

107TH CONGRESS
1ST SESSION

S. 675

To ensure the orderly development of coal, coalbed methane, natural gas, and oil in “common areas” of the Powder River Basin, Wyoming and Montana, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 2 (legislative day, MARCH 30), 2001

Mr. ENZI (for himself and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To ensure the orderly development of coal, coalbed methane, natural gas, and oil in “common areas” of the Powder River Basin, Wyoming and Montana, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Powder River Basin
5 Resource Development Act of 2001”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that:

1 (1) The Powder River Basin in Wyoming and
2 Montana is one of the world's richest energy re-
3 source regions, possessing the largest reserves of
4 coal in the United States and significant deposits of
5 oil and natural gas, including coalbed methane.

6 (2) The coal is predominantly federally owned,
7 either as part of the public lands or reserved from
8 public lands that were sold under homestead laws
9 enacted in 1909, 1910, and 1916, and may be leased
10 to coal producers by the Bureau of Land Manage-
11 ment, Department of the Interior, under the Mineral
12 Leasing Act.

13 (3) The gas and oil are owned by the Federal
14 Government, the States, and private parties.

15 (4) The federally owned gas and oil, like the
16 coal, are part of the public lands and may be leased
17 to oil and gas producers by the Bureau of Land
18 Management under the Mineral Leasing Act.

19 (5) The privately owned gas and oil were con-
20 veyed with the public lands purchased under the
21 three homestead laws and may have been sold or
22 leased to oil and gas producers by the successors to
23 those original purchasers.

1 (6) Development of these valuable energy re-
2 resources is of critical importance to the American
3 public.

4 (7) These energy resources provide fuel to heat
5 and light our homes and power our industries.

6 (8) Extraction of these energy resources pro-
7 vides royalties, taxes, and wages that contribute to
8 national, State, and local treasuries and economies.

9 (9) Development of both the coal and the gas
10 and oil is occurring in the Powder River Basin.

11 (10) In many locations the coal and the gas and
12 oil have been leased or sold to different parties.
13 These resources are frequently extracted sequen-
14 tially, but for safety and operational reasons typi-
15 cally cannot be extracted simultaneously, in the
16 same location. Where concurrent development is im-
17 possible and even where it may be possible, in cer-
18 tain of these locations disputes have arisen among
19 the different parties concerning plans for, and the
20 course of, development of these resources.

21 (11) The development of any one of these re-
22 sources can result in loss of another, either by mak-
23 ing recovery impossible in the case of coalbed meth-
24 ane or uneconomic in the case of coal, oil, or deep
25 gas.

1 (12) The nature, extent, and value of any loss
2 or delay in development of the gas, oil, or coal re-
3 source due to development of another of these re-
4 sources in the “common areas” within the Powder
5 River Basin in which disputes between the resources’
6 developers arise should be ascertained and fair mar-
7 ket value for the loss or delay should be provided by
8 agreement between the developers or by an expedi-
9 tious adjudication procedure.

10 (13) Federal law should provide a procedure
11 that will assure the orderly development of the en-
12 ergy resources, and fair treatment to the resources’
13 developers, in the “common areas” within the Pow-
14 der River Basin in which disputes between the devel-
15 opers arise.

16 (b) PURPOSES.—The purposes of this Act are to—

17 (1) provide a consistent procedure to resolve
18 disputes between developers of coal and developers
19 of natural gas and oil in the “common areas” within
20 the Powder River Basin to which this Act applies
21 concerning the sequence of development of those re-
22 sources in the same location, regardless of who owns
23 the resources;

24 (2) encourage maximum recovery of the re-
25 sources prior to the time at which such disputes are

1 likely to occur on thereafter until the procedure pro-
2 vided by this Act is implemented;

3 (3) ensure that the procedure provided by this
4 Act is employed as a last resort if the disputes are
5 not fully resolved by voluntary agreements between
6 the resources' developers or administrative policies
7 and actions;

8 (4) determine fair and just compensation owed
9 for the loss of, or delay in, the opportunity to de-
10 velop a resource resulting from implementation of
11 the procedure provided by this Act; and

12 (5) provide expressly that the procedure pro-
13 vided by this Act will neither apply to nor set any
14 precedent for resolution of disputes between or
15 among resource developers outside of the "common
16 areas" within the Powder River Basin to which this
17 Act applies.

18 **SEC. 3. DEFINITIONS.**

19 As used in this Act, the term—

20 (1) "Powder River Basin" or "Basin" means
21 the area designated as "Powder River Basin" on a
22 map entitled "MLA Section 44 Powder River Basin
23 Area", dated July 1, 1999, and on file in the Wyo-
24 ming and Montana State Offices of the Bureau of
25 Land Management, Department of the Interior;

1 (2) “Section 21 Lands” means the area des-
2 ignated as “Section 21 Lands” on the map de-
3 scribed in paragraph (1);

4 (3) “Secretary” means the Secretary of the In-
5 terior;

6 (4) “Mineral Leasing Act” means the Act of
7 February 25, 1920 (41 Stat. 437), as amended (30
8 U.S.C. 181 et seq.);

9 (5) “Federal coal lease” means a lease of Fed-
10 eral coal in the Basin issued pursuant to the Mineral
11 Leasing Act;

12 (6) “Federal coal lessee” means the holder of a
13 Federal coal lease;

14 (7) “Federal oil and gas lease” means a lease
15 of Federal oil and gas in the Basin issued pursuant
16 to the Mineral Leasing Act;

17 (8) “oil and gas lease or right to develop”
18 means a Federal oil and gas lease or a lease for or
19 right to develop oil and gas in the Basin provided
20 by a State or private owner of the resources;

21 (9) “non-Federal oil and gas lease or right to
22 develop” means a lease for or right to develop oil
23 and gas in the Basin provided by a State or private
24 owner of the resources;

1 (10) “oil and gas developer” means the holder
2 of an oil and gas lease or right to develop;

3 (11) “oil and gas property means an area in the
4 Basin which is subject to an oil and gas lease or
5 right to develop held by an oil and gas developer;

6 (12) “coalbed methane” shall have the meaning
7 given that term in section 1339(p)(2) of the Energy
8 Policy Act of 1992 (106 Stat. 2992, 42 U.S.C.
9 13368(p)(2));

10 (13) “common area” means an area in the
11 Basin in which all or a portion of a Federal coal
12 lease (including any area of State or private coal
13 within a logical mining unit with the Federal coal
14 lease) overlaps all or a portion of an oil and gas
15 property;

16 (14) “approved or proposed mining plan”
17 means a mining plan that is approved by, or has
18 been submitted for the approval of, the Secretary;

19 (15) “owners of any interest in the oil and gas
20 property” means persons who own the working in-
21 terest, lease interest, operating interest, mineral in-
22 terest, royalty interest, or any other interest in the
23 oil and gas property, and any other persons who
24 might receive compensation for unavoidable fixed ex-

1 penses under an order concerning the oil and gas
2 property issued pursuant to section 11(d);

3 (16) “owners of any non-Federal interest in the
4 oil and gas property” means all owners of any inter-
5 est in the oil and gas property except the Federal
6 Government or any agency or department thereof;
7 and

8 (17) “develop” or “development” means to de-
9 velop or to produce, or both, or the development or
10 production, or both, respectively, including all inci-
11 dental operations.

12 **SEC. 4. PARTIES ENCOURAGED TO ENTER INTO WRITTEN**
13 **AGREEMENT.**

14 In any common area, the Federal coal lessee and oil
15 and gas developer, subject to applicable Federal and State
16 laws, regulations, and lease terms, may and are encour-
17 aged to enter into a written agreement that details oper-
18 ations and assigns or assesses costs or compensation for
19 the concurrent or sequential development of those re-
20 sources.

21 **SEC. 5. MINERAL CONSERVATION.**

22 The Secretary shall employ any authority the Sec-
23 retary possesses to encourage expedited development of
24 any oil or gas resources and any coal resource that—

1 (1) are leased pursuant to the Mineral Leasing
2 Act;

3 (2) are within common areas; and

4 (3) otherwise may be lost or bypassed due to
5 the development of another of the resources.

6 **SEC. 6. NEGOTIATIONS CONCERNING DEVELOPMENT PRI-**
7 **ORITY FOR CERTAIN OPERATIONS IN THE**
8 **BASIN.**

9 (a) OBLIGATION TO PROVIDE WRITTEN NOTICE OF
10 CONFLICT.—Whenever a Federal coal lessee or an oil and
11 gas developer determines that its Federal coal lease (or
12 a logical mining unit including the Federal coal lease) or
13 its oil and gas property is located in a common area, and,
14 pursuant to an approved or proposed mining plan, mining
15 operations or facilities in support of mining for coal on
16 the Federal coal lease or the logical mining unit will be
17 located within the common area, the Federal coal lessee
18 or the oil and gas developer shall deliver written notice
19 of the determination to the other party and the Secretary
20 no later than 240 days prior to the date on which the
21 mining operations or construction of the mine support fa-
22 cilities is projected by the approved or proposed mining
23 plan to commence in the common area.

24 (b) OBLIGATION TO NEGOTIATE.—Promptly after
25 providing the notice referred to in subsection (a), the party

1 which provided the notice shall seek to negotiate a written
2 agreement with the other party that resolves any conflict
3 between the development of gas or oil and development
4 of coal in the common area.

5 **SEC. 7. PETITION FOR RELIEF.**

6 (a) SUBMISSION OF PETITION.—

7 (1) If notice is submitted timely pursuant to
8 section 6(a) and the Federal coal lessee and the oil
9 and gas developer engage in negotiations, but do not
10 reach agreement, pursuant to section 6(b), the Fed-
11 eral coal lessee or the oil and gas developer may file
12 a petition for relief as described in paragraph (3) in
13 the United States district court for the district in
14 which the common area is located on any date which
15 is not less than 180 days prior to the date on which
16 the mining operations or construction of the mine
17 support facilities is projected by the approved or
18 proposed mining plan to commence in the common
19 area.

20 (2) The petitioner shall serve the oil and gas
21 developer or the Federal coal lessee, as the case may
22 be, and the Secretary with a copy of the petition for
23 relief on the same date upon which the petition is
24 filed with the court pursuant to paragraph (1).

1 (3) The petition for relief shall include the fol-
2 lowing:

3 (A) A description and map of the Federal
4 coal lease, oil and gas property, and the com-
5 mon area.

6 (B) A list containing the names and ad-
7 dresses of all owners of any non-Federal inter-
8 est in the oil and gas property and all owners
9 of any non-Federal interest in the Federal coal
10 lease or logical mining unit. The petitioner shall
11 list those owners of any non-Federal interest in
12 the oil and gas property and of the Federal coal
13 lease or logical mining unit whom the petitioner
14 is able to ascertain from the properly indexed
15 records of the county recorder of the county or
16 counties in which the oil and gas property and
17 Federal coal lease or logical mining unit are lo-
18 cated, and the respondent shall file with the
19 court and serve on the petitioner and the Sec-
20 retary any corrections of, additions to, or dele-
21 tions from the list known to the respondent
22 within 10 days of the date of service of the peti-
23 tion for relief pursuant to paragraph (2).
24 Thereafter, whenever any correction of, addition
25 to, or deletion from the list becomes known to

1 either the petitioner or the respondent, that
2 party shall promptly file with the court and
3 serve on the other party and the Secretary the
4 addition, correction, or deletion. Any person
5 who believes he or she is an owner of any non-
6 Federal interest in the oil and gas property or
7 in the Federal coal lease or logical mining unit
8 and is omitted from the list may file a motion
9 in the court to be added to the list at any time
10 prior to the issuance of an order pursuant to
11 section 11(d) or section 12(d).

12 (C) A certified copy of the notice described
13 in section 6(a).

14 (D) A sworn statement by a senior officer
15 of the petitioner with authority to commit the
16 petitioner in any negotiation under section 6(b)
17 stating, and all documents demonstrating, that
18 the petitioner negotiated or attempted to nego-
19 tiate in good faith with the respondent a vol-
20 untary agreement, pursuant to section 6(b).

21 (4) The Federal coal lessee shall submit a copy
22 of the approved or proposed mining plan for the
23 mining operations or support facilities that are the
24 subject of the petition for relief—

1 (A) with the petition for relief if the Fed-
2 eral coal lessee is the petitioner; or

3 (B) within 5 days of the date of service of
4 the petition for relief pursuant to paragraph (2)
5 if the Federal coal lessee is the respondent.

6 (b) JOINDER OF PARTIES.—The Secretary and all
7 owners of any non-Federal interest in the oil and gas prop-
8 erty and in the Federal coal lease or logical mining unit
9 identified pursuant to subsection (a)(3)(B) shall be joined
10 in the proceedings established pursuant to this Act.

11 (c) PARTIES' RESPONSE TO PETITION.—The non-
12 Federal respondent or respondents may provide to the
13 Secretary a response to the petition within 30 days from
14 the date of filing of the petition for relief pursuant to sub-
15 section (a)(1). The Secretary may require the petitioner
16 and the respondent or respondents to submit such docu-
17 ments and/or provide such testimony as the Secretary
18 deems appropriate within 60 days of such date of filing.

19 **SEC. 8. SECRETARY'S RESPONSE TO PETITION.**

20 (a) IN GENERAL.—Within 90 days of the date of fil-
21 ing of the petition for relief pursuant to section 7(a)(1)
22 the Secretary shall take the actions required by this sec-
23 tion.

24 (b) INITIAL DETERMINATIONS.—The Secretary shall
25 determine, with petitioner having the burden of proof—

1 (1) whether a common area exists; and

2 (2) whether the approved or proposed mining
3 plan submitted pursuant to section 7(a)(4) provides
4 for the mining operations to intersect, or the mine
5 support facilities to be constructed in, any portion of
6 the common area.

7 (c) PUBLIC INTEREST DETERMINATION.—(1) If ex-
8 istence of the common area and intersection of, or con-
9 struction in, the common area are determined pursuant
10 to subsection (b), the Secretary shall determine whether
11 the public interest is best realized by delaying or foregoing
12 development of either—

13 (A) the oil or gas resource to permit the mining
14 operations to intersect, or the mine support facilities
15 to be constructed in, the common area in accordance
16 with the approved or proposed mining plan; or

17 (B) the coal resource to permit commencement
18 or continuation of the development of the oil or gas
19 resource in the common area after the date on which
20 the mining operations or construction of the mine
21 support facilities is projected by the approved or
22 proposed mining plan to commence in the common
23 area.

24 (2) The Secretary shall make the public interest de-
25 termination described in paragraph (1) solely by the cal-

1 culation of the greater economic benefit to be realized by
2 comparison, on a net present value basis, of the Federal
3 and State revenues from royalties and severance taxes
4 likely to be generated from each resource underlying the
5 common area to which the petition for relief applies.

6 (d) LEASE SUSPENSION.—If any portion of the re-
7 source for which delayed or foregone development is deter-
8 mined to be in the public interest pursuant to subsection
9 (c) is subject to a lease issued pursuant to the Mineral
10 Leasing Act, the Secretary shall suspend all or any portion
11 of, including any geographical area of or zone or reservoir
12 subject to, the lease to accommodate development of the
13 other resource in the common area during the period be-
14 ginning on a date no later than the commencement date
15 referred to in section 7(a)(1) and provided in the notice
16 submitted pursuant to section 7(a)(3)(C) and ending on
17 the date on which an order is issued pursuant to section
18 11(d) or section 12(d).

19 (e) EXCEPTIONS.—The Secretary may refrain from
20 either making the determinations required by subsections
21 (b) and (c) or suspending all or any portion of a lease
22 issued pursuant to the Mineral Leasing Act as required
23 by subsection (d) if the Secretary determines that—

24 (1) no common areas exists; or

1 (2) the approved or proposed mining plan does
2 not provide for the mining operations to intersect, or
3 the mine support facilities to be constructed in, the
4 common area.

5 (f) SECRETARIAL REPORT.—The Secretary shall—

6 (1) not delegate the determinations made pur-
7 suant to this section;

8 (2) report the determinations made pursuant to
9 subsections (b) and (c) or subsection (e) and any
10 suspension made pursuant to subsection (d), includ-
11 ing the administrative record therefor, with the
12 court in which the petition for relief is filed pursuant
13 to section 7(a)(1); and

14 (3) provide the petitioner and respondent or re-
15 spondents with copies of the report and record.

16 **SEC. 9. COURT'S INITIAL RESPONSE TO PETITION.**

17 (a) RECEIPT OF SECRETARIAL REPORT.—The court
18 in which the petition is filed pursuant to section 7(a)(1)
19 shall have exclusive jurisdiction to receive and review the
20 report of the Secretary required by section 8(f), and the
21 determinations made and any action taken by the Sec-
22 retary pursuant to section 8.

23 (b) PARTIES' OBJECTIONS TO REPORT.—(1) The pe-
24 titioner and respondent or respondents shall have 30 days
25 from the date upon which the report of the Secretary is

1 filed with the court pursuant to section 8(f) in which to
2 file with the court any objection to any determination of
3 the Secretary required by section 8.

4 (2) If any objection is filed pursuant to paragraph
5 (1), the court shall, within 60 days of receipt of the report
6 of the Secretary pursuant to section 8(f), make the deter-
7 mination that is the subject of the objection on the basis
8 of the administrative record filed with the report and in
9 accordance with the applicable requirements or standards
10 of subsection (b) or subsection (c) of section 8.

11 (3) Any determination made by the court pursuant
12 to paragraph (3) shall be an independent judicial deter-
13 mination that is de novo, without regard to the prior de-
14 termination of the Secretary.

15 (4) If no objection is filed pursuant to paragraph (1),
16 the determinations of the Secretary required by section 8
17 shall be final and approved by the court in the order issued
18 pursuant to subsection (c) or subsection (f).

19 (c) COURT ORDER.—Within 90 days of the date of
20 receipt of the report of the Secretary pursuant to section
21 8(f), the court, except as provided in subsection (f), shall
22 issue an order that—

23 (1) suspends all or any part of, including any
24 geographical areas of or reservoir subject to, any
25 non-Federal oil and gas lease or right to develop, or

1 any non-Federal interest in any logical mining unit
2 that includes the Federal coal lease, in the common
3 area in accordance with the determination of the
4 Secretary pursuant to subparagraph (A) or subpara-
5 graph (B), respectively, of section 8(c)(1) or in ac-
6 cordance with the determination of the court pursu-
7 ant to subsection (b)(2);

8 (2) if required by a determination of the court
9 pursuant to subsection (b)(2), terminates a suspen-
10 sion of a lease issued pursuant to the Mineral Leas-
11 ing Act imposed by the Secretary pursuant to sec-
12 tion 8(d), or imposes a suspension of a lease issued
13 pursuant to the Mineral Leasing Act, or both, in ac-
14 cordance with the determination;

15 (3) if all or any part of the oil and gas lease
16 or right to develop is suspended pursuant to section
17 8(d) or this subsection, fixes the date upon which
18 the Federal coal lease may commence mining oper-
19 ations or construction of mine support facilities in
20 the common area, which may be no later than the
21 commencement date referred to in section 7(a)(1)
22 and provided in the notice submitted pursuant to
23 section 7(a)(3)(C), except for good cause shown; and

24 (4) if all or any part of the Federal coal lease
25 and/or any non-Federal interest in the logical mining

1 unit that includes the Federal coal lease is sus-
2 pended pursuant to section 8(d) or this subsection,
3 prohibits the mining operations for intersecting, or
4 the support facilities from being constructed in, all
5 or a portion of the common area.

6 (d) EXPIRATION OF ORDER.—The order of the court
7 issued pursuant to subsection (c) shall expire upon the
8 issuance of an order pursuant to section 11(d), or section
9 12(d).

10 (e) EXCEPTIONS.—The court may refrain from
11 issuing the order required by subsection (c), only if—

12 (1) the Secretary makes a determination de-
13 scribed in section 8(e); or

14 (2) the court, acting on an objection filed pur-
15 suant to subsection (b), concurs in a determination
16 made by the Secretary pursuant to section 8(e), or
17 determines that—

18 (A) no common area exists; or

19 (B) the approved or proposed mining plan
20 submitted pursuant to section 7(a)(4) does not
21 provide for the mining operations to intersect,
22 or the mine support facilities to be constructed
23 in, the common area.

24 (f) TERMINATION OF PROCEEDING.—If the Secretary
25 makes a determination described in section 8(e) or the

1 court makes a determination described in subsection
2 (e)(2), the court shall issue an order terminating the pro-
3 ceeding under this Act.

4 **SEC. 10. APPOINTMENT OF EXPERTS.**

5 (a) APPOINTMENT PROCEDURE.—Within 30 days of
6 the date of issuance of an order pursuant to section 9(c),
7 to assist the court in making the determinations pursuant
8 to section 11 or section 12, the Federal coal lessee and
9 the oil and gas developer shall each appoint a person who
10 is an expert in appraising the value of, and right to de-
11 velop, gas or oil if all or any part of the oil and gas lease
12 or right to develop is suspended, or coal if all or any part
13 of the Federal coal lease and/or any non-Federal interest
14 in the logical mining unit that includes the Federal coal
15 lease is suspended, pursuant to section 8(d) and/or section
16 9(c), and these persons shall agree upon and appoint a
17 third person with such expertise. If no agreement is
18 reached on the date of appointment of a third person, the
19 court shall make the appointment.

20 (b) COMPENSATION.—The Federal coal lessee shall
21 be responsible for compensation of the expert appointed
22 by it; the oil and gas developer shall be responsible for
23 compensation of the expert appointed by it; and the Fed-
24 eral coal lessee and oil and gas developer shall each pay
25 one-half of the compensation for the third expert.

1 (c) INFORMATION AND DATA.—

2 (1) The Federal coal lessee, oil and gas devel-
3 oper, and Secretary shall each submit to the panel
4 of experts within 30 days of the date of appointment
5 of the panel pursuant to subsection (a) all informa-
6 tion and data in the possession of such party that
7 is pertinent to the determinations to be made pursu-
8 ant to section 11 or section 12, and shall each sub-
9 mit to the panel of experts thereafter any additional
10 pertinent information and data in the possession of
11 such party that the panel requests of such party in
12 writing.

13 (2) Except as provided in paragraph (3), the
14 court shall ensure that any information and data
15 submitted to the panel of experts pursuant to para-
16 graphs (1) and (4) shall have the protection of con-
17 fidentiality that is applicable, and may be accorded,
18 to them by law and the Federal rules of civil proce-
19 dure and evidence.

20 (3) All information and data submitted to the
21 panel of experts pursuant to paragraphs (1) and (4)
22 shall be available for review by all parties unless an
23 ex parte order is issued by the court.

24 (4)(A) The Federal coal lessee may drill for and
25 otherwise collect data or information on coalbed

1 methane at any site or sites within the common area
2 that are not within a spacing unit containing a well
3 that is producing or capable of producing coalbed
4 methane under the conditions set forth in subpara-
5 graph (B).

6 (B) The drilling or collection of data or infor-
7 mation authorized by subparagraph (A) shall be for
8 the sole purpose of submission of information and
9 data pursuant to this paragraph.

10 (C) The Federal coal lessee shall not produce
11 any coalbed methane as a result of any drilling au-
12 thorized by subparagraph (A) and shall comply with
13 any Federal or State requirements applicable to such
14 activity.

15 (D) The Federal coal lessee shall submit to the
16 Secretary an exploration plan to conduct any drilling
17 pursuant to subparagraph (A). The Secretary shall
18 approve, approve as modified, or reject the plan,
19 within 15 days of the date of its submission. The
20 Secretary may modify or reject the plan only for
21 good cause fully set forth in writing and provided to
22 the Federal coal lessee. The Federal coal lessee shall
23 adhere to the plan, as approved by the Secretary.

24 (d) SUBMISSION OF BRIEFS AND HEARING.—(1)
25 Within 45 days of the date of appointment of the panel

1 of experts pursuant to subsection (a), all parties may sub-
 2 mit briefs concerning the determinations to be made pur-
 3 suant to section 11 or section 12.

4 (2) Within 60 days of the date of appointment of the
 5 panel of experts pursuant to subsection (a), the panel may,
 6 or if requested by the petitioner or a respondent shall, re-
 7 ceive testimony from all parties concerning the determina-
 8 tions to be made pursuant to section 11 or section 12.

9 (e) EXPERT'S REPORT.—Within 120 days of the date
 10 of appointment of the panel of experts pursuant to sub-
 11 section (a), the panel shall submit a written report to the
 12 court providing in detail the panel's recommendations on
 13 the determinations to be made pursuant to section 11 or
 14 section 12.

15 **SEC. 11. COURT'S FINAL RESPONSE TO PETITION: VALU-**
 16 **ATION CONCERNING ECONOMICALLY RECOV-**
 17 **ERABLE OIL OR GAS RESOURCES LOST OR**
 18 **DELAYED, SUSPENSION OR TERMINATION,**
 19 **AND PAYMENT ORDER.**

20 (a) IN GENERAL.—Within 210 days of the date of
 21 issuance of an order pursuant to section 9(c), by which,
 22 or by any action of the Secretary pursuant to section 8(d),
 23 all or any part of the oil and gas lease or right to develop
 24 is suspended, the court shall take the actions required by
 25 this section.

1 (b) SUSPENSION OR TERMINATION DETERMINA-
2 TION.—(1) The court shall determine whether, as a result
3 of the order or any action of the Secretary, all or any part
4 of, including any geographical area of or zone or reservoir
5 subject to, the oil and gas lease or right to develop should
6 be suspended during any remaining period in which the
7 mining operations or support facilities occupy the common
8 area or whether the oil and gas lease or right to develop
9 should be terminated.

10 (2) Any determination to suspend pursuant to para-
11 graph (1) shall, wherever possible or appropriate, limit the
12 suspension or phase the suspension to permit the optimum
13 development of the oil or gas prior to the time at which
14 the mining operations would reach the area within the
15 common area that is subject to the suspension or par-
16 ticular phase of the suspension.

17 (3) Any determination to terminate pursuant to para-
18 graph (1) shall be made only if the court finds that the
19 economically recoverable oil and gas resources subject to
20 compensation pursuant to subsection (d) would be entirely
21 lost or rendered impracticable to produce as a consequence
22 of the mining operations in the common area and that
23 such resources constitute all of the economically recover-
24 able resources within the oil and gas property.

1 (c) COMPENSATION DETERMINATION.—(1) If the
2 court makes a determination to suspend pursuant to sub-
3 section (b), the court shall determine—

4 (A) the amount of any net income that will not
5 be realized due to delay in development of economi-
6 cally recoverable resources of oil or gas, other than
7 coalbed methane, from the common area, whether or
8 not such development has commenced;

9 (B) the amount of any net income that will not
10 be realized, whether or not development of coalbed
11 methane has commenced, that is due to—

12 (i) delay in development of economically re-
13 coverable resources of coalbed methane in the
14 common area; and

15 (ii) the loss of any economically recoverable
16 resources of coalbed methane from the coal to
17 be extracted by the mining operations in the
18 common area; and

19 (iii) the loss of any economically recover-
20 able resources of coalbed methane underlying
21 any area that is within the oil and gas property
22 associated with the common area and that ex-
23 tends outward from each exposed coal face of
24 the mining operations for a distance from which

1 drainage of such resources is established to the
2 satisfaction of the court; and

3 (C) any of the following damages that will be
4 incurred by the owners of any interest in the oil and
5 gas property as a consequence of the suspension:
6 any unavoidable fixed expenses (including, but not
7 limited to, the expenses of shutting in production
8 from, maintenance of, testing of, and redrilling or
9 reconnecting an existing well; relaying pipeline; and
10 all other expenses reasonably related to reestab-
11 lishing any existing oil or gas production); expenses
12 associated with stranded costs of drilling equipment
13 and facilities; any lost royalties on oil or gas not
14 produced by the oil and gas developer; and any lost
15 income associated with temporarily shutting in pro-
16 duction from wells outside of the common area as
17 needed for reconnection to a gathering system or
18 pipeline to market.

19 If the court determines that the unavoidable fixed ex-
20 penses to achieve post-suspension recovery of all or certain
21 economically recoverable resources of oil or gas in the com-
22 mon area will exceed the net income to be derived from
23 the resources, the court shall determine the amount of the
24 net income and lost royalties in lieu of the unavoidable
25 fixed expenses.

1 (2) The determinations made pursuant to paragraph
2 (1) shall not include any decrease in net income or dam-
3 ages resulting from loss of any oil or gas resources that
4 occurred before the date of the determinations and is
5 caused by mining within or outside of the common area
6 on the Federal coal lease or logical mining unit that is
7 the subject of the common area determination made pur-
8 suant to section 8(b)(1) or section 9(b)(2).

9 (3) If the court makes a determination to terminate
10 pursuant to subsection (b), the court shall determine the
11 amount of any net income that will not be realized and
12 any damages due to the loss of, or impracticability to
13 produce, the economically recoverable resources of oil or
14 gas in the oil and gas property in the same manner as
15 provided in paragraph (1).

16 (4) In determining the amount of net income that will
17 not be realized pursuant to paragraph (1) or paragraph
18 (3) and the sum of money to be awarded pursuant to sub-
19 section (d), the court shall ensure to the best of its ability
20 that the Federal coal lessee is not required to pay for the
21 same gas or oil lost, delayed in development, or rendered
22 impractical to develop to more than one oil and gas devel-
23 oper or the owners of any interest in more than one oil
24 and gas property.

1 (d) COURT ORDER.—The court shall issue an order
2 that—

3 (1) suspends all or any part of, suspends in
4 phases parts of, or terminates the oil and gas lease
5 or right to develop, including any applicable payment
6 or production obligations, in accordance with the de-
7 termination made pursuant to subsection (b); and

8 (2) awards to the oil and gas developer and all
9 other owners of any interest in the oil and gas prop-
10 erty, as their interest may appear, a sum of money
11 from the Federal coal lessee equal to the net income
12 amount and damages determined pursuant to sub-
13 section (c).

14 **SEC. 12. COURT'S FINAL RESPONSE TO PETITION: VALU-**
15 **ATION CONCERNING ECONOMICALLY RECOV-**
16 **ERABLE COAL RESOURCES LOST OR DE-**
17 **LAYED, SUSPENSION OR TERMINATION AND**
18 **PAYMENT ORDER.**

19 (a) IN GENERAL.—Within 210 days of the date of
20 issuance of an order pursuant to section 9(c) by which,
21 or by any action by the Secretary pursuant to section 8(d),
22 the Federal coal lease and/or any non-Federal interest in
23 the logical mining unit is suspended, the court shall take
24 the actions required by this section.

1 (b) SUSPENSION DETERMINATION.—The court shall
2 determine whether, as a result of the order or any action
3 of the Secretary, the Federal coal lease and/or any non-
4 Federal interest in the logical mining unit shall be sus-
5 pended in whole or in part to further accommodate oil or
6 gas development in the common area.

7 (c) COMPENSATION DETERMINATION.—If the court
8 makes a determination to suspend pursuant to subsection
9 (b), the court shall determine the amount of any net in-
10 come that will not be realized from the loss or delay in
11 development of economically recoverable resources of coal,
12 and the unavoidable fixed expenses (including, but not lim-
13 ited to, additional expenses associated with reclamation,
14 expenses associated with stranded costs of mining equip-
15 ment and facilities, a proportionate refund of the lease
16 bonus, and any lost royalties on coal not produced by the
17 Federal coal lessee) that will be incurred, by the Federal
18 coal lessee as a consequence of the suspension.

19 (d) COURT ORDER.—The court shall issue an order
20 that—

21 (1) suspends, in accordance with the determina-
22 tion made pursuant to subsection (b), all or any part
23 of the Federal coal lease and/or any non-Federal in-
24 terest in the logical mining unit, including any appli-
25 cable payment or production obligations on the lease

1 or logical mining unit, for the period necessary for
2 expeditious development in the common area of the
3 gas or oil that is the subject of the petition for relief
4 as demonstrated to the court in a production plan
5 submitted by the oil and gas developer; and

6 (2) awards to the Federal coal lessee and all
7 other owners of any interest in the Federal coal
8 lease or logical mining unit, as their interests may
9 appear, a sum of money equal to the net income
10 amount and unavoidable fixed expenses determined
11 pursuant to subsection (c).

12 **SEC. 13. REVIEW OF EXPERTS' REPORT AND HEARING.**

13 (a) The court shall make the determinations required
14 by section 11 or section 12 after reviewing the report of
15 the panel of experts submitted pursuant to section 10(e)
16 and the hearing required by subsection (b).

17 (b) After submission of the report of the panel of ex-
18 perts pursuant to section 10(e) and prior to making the
19 determinations required by section 11 or section 12, the
20 court shall hold a hearing in which the panel of experts
21 shall present their report and the parties to the proceeding
22 shall have the opportunity to examine the panel and pro-
23 vide to the court any evidence or arguments they may have
24 to support or contravene the recommendations of the re-
25 port.

1 **SEC. 14. DISBURSEMENT OF PAYMENTS.**

2 (a) PAYMENT TO OIL AND GAS DEVELOPER.—(1) At
3 the election of the oil and gas developer, the sum of money
4 awarded by the court pursuant to section 11(d)(2) shall
5 be—

6 (A) paid in full within 60 days of the date of
7 issuance of the order pursuant to section 11(d); or

8 (B) divided into the number of tons of recover-
9 able coal in the common area and paid in per ton
10 increments as the coal is mined in accordance with
11 paragraph (2) and subsection (c).

12 (2) The Federal coal lessee shall make the payments
13 required by paragraph (1)(B) on a quarterly basis in ad-
14 vance based on the Federal coal lessee's estimate of the
15 number of tons of coal to be mined in the common area
16 during the following quarter, and shall add or subtract
17 an amount to or from the advance payment for the next
18 quarter to reflect the coal actually sold or transferred.

19 (b) PAYMENT TO FEDERAL COAL LESSEE.—(1) At
20 the election of the Federal coal lessee, the sum of money
21 awarded by the court pursuant to section 12(d)(2) shall
22 be—

23 (A) paid in full within 60 days of the date of
24 issuance of the order pursuant to section 12(d); or

25 (B) divided into the number of barrels of recov-
26 erable oil or cubic feet of recoverable gas in the com-

1 mon area and paid in per barrel or cubic feet incre-
2 ments as the oil or gas is produced in accordance
3 with paragraph (2) and subsection (c).

4 (2) The oil and gas developer shall make the pay-
5 ments required by paragraph (1)(B) on a quarterly basis
6 in advance based on the oil and gas developer's estimate
7 of the number of barrels of oil or cubic feet of gas to be
8 produced in the common area during the following quar-
9 ter, and shall add or subtract an amount to or from the
10 advance payment for the next quarter to reflect the oil
11 or gas actually produced.

12 (c) FINAL PAYMENT.—If the mining or production
13 necessary to make full payment of the sum of money
14 awarded by the court in accordance with subsection
15 (a)(1)(B) or subsection (b)(1)(B) does not occur within
16 5 years of the date of issuance of the court order pursuant
17 to section 11(d) or section 12(d), the unpaid balance shall
18 be paid within 60 days thereafter.

19 **SEC. 15. TERMINATION OF OIL AND GAS LEASE SUSPEN-**
20 **SION.**

21 (a) NOTIFICATION OF COURT.—If the court issues an
22 order to suspend all or any part of the oil and gas lease
23 or right to develop pursuant to section 11(d)—

24 (1) the Federal coal lessee shall notify the court
25 and the oil and gas developer when the portion of

1 the common area subject to the order issued pursu-
2 ant to section 11(d) is no longer required for mining
3 operations or support facilities; and

4 (2) within 120 days of the date of receipt by
5 the court of the notification pursuant to paragraph
6 (1) or within 60 days prior to the date on which the
7 period established by the court in the order issued
8 pursuant to section 11(d) concludes, the oil and gas
9 lessee may petition the court for an order that ter-
10 minates the suspension and fixes the date and terms
11 on which the oil and gas developer may resume oper-
12 ations within the portion of the common area subject
13 to the order issued pursuant to section 11(d).

14 (b) COURT ORDER TO TERMINATE SUSPENSION OF
15 LEASE OR RIGHT TO DEVELOP.—The court shall issue
16 the order sought under subsection (a)(2) within 30 days
17 of the date of receipt of the petition pursuant to subsection
18 (a)(2).

19 (c) TERMINATION OF LEASE OR RIGHT TO DE-
20 VELOP.—(1) If the oil and gas developer determines that,
21 as a consequence of the order of the court issued pursuant
22 to section 9(c) and an order to suspend all or any part
23 of the oil and gas lease or right to develop pursuant to
24 section 11(d), the conditions described in section 11(b)(3)

1 exist, the oil and gas developer may petition the court to
2 terminate the oil and gas lease or right to develop.

3 (2) The petition referred to in paragraph (1) may be
4 filed any time after issuance of the order of the court pur-
5 suant to section 11(d) but not later than 120 days after
6 the date of receipt by the court of the notification pursu-
7 ant to subsection (a)(1).

8 (3) Upon receipt of a petition pursuant to paragraph
9 (1), the court shall make a determination whether to issue
10 an order to terminate the oil and gas lease or right to
11 develop and award an additional amount from the Federal
12 coal lessee to the oil and gas developer and all other own-
13 ers of any interest in the oil and gas property, as their
14 interests may appear, in accordance with the procedures
15 and deadlines established in section 7(a) and sections 10
16 through 14.

17 **SEC. 16. TERMINATION OF COAL LEASE SUSPENSION.**

18 (a) NOTIFICATION OF COURT.—If the court issues an
19 order requiring suspension of all or any part of the Fed-
20 eral coal lease and/or any non-Federal interest in the log-
21 ical mining unit that includes the Federal coal lease pursu-
22 ant to section 12(d)—

23 (1) the oil and gas developer shall notify the
24 court and the Federal coal lessee when the portion
25 of the common area subject to the order issued pur-

1 suant to section 12(d) is no longer required for gas
2 or oil production from such portion; and

3 (2) within 120 days of the date of receipt by
4 the court of the notification pursuant to paragraph
5 (1) or within 60 days prior to the date on which the
6 period established by the court in the order issued
7 pursuant to section 12(d) concludes, the Federal
8 coal lessee may petition the court for an order that
9 fixes the date and terms on which the Federal coal
10 lessee may commence mining operations or construc-
11 tion of support facilities in the portion of the com-
12 mon area subject to the order issued pursuant to
13 section 12(d) and, if all or any part of the Federal
14 coal lease and/or any non-Federal interest in the log-
15 ical mining unit is suspended, terminates the sus-
16 pension.

17 (b) COURT ORDER TO TERMINATE LEASE SUSPEN-
18 SION.—The court shall issue the order sought under sub-
19 section (a)(2) within 30 days of the date of receipt of the
20 petition pursuant to subsection (a)(2).

21 (c) TERMINATION OF LEASE.—(1) If the Federal coal
22 lessee determines that, as a consequence of the order of
23 the court issued pursuant to section 12(d), further devel-
24 opment of all or any part of the Federal coal lease and/
25 or any non-Federal interest in the logical mining unit is

1 impracticable, the Federal coal lessee may petition the
2 court to terminate all or any part of the Federal coal lease
3 and/or any non-Federal interest in the logical mining unit.

4 (2) The petition referred to in paragraph (1) may be
5 filed any time after issuance of the order of the court pur-
6 suant to section 12(d) but not later than 120 days after
7 the date of receipt by the court of the notification pursu-
8 ant to subsection (a)(1).

9 (3) Upon receipt of a petition pursuant to paragraph
10 (1), the court shall make a determination whether to issue
11 an order to terminate all or any part of the Federal coal
12 lease and/or any non-Federal interest in the logical mining
13 unit and award an additional amount from the oil and gas
14 developer to the Federal coal lessee and all other owners
15 of any interest in the Federal coal lease or logical mining
16 unit, as their interests may appear, in accordance with the
17 procedures and deadlines established in section 7(a) and
18 sections 10 through 14.

19 **SEC. 17. SUPPLEMENTAL PETITION FOR RELIEF.**

20 (a) PETITION SUBMITTAL.—(1) If, at any time after
21 the issuance of an order pursuant to section 11(d) or sec-
22 tion 12(d), the mining plan that is the basis of the order
23 is altered in a manner that may warrant suspension of
24 an additional part or all of, or termination of, the oil and
25 gas lease or right to develop or suspension of an additional

1 part of the Federal coal lease and/or any non-Federal in-
2 terest in the logical mining unit that includes the Federal
3 coal lease and/or an increase in the sum of money that
4 was awarded under the order, either the Federal coal les-
5 see or the oil and gas developer may, if necessary after
6 compliance with the requirements of section 6, file a sup-
7 plemental petition for relief with the court to amend the
8 order.

9 (2) The requirements of section 7(a) and sections 8
10 through 14 shall apply to the supplemental petition sub-
11 mitted pursuant to paragraph (1).

12 (b) COURT ORDER.—(1) Upon completion of the
13 process required by subsection (a)(2), the court shall make
14 a determination whether to suspend an additional part or
15 all of, or terminate, the oil and gas lease or right to de-
16 velop or to suspend an additional part of the Federal coal
17 lease and/or any non-Federal interest in the logical mining
18 unit as described in, and to award an additional sum of
19 money calculated in accordance with, section 11 or section
20 12.

21 (2) The court shall issue any order resulting from the
22 determinations made pursuant to paragraph (1) within 90
23 days of the date of filing of the supplemental petition for
24 relief.

1 (3) Any award of an additional sum of money shall
2 be paid in accordance with section 14.

3 **SEC. 18. APPEAL OF COURT ORDERS.**

4 (a) NON-APPEALABLE ORDERS.—Any order issued
5 pursuant to section 9(c), section 9(f), section 15(b), or
6 section 16(b) is final and may not be appealed.

7 (b) APPEALABLE ORDERS.—Any order issued pursu-
8 ant to section 11(d), section 12(d), section 15(c)(3), sec-
9 tion 16(c)(3), or section 17(c)(2) may be appealed, but
10 the appeal, and any disposition thereof, may not disturb
11 any order referred to in subsection (a).

12 **SEC. 19. SUSPENSION TERMS.**

13 (a) FEDERAL LEASE SUSPENSION TERMS.—If all or
14 any part of any lease issued pursuant to the Mineral Leas-
15 ing Act is suspended in whole or in part by the Secretary
16 or the court under this Act—

17 (1) the lessee shall not be required to pay any
18 rental for the lease for the period of the suspension;
19 and

20 (2) if the lease is a Federal oil or gas lease and
21 is in the primary term or if the lease is a Federal
22 coal lease, the term of the lease shall be extended by
23 the length of the period of the suspension plus one
24 year; or

1 (3) the lease shall not terminate due to lack of
2 production for the period of the suspension plus one
3 year.

4 (b) OTHER.—If any non-Federal oil and gas lease or
5 right to develop or any non-Federal interest in a logical
6 mining unit is suspended in whole or in part by the court
7 under this Act, the court shall establish terms for the sus-
8 pension comparable to the terms set forth in subsection
9 (a).

10 **SEC. 20. LIABILITY LIMITATION.**

11 (a) FEDERAL COAL LESSEE.—Except as provided in
12 a written agreement reached pursuant to section 6(b) or
13 reached on or after September 1, 1999, and before the
14 date of enactment of this Act, or as provided by an order
15 of the court pursuant to this Act, neither the holder of
16 a Federal coal lease subject to the agreement or order nor
17 the United States shall be liable to the oil and gas devel-
18 oper of, or any owner of an interest in, any oil and gas
19 property subject to the agreement or order for any de-
20 crease in or depletion of, or any impairment of the ability
21 to recover, any gas or oil from the property that may re-
22 sult from the development of any coal on the Federal coal
23 leasehold or within a logical mining unit that includes the
24 Federal coal lease.

1 (b) OIL AND GAS DEVELOPER.—Except as provided
2 in a written agreement reached pursuant to section 6(b)
3 or reached on or after September 1, 1999, and before the
4 date of enactment of this Act, or as provided by an order
5 of the court pursuant to this Act, neither the oil and gas
6 developer of an oil and gas property subject to the agree-
7 ment or order nor the United States shall be liable to a
8 holder of a Federal coal lease subject to the agreement
9 or order, or any owner of any non-Federal interest in a
10 logical mining unit that includes the Federal coal lease,
11 or the United States for any impairment of the ability to
12 recover coal from the Federal coal leasehold or logical min-
13 ing unit that may result from the development of gas or
14 oil on the property.

15 **SEC. 21. CREDIT AGAINST ROYALTIES.**

16 (a) IN GENERAL.—

17 (1) Whenever a holder of a Federal coal lease
18 is required by a written agreement reached pursuant
19 to section 6(b) and approved by the Bureau of Land
20 Management or reached prior to the date of enact-
21 ment of this Act and approved by the Bureau of
22 Land Management on or after September 1, 1999,
23 or by a court order issued pursuant to section 11(d),
24 section 15(c)(3) or section 17(b)(2), to pay an
25 amount for suspension of all or part of, or termi-

1 nation of, a Federal oil and gas lease for coalbed
2 methane located within the Section 21 Lands, the
3 amount so paid shall be credited against any royal-
4 ties on production required by section 7(a) or any
5 other provision of the Mineral Leasing Act from any
6 lease of Federal coal issued under the Mineral Leas-
7 ing Act to such holder or any affiliate thereof.

8 (2) Whenever a holder of a Federal oil and gas
9 lease is required by a written agreement reached
10 pursuant to section 6(b) and approved by the Bu-
11 reau of land Management or reached prior to the
12 date of enactment of this Act and approved by the
13 Bureau of Land Management on or after September
14 1, 1999, or by a court order issued pursuant to sec-
15 tion 12(d), section 16(c)(3), or section 17(b)(2), to
16 pay an amount for suspension or termination of all
17 or part of a Federal coal lease located within the
18 Section 21 Lands, the amount so paid shall be cred-
19 ited against any royalties on production required by
20 subsection (b)(1)(A) or subsection (c)(1) of section
21 17 or any other provision of the Mineral Leasing Act
22 from any lease of Federal oil and gas issued under
23 the Mineral Leasing Act to such holder or any affil-
24 iate thereof.

1 (b) TREATMENT OF ROYALTIES TO STATES.—The
2 Secretary shall pay to the State in which the Federal coal
3 lease or Federal oil and gas lease referred to in subsection
4 (a)(1) or subsection (a)(2), respectively, is located 50 per-
5 cent of the amount of any credit against royalties provided
6 under subsection (a)(1) or subsection (a)(2),
7 respectively—

8 (1) in the same manner as if the credit against
9 royalties had been paid in money as royalties and
10 distributed under section 35(a) of the Mineral Leas-
11 ing Act; and

12 (2) from amounts received as royalties, rentals,
13 or bonuses derived from leases issued under this Act
14 that otherwise would be deposited to miscellaneous
15 receipts under section 35(a) of the Mining Leasing
16 Act.

17 **SEC. 22. DENIAL OF USE AS PRECEDENT.**

18 Nothing in this Act shall be applicable to any lease
19 under the Mineral Leasing Act for any mineral, or shall
20 be applicable to, or supersede any statutory or common
21 law otherwise applicable in, any proceeding in any Federal
22 or State court involving development of any mineral, out-
23 side of any common area, as defined in section 3(13),
24 within or outside of the Powder River Basin, as defined
25 in section 3(1).

1 **SEC. 23. EFFECTIVE DATE.**

2 This Act shall be effective upon the date of its enact-
3 ment.

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