The interdepartmental remedy to contest the decision of a Secretary is to appeal to the Secretary. Thus, the Secretary makes the initial adverse decision and then sits in judgment on the appeal from that decision. Certainly fair play would require that interdepartmental appeals and hearings be held before an examiner who is independent of the department in question and who would be authorized and required to make findings of fact in each case.

Under S. 3126 a person appealing a final decision must file his notice of appeal within 20 days. While the large mining company may have a staff which will be aware of this short appeal time, experience dictates that a small operator—due to the many pressing problems which he has—oft times is not aware of the fact that he must appeal within a certain period of time until it is too late. There is no reason for establishing such a short period of time for the filing of a notice of appeal.

The appeal provisions of S. 3126 provide that the appeal must be taken to the Circuit Court, and if there is substantial evidence in the record to support the findings of fact of the Secretary, his findings will be accepted. Past experience in administrative hearings subject to this type of review, illustrates that almost anyone can get enough evidence in the record to support the findings of fact. The usual rules for admission of evidence are not applicable in these administrative hearings, and thus it is almost always possible to get evidence of some kind in the record to support the findings. Furthermore, the courts have consistently followed the doctrine in such cases that the federal administrators have expertise in their particular field and their decisions are thus given great weight—particularly where the appeal procedures provide that the findings of the administrator need only to be supported by some evidence in the record.

It is respectfully submitted that a person seeking judicial review should have the option of either proceeding with an appeal to the Circuit Court or to have a trial *de novo* in a Federal District Court.

It is further suggested that any departmental decision should be considered to be a final agency action subject to judicial review if it is made effective pending a departmental appeal of the decision.

K. Authority of States

Both acts provide that the regulation of surface mining will be left to the states, provided the states proceed in accordance with standards set by the federal government.

Under S. 3132 the determination of whether or not a state is proceeding satisfactorily rests solely within the judgment of the Secretary. As has been previously noted, this bill sets forth no standards or limitations governing the action of the Secretary. This situation also exists with respect to the authority of the Secretary in determining whether or not a state is meeting the federal standards. While the Phosphate Lands Conference believes that the western states can amply handle the problems of reclamation of surface mining, it respectfully submits that if legislation is to be adopted allowing the states this authority only if they meet federal standards, then there ought to be some kind of guideline or standard governing the action of the Secretary in his determination of whether or not a state is meeting the federal requirements.

S. 3126 provides for an appeal of the Secretary's decision; however, the appeal again is to the Circuit Court with a proviso that if there is substantial evidence in the record to support the Secretary's findings, then these findings shall be conclusive. It is respectfully submitted that a state should have the option of seeking a trial *de novo* in a Federal District Court. It would seem that in such circumstances the determination of a state administrator is entitled to as much respect from the standpoint of expertise as is the decision of a federal administrator and any appeal should be made in circumstances which would give each party equal opportunity to prevail.

SUGGESTED ADDITIONAL PROVISIONS

The foregoing comments have been directed primarily to a critique of the provisions in the two bills. In some instances, the comments have indicated provisions which might be included in the act. The following constitute additional provisions which the Conference respectfully suggests be considered for possible inclusion in the proposed legislation—at least as it may pertain to western phosphate mining. To a large extent, these suggestions are made with a view to preventing the adoption of provisions which have been included in proposed regulations published by the Department of the Interior which if included in future