

B. Need for standards establishing limits as to what may be required or prohibited

Neither bill establishes any standards which define or limit in any detail the activities which may be required or prohibited.

S. 3132 provides that regulation—whether under federal or state auspices—must “promote an *appropriate* relationship between the extent of regulation and reclamation that is required and the need to preserve and protect the environment.” The state plan (or the federal regulations in the event that such become necessary) must contain, under section 7(a)(1)(C) criteria relating specifically to:

- Control of erosion, flooding, and pollution of water,
- The isolation of toxic materials,
- Prevention of air pollution by dust or burning refuse piles or otherwise,
- The reclamation of surface mined areas by revegetation, replacement of soil, or other means,
- The maintenance of access through mined areas,
- The prevention of land or rock slides,
- The protection of fish and wildlife in their habitat,
- The prevention of hazards to public health and safety.

The term “appropriate” establishes no standard whatsoever. What is “appropriate” is apparently to be determined solely by the judgment of the Secretary of the Interior. (§ 7(a)(1))

Thus, under regulations promulgated pursuant to the act, a land owner could be precluded from extracting the minerals from his land if the mining activities even slightly impaired the natural beauty of the land under the circumstances wherein the mining or reclamation activities required by these regulations to preclude the impairment of the beauty would be so expensive as to make the extraction uneconomic. Of course, the same applies with respect to any of the other listed “burdens” in S. 3132. These burdens are set forth in section 3(b) as follows:

“(The) destroying or diminishing (of) the availability of land for commercial, industrial, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods and pollution of waters, by destroying fish and wildlife habitat and impairing natural beauty, by counteracting efforts to conserve soil, water, and other natural resources, by destroying or impairing the property of citizens, and by creating hazards dangerous to life and property.”

S. 3126 provides that the Secretaries of Agriculture and the Interior, in establishing federal standards and mining and reclamation requirements, “shall consider requirements which will reasonably assure the attainment of the following objectives:

“* * * grading, drainage, backfilling, plantings, revegetation, and any other measures or practices deemed by the Secretaries, after consultation with appropriate advisory committees, to be necessary to carry out the purposes of this Act.” (§§ 101(a) and 101(b)).

Both bills contemplate that the backfilling of pits could be required even though a pit was in a remote arid region high on a mountain under circumstances which would require the uphill hauling of millions of tons of earth—and despite the fact that there was phosphate ore in the bottom of the pit which advancements in mining technology or future domestic need would make it economically feasible to extract.

The impact of such backfilling on western phosphate mining is tremendous. As illustrated in the report attached to Mr. Power’s statement, the increased mining cost resulting from backfilling would eliminate a marketing area of western phosphate fertilizer which now provides one-third of the total sales of western producers and which will, in the future, provide an estimated 50 percent or more of such sales. The loss of this marketing area to western phosphate producers could mean the loss of over 5,000 jobs and 40 million dollars in annual payroll—plus a substantial loss in tax revenue to cities, counties and states in the western phosphate producing area.

The impact would also be felt severely by the private land owner who would be unable to reap the benefit of his investment in the land if the cost of reclamation was so high as to preclude its development. In effect, these bills would allow the taking of his land by the prevention of its use. The unfettered discretion granted to the secretaries to set requirements for mining and reclamation which could result in a loss of use of the land also raises a serious question as to whether