

Mr. OLSEN. These are the same problems, Senator, that we have encountered with both sets of regulations that have been published thus far, the possibility of retroactivity.

Senator CHURCH. You mean you have the possibility of retroactivity.

Mr. OLSEN. I beg your pardon; not on retroactivity. I do not believe the regulations have presented that problem. I can refer to our comments but it is my recollection that that is not a problem that we have encountered.

Senator CHURCH. As you see it, it is a possible problem in connection with the proposed bill.

Mr. OLSEN. Yes, sir. We would also like to draw to the committee's attention that there is extremely broad discretion given to the Secretary under both bills. Several sections of S. 3132 allow the Secretary to act or make determinations based solely on his judgment or based upon what the Secretary "deems necessary," resulting in the Secretary again having unfettered discretion which may preclude any effective judicial review of these actions. Then we list some six or seven examples of actions being subject only to the discretion and the judgment of the Secretary.

In the past the Department of the Interior, for example, has taken the position, which in some instances has been upheld by the courts, that certain actions of the Secretary are not subject to judicial review.

Furthermore, when judicial review was permitted, statements in legislation or regulations pertaining thereto which granted the Secretary the authority to act based solely on his judgment made the reversal of any such actions almost impossible to obtain.

Legislation on the matter should specifically provide that any action of the Secretary is subject to judicial review and that the judgment of the Secretary is not to be the sole criteria in determining whether or not he has acted properly.

Continuing with my prepared statement, both bills not only stipulate that certain reclamation activities should be required, but also provide for the regulation and control of the extraction or mining methods as well, and we cite there the sections which so provide.

The phosphate lands conference asserts that adequate reclamation of western phosphate lands can be achieved without outside interference with extraction methods.

Due to the peculiarities of the western phosphate beds, which we have drawn attention to here, extraction plans often have to be changed with practically no notice. Delays and other problems incumbent in submitting and obtaining approval of extracting methods would create an onerous and unnecessary burden on the person engaging in the mining activity.

Overburden and ore must be removed as part of the mining operation. In western phosphate mining the method used in doing this is irrelevant from the standpoint of reclamation of the land. The economics of the operation and the variations in mining conditions require that the operator be allowed to utilize the extraction methods dictated by these conditions and not by a party having no economic responsibility for the success of the operation.