

THE WHITE HOUSE  
WASHINGTON

April 7, 1983

TO: JAB III

RE: CENRE Meeting

Topics for today's meeting are:

Coal Slurry Pipelines

Clean Water Act

The papers for the meeting are attached. I have also attached the memos I did within the past few weeks on each subject-- they give an accurate summary of the main issues to be discussed today.


Note that the Clean Water issues will not be decided today. It is felt that this should wait till after Ruckelshaus is confirmed.

JC

THE WHITE HOUSE  
WASHINGTON

March 11, 1983

MEMORANDUM FOR JAMES A. BAKER, III

FROM: Jim Cicconi   
SUBJECT: Coal Slurry Pipeline

As you know, the new Congress is again considering legislation on coal slurry pipelines. The CCNRE has discussed the subject in light of recent developments, and agreed on the following points:

1. There should be no restrictions barring railroads and other companies owning coal from also owning coal slurry pipelines.
2. New rate and service regulations should not be imposed on coal slurry pipelines.
3. States should be allowed to restrict or ban the use of their waters in such pipelines.

There was less agreement on an eminent domain provision, which the President decided to oppose last year. A majority of CCNRE favored a limited eminent domain provision, but it was argued that this would not be enough to allow the pipelines to proceed.

The key question which must be answered is: are coal slurry pipelines important to the national interest? If so, then we must face the fact that, without a strong eminent domain provision, such pipelines will probably not get off the ground. If, however, we continue to oppose eminent domain, it should be based on a decision that coal slurry pipelines are not sufficiently important to the national interest to warrant such a right.

As I understand it, a decision memo will be drafted that recommends a limited right of eminent domain, but which also presents the other options. I would hope that the threshold question of the pipelines' importance to the national interest is included as a basis for decision.


cc: Richard Darman

THE WHITE HOUSE

WASHINGTON

March 15, 1983

MEMORANDUM FOR JAMES A. BAKER, III

FROM: Jim Cicconi   
SUBJECT: Clean Water Act

The authorization for the Clean Water Act expired last year, though funds have been voted to continue it. EPA has proposed that the Administration forward a bill based on elements discussed and approved last year by CCNRE. The Cabinet Council agrees with this, though there are two questions outstanding which may soon be forwarded to the President.

The first question involves whether to give EPA the power to waive, on a case-by-case basis, the requirement that the best available pollution control technology that is economically feasible (BAT) be used. There is sentiment on the CCNRE for such a waiver power, but EPA argues that their current BAT guidelines make a waiver power unnecessary. A majority of the Council seems to support EPA on this and will probably recommend against a waiver. Such a waiver would, of course, be controversial; it would also have little chance of passage since senior Republicans in Congress would oppose it.

The other outstanding issue involves the "dredge and fill" provision of the Act (Section 404), which the Corps of Engineers has long sought to change. Most agree that Section 404 imposes regulatory burdens which are too heavy. However, change would be very controversial and would be viewed as an attempt to weaken wetlands protection. EPA argues that much of the burden could be eased by administrative action revising certain 404 guidelines; though the Corps is working with EPA on such revisions, it feels that legislation will still be necessary and has sent a bill to OMB for clearance. Here again, a majority of CCNRE seems to back EPA's position.

I might add that, if we propose changes in Section 404, it could damage the credibility of Watt's proposed "Protect Our Wetlands Bill" (which would otherwise be viewed as a positive environmental proposal).

cc: Richard G. Darman

THE WHITE HOUSE  
WASHINGTON

**CABINET AFFAIRS STAFFING MEMORANDUM**

DATE: April 6, 1983 NUMBER: 118604CA DUE BY: \_\_\_\_\_

SUBJECT: Cabinet Council on Natural Resources and Environment with the  
President - Thursday, April 7, 1983 2:00 P.M. Cabinet Room

	ACTION	FYI		ACTION	FYI
ALL CABINET MEMBERS	<input type="checkbox"/>	<input type="checkbox"/>	Baker	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice President	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Darman ( <i>For WH Staffing</i> )	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Harper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Attorney General	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jenkins	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Interior	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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HUD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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OSTP	<input type="checkbox"/>	<input type="checkbox"/>	CCMA/Bledsoe	<input type="checkbox"/>	<input type="checkbox"/>
EPA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CCNRE/Boggs	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**REMARKS:** The President will chair a meeting of the Cabinet Council on Natural Resources and Environment Thursday, April 7, 1983 at 2:00 P.M. in the Cabinet Room. Agenda and decision memorandum attached.

AGENDA: Coal Slurry Pipelines CM # 121 Decision Memorandum attached  
Clean Water Act CM # 199 Decision Memorandum previously distributed

RETURN TO:  Craig L. Fuller Assistant to the President for Cabinet Affairs 456-2823  
 Becky Norton Dunlop Director, Office of Cabinet Affairs 456-2800

THE WHITE HOUSE  
WASHINGTON

CABINET COUNCIL ON NATURAL RESOURCES AND ENVIRONMENT

April 7, 1983

2:00 p.m.

Cabinet Room

AGENDA

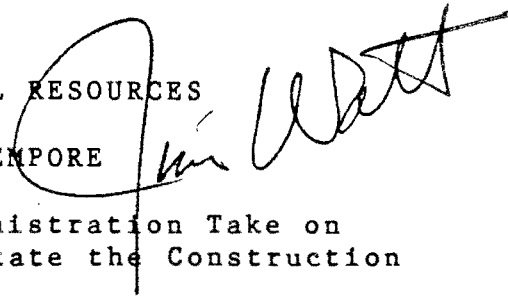
1. Coal Slurry Pipelines (CM#121)
2. Clean Water (CM#199)

## THE WHITE HOUSE

WASHINGTON

April 4, 1983

## MEMORANDUM FOR THE PRESIDENT

FROM: THE CABINET COUNCIL ON NATURAL RESOURCES  
AND ENVIRONMENT  
JAMES G. WATT, CHAIRMAN PRO TEMPORE 

ISSUE: What Position Should the Administration Take on  
Pending Legislation to Facilitate the Construction  
of Coal Slurry Pipelines?

INTRODUCTION

Last year, the Administration opposed legislation to provide federal eminent domain authority for coal slurry pipelines. Most discussion at that time focused on the question of general federal eminent domain authority, including its disruptive effect on the rights of individuals and its general overriding of state control over lands in those states. This issue now merits reconsideration. The Department of the Interior has advised the CCNRE of changes in both the proposed legislation and in the economic environment for coal transportation. First, it has become increasingly clear that railroad opposition to passage over their rights-of-way will be able to frustrate slurry pipeline construction, whether or not other factors are also responsible for the lack of such progress. Second, railroads are benefitting from implementation of the Staggers Regulatory Reform Act and deregulation of export coal rates. Coal and other bulk shippers are making the case on the Hill and elsewhere that regulatory reform is resulting in non-competitive price increases by the railroads, and we are facing increasing calls for re-regulation. While the Cabinet Council does not subscribe to this view, coal slurry pipelines can be considered a legitimate competitive alternative and as an answer to these concerns. Finally, our European and Japanese allies have indicated their perception that passage of this legislation would affirm our intention of becoming a stable energy supplier.

BACKGROUND

Today most coal is moved from mine to market by railroad, with some moving by barge. Transportation costs are a significant part of the delivered cost of coal. High inland transportation costs are thought by many to be an impediment to increased domestic use of coal and a barrier to greater exports. One possible competing transportation mode is slurry pipeline. In a

slurry pipeline, coal is powdered and mixed with water to form a liquid that can be pumped through a pipeline. Coal slurry pipelines use roughly one ton of water for each ton of powdered coal shipped. In arid areas, especially in the west, use of water in pipelines is controversial.

A number of coal slurry pipelines, some hundreds of miles long, have been proposed. Proponents of these lines argue that they can provide transportation cheaper than their competition. One major problem with the planning for such lines has been in obtaining rights-of-way. Railroads have been adamantly opposed to competition from slurry pipelines, and since railroads control rights-of-way that crisscross the areas between production and consumption, this has made it extremely difficult for slurry lines to proceed. In the east, railroads generally have absolute title to their rights-of-way, whereas in the west they often have only surface rights.

Numerous bills have been introduced to grant slurry pipelines a federal right of eminent domain, and these bills were backed by the last five Administrations. The current bills, S.267 introduced by Senator Johnston and others, and H.R.1010 introduced by Congressman Udall and others, were introduced primarily at the behest of the slurry pipeline industry. Both bills allow federal eminent domain authority, using where practicable the practice and procedures of state law regarding eminent domain in the federal court. This provision seeks to minimize federal intrusion into state affairs and ensures that a state's procedures and compensation requirements are met, except if they would have the effect of prohibiting such pipelines.

#### DISCUSSION

The Council has concluded that slurry pipelines should be allowed to go forward if they are economically viable. The arguments against slurry pipeline construction in terms of the destructive effects they might have on other modes of transportation, or their environmental consequences, were not well founded, but the case for their construction was not considered sufficiently important to require any type of government subsidy or special favors. The Council's final consideration came down to the question of the degree to which some type of eminent domain authority was appropriate and necessary to allow coal slurry pipelines to compete. Three options were developed:

##### OPTION 1

Oppose all eminent domain authority, affirming the Administration's previous position.

Advantages:

- o Leaves eminent domain question in the hands of individual states, who are best equipped to judge local impacts and needs.
- o Does not create federal entanglement in support of a particular mode of transportation.
- o Favors rights of landowners.

Disadvantages:

- o Could greatly delay, if not prevent, formation of a coal pipeline industry, especially in the eastern United States, even if economically justified.
- o Diminishes potential competition to railroads, thus possibly encouraging higher rates.
- o Could be criticized as abrogating the federal responsibility of assuring the free flow of interstate commerce.

OPTION 2

Do not use formal eminent domain powers. Instead, compel railroads and other interstate transportation systems (defined as common carriers, interstate electrical transmission systems, and coal pipelines) to grant crossings through the exercise of other federal authorities. Railroads and other interstate transportation systems operate under a federal certificate of public convenience and necessity, which is a license to do business and not a license to impede competition in interstate commerce. Therefore, it may be appropriate to compel holders of such federally-issued licenses to grant crossings by other interstate transportation systems, including coal pipelines. The compulsory crossing requirement would become a condition of federal licensure and would be applied to new and existing certificates. Compulsory crossing would not be the exact equivalent of eminent domain because the interest acquired by the interstate transportation system would be more similar to a license, rather than a formal interest in property.

Advantages:

- o Only affects entities whose ability to block pipelines has been enhanced by federal action in the past.



- o Would necessitate fewer administrative determinations and generally less federal government interference.
- o Could remove a major barrier to construction of pipelines, and is consistent with the President's earlier decision to ensure pipelines are not barred by "unjustified impediments" to right-of-way acquisition.
- o Does not interfere with individual property rights.
- o Does not involve formal federal eminent domain powers.

Disadvantages:

- o Could result in less efficient and more costly construction, since the slurry line might have to be rerouted, depending on success in private negotiations.
- o The slurry industry may not consider this option satisfactory because of the increased cost and difficulty of negotiating with private landowners.
- o By taking an intermediate position, may satisfy no one.
- o May not actually allow slurry lines to be built.

OPTION 3

Allow general federal eminent domain, albeit using state laws regarding procedure and substance of eminent domain awards.

Advantages:

- o Could facilitate more rapid development of a new coal transport mode.
- o Would signal the states that the Administration seeks to minimize federal intrusion into state affairs.
- o Private landowners could be protected to the extent of their own state's due process and compensation requirements.
- o Would be seen in Europe and Japan as evidence of a U.S. desire to facilitate development of its energy resources to help assure the energy security of western countries.

Disadvantages:

- o Could be criticized as benefiting private concerns at the expense of common carriers.

- o Could interfere with free market operation regarding acquisition of property interests.
- o Violates rights of landowners.
- o Requires reversal of Presidential decision.

RECOMMENDATION

The preponderance of the Cabinet Council discussion (including Interior, Transportation, Energy, and CEQ) favored Option 2. The Commerce and State Departments favored Option 3. The Office of Policy Development favored Option 1. (A supplementary recommendation of the Commerce Department's reasoning is attached as Appendix 2.)

If Option 2 or Option 3 is chosen, the Administration would also have to take a position on a number of subsidiary issues. The Council's recommendations are discussed in Appendix 1.

DECISION

- Option 1 (Oppose eminent domain) \_\_\_\_\_
- Option 2 (allow only crossing rights as against railroads and similar systems) \_\_\_\_\_
- Option 3 (support general eminent domain) \_\_\_\_\_

1. State Water Law

The Senate coal slurry bill grants to states the authority to set terms and conditions on the export of water for slurry purposes. The House bill contains similar but less comprehensive language. The provisions of both bills partially reverse, to varying degrees, two recent court decisions which have limited state statutes regarding export of water. In Sporhase v. Nebraska, the U.S. Supreme Court ruled that water was an article of commerce and held that a state reciprocity requirement on the export of water was an impermissible burden on interstate commerce. A U.S. District Court in New Mexico, in El Paso v. Reynolds, declared New Mexico's embargo statute to be an unconstitutional burden on interstate commerce. Certain western Senators have indicated a desire to use the coal slurry legislation as a vehicle to reaffirm existing state water laws. The CCNRE recommends support of states rights to restrict water for coal slurry, but does not recommend expanding the bill's coverage to include export of water for any additional purposes.

2. Regulation/Jurisdiction

Most transportation modes are currently subject to some manner of economic regulation. The CCNRE, consistent with the Administration's policy of deregulation and reliance on market forces recommends opposition to any rate and service regulation of slurry pipelines.

3. Pipeline Ownership by Shippers

Railroads are generally prohibited, under various statutes, from owning the commodities they ship and from leasing federal coal; the CCNRE continues to recommend that all such restrictions be repealed. In the last Congress, the Administration supported legislation to repeal section 2(c) of the Mineral Leasing Act, which restricts railroad leasing of federal coal lands. The CCNRE recommends that no restrictions be placed on coal slurry pipeline ownership. Restrictions on ownership could impede favorable pipeline financing.

The Department of Commerce supports federal eminent domain for slurry pipelines for the following reasons:

- o Slurry transportation is a cheaper, supplemental alternative to the railroads, whose rates have doubled since 1979. As coal becomes more dominant in electricity generation, lower coal prices are projected to save American consumers billions in utility bills, as well as to expedite the movement of coal for export.
- o Administration support for slurry pipelines would send a strong message of its commitment to the reliable and secure supply of U.S. coal to our allies and trading partners.
- o Direct construction jobs for the seven proposed pipelines would be approximately 50,000, and an additional 5,000 jobs would be created for operating and maintaining the pipelines. The railroads would also benefit from an additional 41,000 jobs, since coal slurry pipelines will account for only about 20 percent of increased transportation capacity, as the demand for coal doubles between now and 1995.
- o Pipeline construction would provide a market for approximately 3,500 heavy-duty vehicles, 1,300 light-duty trucks, 530 reciprocating pumps, 4,200 centrifugal pumps, 210 centrifuges, and thousands of electric motors to power them. Construction of the pipeline systems would call for 3,000,000 tons of steel, which equals about 15,000 jobs for steelworkers.

THE WHITE HOUSE  
WASHINGTON

**CABINET AFFAIRS STAFFING MEMORANDUM**

DATE: April 6, 1983 NUMBER: 118604CA DUE BY: \_\_\_\_\_

SUBJECT: Cabinet Council on Natural Resources and Environment with the  
President - Thursday, April 7, 1983 2:00 P.M. Cabinet Room

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REMARKS: As previously announced, the President will chair a meeting of the Cabinet Council on Natural Resources and Environment Thursday, April 7, 1983 at 2:00 P.M. in the Cabinet Room.

AGENDA: Coal Slurry Pipelines CM # 121 Decision Memorandum distributed April 6, 1983  
Clean Water Act CM # 199 Decision Memorandum attached

RETURN TO:

Craig L. Fuller  
Assistant to the President  
for Cabinet Affairs  
456-2823

Becky Norton Dunlop  
Director, Office of  
Cabinet Affairs  
456-2800

CM 199

THE WHITE HOUSE

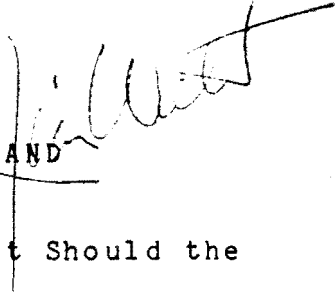
WASHINGTON

March 21, 1983

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES G. WATT, CHAIRMAN PRO TEMPORE  
CABINET COUNCIL ON NATURAL RESOURCES AND ENVIRONMENT

SUBJECT: What Amendments to the Clean Water Act Should the Administration Propose?



Background

Authorization for the Clean Water Act (CWA) expired on September 30, 1982.

Changes for Title II, the Construction Grants Program, were signed into law on December 29, 1981. The remaining titles for which the authorization has expired cover the Act's goals: enforcement, permitting, and technology requirements for industrial discharges of pollutants into the Nation's waters; and a permit program for the protection of the Nation's wetlands.

Although authorization expired on September 30th, monies were appropriated to continue the current law.

The Senate Subcommittee on Environmental Pollution intends to begin hearings on March 8th to consider S. 431.

EPA Proposal

The EPA prepared a draft legislative package that includes most of the recommendations adopted by the CCNRE last year. These include:

- o Extend Best Available Technology Economically Achievable (BAT) and Best Conventional Pollution Control Technology (BCT) compliance deadlines from July 1, 1984 to July 1, 1988.
- o Allow Publicly Owned Treatment Works (POTWs) to seek extension to 1988 to meet applicable secondary treatment or water quality based limitations.

- o Make new source performance standards effective on date of issuance of final regulations, rather than the date on which they are proposed.
- o Allow POTWs to apply for waivers of the categorical pre-treatment standards on behalf of industrial dischargers.
- o Allow the Administrator to assess civil penalties for violations of CWA.
- o Provide judicial penalties of up to \$50,000/day and/or 2 years imprisonment for firms that discharge or individuals who knowingly violate or cause violations of certain sections of CWA.
- o Modify criteria governing thermal discharges.
- o Extend National Pollution Discharge Emissions Standards (NPDES) permit life from 5 to 10 years.
- o Allow EPA to approve partial state administration of NPDES permit programs.
- o Exclude munitions from the definition of pollutants controlled under the Act, to avoid need for the military to get a NPDES permit for activities such as target practice.
- o Affirm EPA's criminal investigative authority.

The EPA package does not include several items in last year's bill, including:

- o Exemption authority for DOE defense-related facilities and broader authority for the President to suspend the Act's provisions during states of war or national emergencies.

In addition, the EPA draft does not include 2 items discussed by Cabinet Council last year.

- o Case-by-case waiver by EPA of the BAT requirement to avoid treatment for treatment's sake where water quality does not require the additional level of treatment.
- o Modification advocated by the Corps of Engineers and other agencies to the Act's section 404 "dredge and fill" program.

EPA indicated that, based on the 12 BAT regulations promulgated to date there is no need to allow waivers, since the incremental costs are not significant. This assessment may be premature,

since the BAT requirement for organic chemicals (a principal source of toxic pollutants) has not been issued, and lawsuits are pending on the steel and petroleum regulations. EPA indicated that a BAT proposal would engender acrimonious debate and delay enactment of the other changes. Key Senators on the Environment and Public Works Committee oppose the change since it relaxes controls on toxics.

EPA also indicated that pending revisions to 404(b)(1) guidelines should be completed before any Section 404 legislation is proposed. At the CCNRE, the Corps indicated that they have concerns beyond 404(b)(1) and have since submitted legislation to OMB for technical review. Secretary Watt urged the Corps of Engineers and EPA to work together on Section 404 and reach a mutually agreeable position. Thus far, they have been unable to reach a mutually acceptable position.

### Issue

Option 1. Propose an Administration Clean Water bill based on the EPA draft summarized on page 1 of this memo.

#### Pros

- o Provides important regulatory relief, especially on the deadline for meeting BAT.
- o Administration is responding in a timely fashion to Senate subcommittee.
- o Press will be positive or neutral.

#### Cons

- o Does not address Section 404 or provide BAT waivers.

Option 2. Include a BAT waiver in the Administration bill.

#### Pros

- o Prevents installation of technology for technology's sake where water quality does not warrant additional control.
- o The organic chemical guideline when issued will be costly, and pending lawsuits may require additional, costly controls on the steel and petroleum industry.

#### Cons

- o Since BAT regulates toxic pollutants, any waiver would be controversial.



- o Based on BAT guidelines already issued, EPA feels the waiver is not necessary.
- o Senior Republican Senators and Congressman have indicated opposition to the waiver provision.

Option 3. Include changes to Section 404 (dredge and fill) in the Administration bill.

Pros

- o Section 404 is overly broad and imposes unnecessary regulatory burdens.
- o The present law may impede economic development, especially energy projects in Alaska.
- o Administrative reform has been slow and does not adequately address all concerns raised by the Presidential Task Force on Regulatory Relief and the Corps of Engineers.

Cons

- o Administrative reforms to Section 404 are underway.
- o Changes to Section 404 would be controversial, because of a perceived weakening of wetland protection and may delay enactment of legislation.

In addition to the EPA draft (Option 1), either or both of options 2 and 3 could be added to the bill.

Recommendation:

The Cabinet Council on Natural Resources and Environment recommended Option I. Dr. Hernandez, the EPA Acting Administrator, stated that it was important for the Administration to submit this bill as soon as possible. Senator Chafee, Chairman of the Senate Environment Subcommittee, plans to begin deliberations on clean water within the next two weeks. The Cabinet Council also recommended that the Administration support any future Congressional efforts to reform Section 404 that are consistent with proposals made by the Corps of Engineers.

- Option I \_\_\_\_\_
- Option II \_\_\_\_\_
- Option III \_\_\_\_\_
- Disapprove \_\_\_\_\_