, effective May 14, 1976. governing conditions under which mining operations and postmining reclamation must take place. These regulations propose standards governing mining and reclamation practices on the Federal lands, designed to meet the highest justifiable environmental criteria. They apply to all future leases, permits and licenses. Reclamation standards will apply to existing operations 180 days after publication of the regulations in the Federal Register publication date.

More than 100 organizations and individuals submitted written comments and 35 persons spoke at the public meetings. Comments received included those from 10 Federal agencies and 23 States. As a result of the comments and other Departmental review, changes were incorporated into the regulations or final EIS as appropriate. The final EIS was filed with the President's Council on Environmental Quality (CEQ) on March 5, 1976.

The Environmental Protection Agency Administrator, Russell E. Train, has said his agency "welcomes this opportunity to endorse the Department of the Interior's coal leasing regulations governing mining and reclamation activities. These regulations are extremely important as they establish the environmental ground rules for Western coal development, as well as serve as a model for national policy for all coal mining operations."

The Council on Environmental Quality Chairman Russell Peterson, in a letter to Secretary Kleppe, has said "the Council is pleased that working with other Federal agencies, States, and the public, the Department has adopted final regulations that are environmentally acceptable, compatible with sound energy development, and worthy of broad support."

4. The preparation of regional environmental impact statements where groups of coal and coal-related actions are proposed in a defined geographical area.

5. The continuation of the short-term criteria, under which leases can be granted for continuation of existing mining operations or where needed to fulfill short-term production needs until the new leasing is fully implemented. Such leases will be granted only when NEPA provisions have been met and where environmental conditions warrant.

6. The promulgation on May 29, 1976, of diligent development regulations to assure development or relinquishment of Federal coal resources in a timely manner.

7. The establishment in final regulations published on May 7, 1976, of firm "commercial quantities" criteria pursuant to which existing preference right lease applications can be granted or denied.

8. The lifting of the moratorium on Federal coal leasing so that, as the need arises, we will be able to offer leases for sale.

We are very proud of the Department's new coal program and have the utmost confidence that it will provide an efficient and an effective mechanism for future leasing. We believe it should be given every opportunity to work. The enactment of S. 391 would deny this opportunity.

Our assessment of the support for this legislation in the House and Senate indicates that a veto may be very difficult to sustain, particularly in the Senate. However, we believe the potential adverse impact on our coal program is so serious as to warrant a veto of enrolled bill S. 391.

Sincerely yours,

Ronald M. Cohen

Assistant Secretary of the Interior

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D. C.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

July 2, 1976

OFFICE OF THE DEPUTY ADMINISTRATOR

MEMORANDUM FOR JAMES M. FREY
ASSISTANT DIRECTOR FOR
LEGISLATIVE REFERENCE
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN A. HILL
DEPUTY ADMINISTRATOR

SUBJECT: ENROLLED BILL S.391, THE FEDERAL COAL LEASING AMENDMENTS ACT OF 1975

This is in response to your memorandum of June 22, 1976, in which you requested the views of the Federal Energy Administration (FEA) on the subject enrolled bill. This legislation would: modify procedures related to coal leasing, as now conducted by the Secretary of the Interior, and the terms of such leases (including acreage limitation); give governors an opportunity to comment on leasing within their states; require prior comprehensive land use planning; establish procedures for exploration licenses; authorize consolidation into "logical mining units"; require an exploratory program by the Secretary of the Interior; require periodic reports to Congress; and redirect 12-1/2% of lease generated Federal revenues from the reclamation fund to the states (increasing their percentage thereof from 37-1/2% to 50%).

The Federal Energy Administration does not believe that this bill should be approved by the President. After the recent prolonged delay in coal leasing and the acceptance of the EMARS leasing program within the Administration, the possibility of new delays is unfortunate. The Department of the Interior is in the best position to evaluate the precise effect of the legislation on the coal leasing program. Although the precise effects on coal production are difficult to quantify, we believe that the enrolled bill could impair the expeditious

utilization of our domestic coal reserves, which is a critical component in our national energy policy.

Specifically, the bill creates problems in several areas: (1) the 12-1/2% minimum royalty on surface mining (although this provision should not have a major impact); (2) the requirements for public hearings at several points in the leasing process; (3) the required submission of an operation and reclamation plan within three years of leasing; and (4) restrictions placed on the Secretary of the Interior affecting the manner and terms of leasing (including acreage limitation). These provisions create a substantial possibility of delay and inefficient exploitation of our coal resources without corresponding public benefits. The specification of royalties should probably be done administratively, rather than by statute. Further, it would appear that most of the desirable features of the legislation, e.g., the requirement for exercise of due diligence by the lessee and comprehensive planning by Interior, can be or have been accomplished under existing authority.

The bill also not only authorizes but directs the Secretary of the Interior to conduct a comprehensive exploratory program to evaluate recoverable coal resources. This requirement represents a substantial new governmental role which does not, in our opinion, promote expeditious development of our coal resources.

Finally, the bill contains an impact assistance provision. The Federal Energy Administration favors appropriate impact assistance to communities adversely affected by the development of Federal energy resources. However, we cannot concur in the approach adopted in this enrolled bill. The Administration has proposed comprehensive and rational impact assistance criteria and mechanisms in H.R. 11792. We continue to believe that the approach advocated in that legislation is superior to an increase in the state share of royalties and fees received in connection with Federal coal leases and production.