Calendar No. 939

106TH CONGRESS, *2d Session* | SENATE | REPORT 106–490

POWDER RIVER BASIN RESOURCE DEVELOPMENT ACT OF 1999

OCTOBER 5 (legislative day SEPTEMBER 22), 2000.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1950]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1950) to amend the Mineral Leasing Act of 1920 to ensure the orderly development of coal, coalbed methane, natural gas, and oil in the Powder River Basin, Wyoming and Montana, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments, are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Powder River Basin Resource Development Act of 2000".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that:

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

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

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

(4) the federally-owned gas and oil, like the coal, are part of the public lands and may be leased to oil and gas lessees by the Bureau of Land Management under the Mineral Leasing Act.

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

(6) Development of those valuable energy resources is of critical importance to the American public.

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

(8) Extraction of these energy resources provides royalties, taxes, and wages that contribute to national, State, and local treasuries and economies.

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

(10) In many locations the coal and the gas and oil have been leased or sold to different parties. These resources are frequently extracted sequentially, but for safety and operational reasons typically cannot be extracted simultaneously, in the same location. Where concurrent development is impossible and even where it may be possible, in certain of these locations disputes have arisen among the different parties concerning plans for, and the course of, development of these resources.

(11) The development of any one of these resources can result in loss of another, either by making recovery impossible in the case of coalbed methane or uneconomic in the case of deep natural gas, oil, or coal.

(12) The nature, extent, and value of any loss or delay in development of the gas, oil, or coal resource due to development of another of these resources in the "common areas" within the Powder River Basin in which disputes between the resources' developers arise should be ascertained and fair market value for the loss or delay should be provided by agreement between the developers or by an expeditious adjudication procedure.

(13) The Federal law under which most of the coal and much of the gas and oil in the Powder River Basin are made available for development should be amended to provide a procedure that will assure the orderly development of the energy resources, and fair treatment to the resources' developers, in the "common areas" within the Powder River Basin in which disputes between the developers arise.

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

(1) amend the Mineral Leasing Act to provide a consistent procedure to resolve disputes between developers of coal and developers of natural gas and oil in the "common areas" within the Powder River Basin to which this Act applies concerning the sequence of development of those resources in the same location, regardless of who owns the resources:

(2) encourage maximum recovery of the resources prior to the time at which such disputes are likely to occur or thereafter until the procedure provided by this Act is implemented;

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

(4) determines fair and just compensation owed for the loss, or delay, in, the opportunity to develop a resource resulting from implementation of the procedure provided by this Act; and

(5) provide expressly that the procedure provided by this Act will neither apply to nor set any precedent for resolution of disputes between or among resource developers outside of the "common areas" within the Powder River Basin to which this Act applies.

SEC. 3. AMENDMENT TO THE MINERAL LEASING ACT.

The Mineral Leasing Act (30 U.s.C. 181 et seq.) is amended by renumbering section 44 as section 45 and inserting the following new section.

"SEC. 44. DEVELOPMENT OF COAL, NATURAL GAS, AND OIL IN THE POWDER RIVER BASIN.

"(a) DEFINITIONS.—As used in this section:

"(1) The term 'Powder River Basin' or 'Basin' means the area designated as 'Powder River Basin' on a map entitled 'MLA Section 44 Powder River Basin Area', dated July 1, 1999, and on file in the Wyoming and Montana State Offices of the Bureau of Land Management, Department of the Interior.

"(2) The term 'Subsection (g) Lands' means the area designated as 'Subsection (g) Lands' on the map described in paragraph (1).

"(3) The term 'Secretary' means the Secretary of the Interior.

"(4) The term 'Federal coal lease' means a lease of Federal coal in the Basin issued pursuant to this Act.

"(5) The term 'Federal coal lessee' means the holder of a Federal coal lease.

"(6) The term 'Federal oil and gas lease' means a lease of Federal oil and gas in the Basin issued pursuant to the Act.

"(7) The term 'oil an gas lease or right to develop' means a Federal oil and gas lease or a lease for or right to develop oil and gas in the Basin provided by a State or private owner of the resources.

"(8) The term 'non-Federal oil and gas lease or right to develop' means a lease for or right to develop oil and gas in the Basin provided by a State or private owner of the resources.

"(9) The term 'oil and gas developer' means the holder of an oil or gas lease or right to develop.

"(10) The term 'oil and gas property' means an area in the Basin which is subject to an oil or gas lease or right to develop held by an oil or gas developer.

"(11) The term 'common area' means an area in the Basin in which all or a portion of a Federal coal lease (including any area of State or private coal within a logical mining unit with the Federal coal lease) overlaps all or a portion of an oil and gas property.

"(12) The term 'approved or proposed mining plan' means a mining plan that is approved by, or has been submitted for the approval, of the Secretary.

"(13) The term 'coalbed methane' shall have the meaning given that term in section 1339(p)(2) of the Energy Policy Act of 1992 (106 Stat. 2992, 42 U.S.C. 13368(p)(2)).

"(14) the term 'owners of any interest in the oil and gas property' means persons who own the working interest, lease interest, operating interest, mineral interest, royalty interest, or any other interest in the oil and gas property, and any other persons who might receive compensation for unavoidable fixed expenses under an order concerning the oil and gas property issued pursuant to subsection (e)(10(E).

"(15) The term 'owners of any non-Federal interest in the oil and gas property' means all owners of any interest in the oil and gas property except the Federal government or any agency or department thereof.

"(16) The term 'develop' or 'development' means to develop or to produce, or both, or the development or production, or both, respectively, including all incidental operations.

"(b) PARTIES ENCOURAGED TO ENTER INTO WRITTEN AGREEMENT.—In any common area, the Federal coal lessee and oil and gas developer, subject to applicable Federal and State laws, regulations, and lease terms, may and are encouraged to enter into a written agreement that details operations and assigns or assesses costs or compensation for the concurrent or sequential development of those resources.

"(c) MINERAL CONSERVATION.—The Secretary shall employ any authority the Secretary possesses to encourage expedited development of any oil and gas resources and any coal resource that—

"(1) are leased pursuant to this Act;

"(2) are within common areas; and

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

"(d) NEGOTIATIONS CONCERNING DEVELOPMENT PRIORITY FOR CERTAIN OPERATIONS IN THE BASIN.—

"(1) OBLIGATION TO PROVIDE WRITTEN NOTICE OF CONFLICT.—Whenever a Federal coal lessee or an oil and gas developer determines that its Federal coal lease (or a logical mining unit including the Federal coal lease) or its oil and gas property is located in a common area, and, pursuant to an approved or proposed mining plan, mining operations or facilities in support of mining for coal on the Federal coal lease or the logical mining unit will be located within the common area, the Federal coal lessee or the oil and gas developer shall deliver written notice of the determination to the other party and the Secretary no later than 240 days prior to the date on which the mining operations or construction of the mine support facilities is projected by the approved or proposed mining plan to commence in the common area.

"(2) OBLIGATION TO NEGOTIATE.—Promptly after providing the notice referred to in paragraph (1), the party which provided the notice shall seek to negotiate a written agreement with the other party that resolves any conflict between the development of gas or oil and development of coal in the common area.

"(e) COMPENSATION PROCEDURES FOR ASSIGNMENT OF DEVELOPMENT PRIORITY.—

"(1) PETITION FOR RELIEF.—

"(A) If notice is submitted timely pursuant to subsection (d)(1) and the Federal coal lessee and the oil and gas developer engage in negotiations, but do not reach agreement, pursuant to subsection (d)(2), the Federal coal lessee or the oil and gas developer may file a petition for relief as described in subparagraph (C) in the United States district court for the district in which the common area is located on any date which is not less than 180 days prior to the date on which the mining operations or construction of the mine support facilities is projected by the approved or proposed mining plan to commence in the common area.

"(B) The petitioner shall serve the oil and gas developer or the Federal coal lessee, as the case may be, and the Secretary with a copy of the petition for relief on the same date upon which the petition is filed with the court pursuant to subparagraph (A).

"(C) The petition for relief shall include the following:

"(i) A description and map of the Federal coal lease, the oil and gas property, and the common area.

"(ii) A list containing the names and addresses of all owners of any non-Federal interest in the oil and gas property and all owners of any non-Federal interest in the Federal coal lease or logical mining unit. The petitioner shall list those owners of any non-Federal interest in the oil and gas property and of the Federal coal lease or logical mining unit whom the petitioner is able to ascertain from the properly indexed records of the county recorder of the county or counties in which the oil and gas property and Federal coal lease or logical mining unit are located, and the respondent shall file with the court and serve on the petitioner and the Secretary any corrections of, additions to, or deletions from the list known to the respondent within 10 days of the date of service of the petition for relief pursuant to subparagraph (B). Thereafter, whenever any correction of, addition to, or deletion from the list becomes known to either the petitioner or the respondent, that party shall promptly file with the court and serve on the other party and the Secretary the addition, correction, or deletion. Any person who believes he or she is an owner of any non-Federal interest in the oil and gas property or in the Federal coal lease or logical mining unit and is omitted from the list may file a motion in the court to be added to the list at any time prior to the issuance of an order pursuant to paragraph (10)(E) or paragraph (11)(C).

"(iii) A certified copy of the notice described in subsection (d)(1).

"(iv) a sworn statement by a senior officer of the petitioner with authority to commit the petitioner in any negotiation under subsection (d)(2) stating, and all documents demonstrating, that the petitioner negotiated or attempted to negotiate in good faith with the respondent a voluntary agreement, pursuant to subsection (d)(2).

"(D) The Federal coal lessee shall submit a copy of the approved or proposed mining plan for the mining operations or support facilities that are the subject of the petition for relief—

"(i) with the petition for relief if the Federal coal lessee is the petitioner; or

"(ii) within 5 days of the date of service of the petition for relief pursuant to subparagraph (B) if the Federal coal lessee is the respondent.

"(2) JOINDER OF PARTIES.—The Secretary and all owners of any non-Federal interest in the oil and gas property and in the Federal coal lease or logical mining unit identified pursuant to paragraph (1)(C)(ii) shall be joined in the proceedings established pursuant to this subsection.

"(3) PARTIES' RESPONSE TO PETITION.—The non-Federal respondent or respondents may provide to the Secretary a response to the petition within 30 days from the date of filing of the petition for relief pursuant to paragraph (1)(A). The Secretary may require the petitioner and the respondent or respondents to submit such documents and/or provide such testimony as the Secretary deems appropriate within 60 days of such date of filing.

"(4) SECRETARY'S INITIAL RESPONSE TO PETITION.—Within 90 days of the date of filing of the petition for relief pursuant to paragraph (1)(A) the Secretary shall take the following actions:

"(A) The Secretary shall determine, with petitioner having the burden of proof—

"(i) whether a common area exists; and

"(ii) whether the approved or proposed mining plan submitted pursuant to paragraph (3)(D) provides for the mining operations to intersect,

or the mine support facilities to be constructed in, any portion of the common area.

"(B)(i) If existence of the common area and intersection of, or construction in, the common area are determined pursuant to subparagraph (A), the Secretary shall determine whether the public interest is best realized by delaying or foregoing development of either—

"(I) the oil or gas resource to permit the mining operations to intersect, or the mine support facilities to be constructed in, the common area in accordance with the approved or proposed mining plan; or

"(II) the coal resource to permit commencement or continuation of the development of the oil or gas resource in the common area after the date on which the mining operations of construction of the mine support facilities is projected by the approved or proposed mining plan to commence in the common area.

"(ii) The Secretary shall make the public interest determination described in clause (i) solely by the calculation of the greater economic benefit to be realized by comparison, on a net present value basis, of the Federal and State revenues from royalties and severance taxes likely to be generated from each resource underlying the common area to which the petition for relief applies.

"(C)(i) If any portion of the resource for which delayed or foregone development is determined to be in the public interest pursuant to subparagraph (B) is subject to a lease issued pursuant to this Act, the Secretary shall suspend all or any portion of, including any geographical area of or zone or reservoir subject to, the lease to accommodate development of the other resource in the common area during the period beginning on a date no later than the commencement date referred to in paragraph (1)(A) and provided in the notice submitted pursuant to paragraph (1)(C)(iii) and ending on the date on which an order is issued pursuant to paragraph (10)(E) or paragraph (11)(C).

"(ii) The Secretary may refrain from either making the determinations required by subparagraphs (A) and (B) or suspending all or any portion of a lease issued pursuant to this Act as required by clause (i) only if the Secretary determines that—

"(I) no common area exists; or

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

"(D) The Secretary shall—

"(i) report the determinations made pursuant to subparagraphs (A) and (B) or subparagraph (C)(ii) and any suspension made pursuant to subparagraph (C)(i), including the administrative record therefor, with the court in which the petition for relief is filed pursuant to paragraph (1)(A); and

"(ii) provide the petitioner and respondent or respondents with copies of the report and record.

"(5) COURT'S INITIAL RESPONSE TO PETITION.—

"(A)(i) The court in which the petition is filed pursuant to paragraph (1)(A) shall have exclusive jurisdiction to receive and review the report of the Secretary required by paragraph (4)(D), and the determinations made and any action taken by the Secretary pursuant to paragraph (4).

"(ii) The petitioner and respondent or respondents shall have 30 days from the date upon which the report of the Secretary is filed with the court pursuant to paragraph (4)(D) in which to file with the court any objection to any determination of the Secretary required by paragraph (4).

"(iii) If any objection is filed pursuant to clause (ii), the court shall, within 60 days of receipt of the report of the Secretary pursuant to paragraph (4)(D), make the determination that is the subject of the objection on the basis of the administrative record filed with the report and in accordance with the applicable requirements or standards of subparagraph (A) or subparagraph (B) of paragraph (4).

"(iv) Any determination made by the court pursuant to clause (iii) shall be an independent judicial determination that is de novo, without regard to the prior determination of the Secretary.

"(v) If no objection is filed pursuant to clause (ii), the determinations of the Secretary required by paragraph (4) shall be final and approved by the court in the order issued pursuant to subparagraph (B) or subparagraph (E).

"(B) Within 90 days of the date of receipt of the report of the Secretary pursuant to paragraph (4)(D), the court, except as provided in subparagraph (E), shall issue an order that—

"(i) suspends all or any part of, including any geographical area of or reservoir subject to, any non-Federal oil and gas lease or right to develop, or any non-Federal interest in any logical mining unit that include the Federal coal lease, in the common area in accordance with the determination of the Secretary pursuant to subclause (I) or subclause (II), respectively, of paragraph (4)(B)(i) or in accordance with the determination of the court pursuant to subparagraph (A)(iii), and

"(ii) if required by a determination of the court pursuant to subparagraph (A)(iii), terminates a suspension of a lease issued pursuant to this Act imposed by the Secretary pursuant to paragraph (4)(C)(i), or imposes a suspension of a lease issued pursuant to this Act, or both, in accordance with the determination; and

"(iii) if all or any part of the oil and gas lease or right to develop is suspended pursuant to paragraph (4)(C)(i) or this subparagraph, fixes the date upon which the Federal coal lease may commence mining operations or construction of mine support facilities in the common area, which may be no later than the commencement date referred to in paragraph (1)(A) and provided in the notice submitted pursuant to paragraph (1)(C)(iii), except for good cause shown; and

"(iv) if all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit that includes the Federal coal lease is suspended pursuant to paragraph (4)(C)(i) or this subparagraph, prohibits the mining operations from intersecting, or the support facilities from being constructed in, all or a portion of the common area.

"(C) The order of the court issued pursuant to subparagraph (B) shall expire upon the issuance of an order pursuant to paragraph (10)(E) or paragraph (11)(C).

"(D) The court may refrain from issuing the order required by subparagraph (B), only if—

"(i) the Secretary makes a determination described in paragraph (4)(C)(ii); or

"(ii) the court, acting on an objection filed pursuant to subparagraph (A)(ii), determines that—

"(I) no common area exists; or

"(II) the approved or proposed mining plan submitted pursuant to paragraph (1)(D) does not provide for the mining operations to intersect, or the mine support facilities to be constructed in, the common area.

"(E) If the Secretary makes a determination described in paragraph (4)(C)(ii) or the court makes a determination described in subparagraph (D)(ii), the court shall issue an order terminating the proceeding under this subsection.

"(6) VALUATION PROCEDURE: APPOINTMENT OF EXPERTS.—

"(A) Within 30 days of the date of issuance of an order pursuant to paragraph (5)(B), to assist the court in making the determinations pursuant to paragraph (10) or paragraph (11), the Federal coal lessee and the oil and gas developer shall each appoint a person who is an expert in appraising the value of, and right to develop, gas or oil if all or any part of the oil and gas lease or right to develop is suspended, or coal if all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit that includes the Federal coal lease is suspended, pursuant to paragraph (4)(C) and/or paragraph (5)(B), and these persons shall agree upon and appoint a third person with such expertise. If no agreement is reached on the date of appointment of a third person, the court shall make the appointment.

"(B) The Federal coal lessee shall be responsible for compensation of the expert appointed by it; the oil and gas developer shall be responsible for compensation of the expert appointed by it; and the Federal coal lessee and oil and gas developer shall each pay one-half of the compensation for the third expert.

"(7) INFORMATION AND DATA.—

"(A) The Federal coal lessee, oil and gas developer, and Secretary shall each submit to the panel of experts within 30 days of the date of appointment of the panel pursuant to paragraph (6) all information and data in the possession of such party that is pertinent to the determinations to be made pursuant to paragraph (10) or paragraph (11), and shall each submit

to the panel of experts thereafter any additional pertinent information and data in the possession of such party that the panel requests of such party in writing.

"(B) Except as provided in subparagraph (C), the court shall ensure that any information and data submitted to the panel of experts pursuant to subparagraphs (A) and (D) shall have the protection of confidentiality that is applicable, and may be accorded, to them by law and the federal rules of civil procedure and evidence.

"(C) All information and data submitted to the panel of experts pursuant to subparagraphs (A) and (D) shall be available for review by all parties unless an ex parte order is issued by the court.

"(D)(i) The Federal coal lessee may drill for and otherwise collect data or information on coalbed methane at any site or sites within the common area that are not within a spacing unit containing a well that is producing or capable of producing coalbed methane under the conditions set forth in clause (ii).

"(ii) The drilling or collection of data or information authorized by clause (i) shall be for the sole purpose of submission of information and data pursuant to this paragraph.

"(iii) The Federal coal lessee shall not produce any coalbed methane as a result of any drilling authorized by clause (i) and shall comply with any Federal or State requirements applicable to such activity.

"(iv) The Federal coal lessee shall submit to the Secretary an exploration plan to conduct any drilling pursuant to clause (i). The Secretary shall approve, approve as modified, or reject the plan, within 15 days of the date of its submission. The Secretary may modify or reject the plan only for good cause fully set forth in writing and provided to the Federal coal lessee. The Federal coal lessee shall adhere to the plan, as approved by the Secretary.

"(8) SUBMISSION OF BRIEFS AND HEARING.—

"(A) Within 45 days of the date of appointment of the panel of experts pursuant to paragraph (6), all parties may submit briefs concerning the determinations to be made pursuant to paragraph (10) or paragraph (11).

"(B) Within 60 days of the date of appointment of the panel of experts pursuant to paragraph (6), the panel may, or if requested by the petitioner or a respondent shall, receive testimony from all parties concerning the determinations to be made pursuant to paragraph (10) or paragraph (11).

"(9) EXPERTS' REPORT.—Within 120 days of the date of appointment of the panel of experts pursuant to paragraph (6), the panel shall submit a written report to the court providing in detail the panel's recommendations on the determinations to be made pursuant to paragraph (10) or paragraph (11).

"(10) COURT'S FINAL RESPONSE TO PETITION: VALUATION CONCERNING ECONOMICALLY RECOVERABLE OIL OR GAS RESOURCES LOST OR DELAYED, SUSPENSION OR TERMINATION, AND PAYMENT ORDER.—Within 210 days of the date of issuance of an order pursuant to paragraph (5)(B), by which, or by any action of the Secretary pursuant to paragraph (4)(C)(i), all or any part of the oil and gas lease or right to develop is suspended, the court shall take the following actions:

"(A)(i) The court shall determine whether, as a result of the order or any action of the Secretary, all or any part of, including any geographical area of or zone or reservoir subject to, the oil and gas lease or right to develop should be suspended during any remaining period in which the mining operations or support facilities occupy the common area or whether the oil and gas lease or right to develop should be terminated.

"(ii) Any determination to suspend pursuant to clause (i) shall, wherever possible or appropriate, limit the suspension or phase the suspension to permit the optimum development of the oil or gas prior to the time at which the mining operations would reach the area within the common area that is subject to the suspension or particular phase of the suspension.

"(iii) Any determination to terminate pursuant to clause (i) shall be made only if the court finds that the economically recoverable oil and gas resources subject to compensation pursuant to subparagraph (E) would be entirely lost or rendered impracticable to produce as a consequence of the mining operations in the common area and that such resources constitute all of the economically recoverable resources within the oil and gas property.

"(B) If the court makes a determination to suspend pursuant to subparagraph (A), the court shall determine—

"(i) the amount of any net income that will not be realized due to delay in development of economically recoverable resources of oil or gas,

other than coalbed methane from common area, whether or not such development has commenced;

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

"(I) delay in development of economically recoverable resources of coalbed methane in the common area; and

"(II) the loss of any economically recoverable resources of coalbed methane from the coal to be extracted by the mining operations in the common area; and

"(III) the loss of any economically recoverable resources of coalbed methane underlying any area that is within the oil and gas property associated with the common area and that extends outward from each exposed coal face of the mining operations for a distance from which drainage of such resource is established to the satisfaction of the court; and

"(iii) any of the following damages that will be incurred by the owners of any interest in the oil and gas property as a consequence of the suspension: any unavoidable fixed expenses (including, but not limited to, the expenses of shutting in production from, maintenance of, testing of, and redrilling or reconnecting an existing well; relaying pipeline; and all other expenses reasonably related to reestablishing any existing oil or gas production); expenses associated with stranded costs of drilling equipment and facilities; any lost royalties on oil or gas not produced by the oil and gas developer; and any lost income associated with temporarily shutting in production from wells outside of the common area as needed for reconnection to a gathering system or pipeline to market.

"(C) The determinations made pursuant to subparagraph (B) shall not include any decrease in net income or damages resulting from loss of any oil or gas resources that occurred before the date of the determinations and is caused by mining within or outside of the common area on the Federal coal lease or logical mining unit that is the subject of the common area determination made pursuant to paragraph (4)(A)(i).

"(D) If the court makes a determination to terminate pursuant to subparagraph (A), the court shall determine the amount of any net income that will not be realized and any damages due to the loss of, or impracticability to produce, the economically recoverable resources of oil or gas in the oil and gas property in the same manner as provided in subparagraph (B).

"(E) The court shall issue an order that—

"(i) suspends all or any part of, suspends in phases parts of, or terminates the oil and gas lease or right to develop, including any applicable payment or production obligations, in accordance with the determination made pursuant to subparagraph (A); and

"(ii) awards to the oil and gas developer and all other owners of any interest in the oil and gas property, as their interests may appear, a sum of money from the Federal coal lessee equal to the net income amount and damages determined pursuant to subparagraph (B) or subparagraph (D).

"(F) In determining the amount of net income that will not be realized pursuant to subparagraph (B) or subparagraph (D) and the sum of money to be awarded pursuant to subparagraph (E), the court shall ensure to the best of its ability that the Federal coal lessee is not required to pay for the same gas lost, delayed in development, or rendered impracticable to develop to more than one oil and gas developer or the owners of any interest in more than one oil and gas property.

"(11) COURT'S FINAL RESPONSE TO PETITION; VALUATION CONCERNING ECONOMICALLY RECOVERABLE COAL RESOURCES LOST OR DELAYED, SUSPENSION OR TERMINATION AND PAYMENT ORDER.—Within 210 days of the date of issuance of an order pursuant to paragraph (5)(B) by which or by any action by the Secretary pursuant to paragraph (4)(C)(i), the Federal coal lease and/or any non-Federal interest in the logical mining unit is suspended, the court—

"(A) shall determine whether, as a result of the order or any action of the Secretary, the Federal coal lease and/or any non-Federal interest in the logical mining unit shall be suspended in whole or in part to further accommodate oil or gas development in the common area; and

"(B) shall determine the amount of any net income that will not be realized from the loss or delay in development of economically recoverable resources of coal, and the unavoidable fixed expenses (including, but not lim-

ited to, additional expenses associated with reclamation, expenses associated with stranded costs of mining equipment and facilities, a proportionate refund of the lease bonus, and any lost royalties on coal not produced by the Federal coal lessee) that will be incurred, by the Federal coal lessee as a consequence of the suspension; and

"(C) shall issue an order that—

"(i) suspends, in accordance with the determination made pursuant to subparagraph (A), all or any part of the Federal coal lease and/or any non-Federal interested in the logical mining unit, including any applicable payment or production obligations on the lease or logical mining unit, for the period necessary for expeditious development in the common area of the gas or oil that is the subject of the petition for relief as demonstrated to the court in a production plan submitted by the oil and gas developer; and

"(ii) awards to the Federal coal lessee and all other owners of any interest in the Federal coal lease or logical mining unit, as their interests may appear, a sum of money equal to the net income amount and unavoidable fixed expenses determined pursuant to subparagraph (B).

"(12) REVIEW OF EXPERTS' REPORT.—

"(A) The court shall make the determinations required by paragraph (10) or paragraph (11) after reviewing the report of the panel of experts submitted pursuant to paragraph (9) and the hearing required by subparagraph (B).

"(B) After submission of the report of the panel of experts pursuant to paragraph (9) and prior to making the determinations required by paragraph (10) or paragraph (11), the court shall hold a hearing in which the panel of experts shall present their report and the parties to the proceeding shall have the opportunity to examine the panel and provide to the court any evidence or arguments they may have to support or contravene the recommendations of the report.

"(13) DISBURSEMENT OF PAYMENTS.—

"(A)(i) At the election of the oil and gas developer, the sum of money awarded by the court pursuant to paragraph (10)(E) shall be—

"(I) paid in full within 60 days of the date of issuance of the order pursuant to paragraph (10)(E); or

"(II) divided into the number of tons of recoverable coal in the common area and paid in per ton increments as the coal is mined in accordance with clause (ii) and subparagraph (C).

"(ii) The Federal coal lessee shall make the payment required by clause (i)(II) on a quarterly basis in advance based on the Federal coal lessee's estimate of the number of tons of coal to be mined in the common area during the following quarter, and shall add or subtract an amount to or from the advance payment for the next quarter to reflect the coal actually sold or transferred.

"(B)(i) At the election of the Federal coal lessee, the sum of money awarded by the court pursuant to paragraph (11)(C) shall be:

"(I) paid in full within 60 days of the date of issuance of the order pursuant to paragraph (11)(C); or

"(II) divided into the number of barrels of recoverable oil or cubic feet of recoverable gas in the common area and paid in per barrel or cubic feet increments as the oil or gas is produced in accordance with clause (ii) and subparagraph (C).

"(ii) The oil and gas developer shall make the payments required by clause (i)(II) on a quarterly basis in advance based on the oil and gas developer's estimate of the number of barrels of oil or cubic feet of gas to be produced in the common area during the following quarter, and shall add or subtract an amount to or from the advance payment for the next quarter to reflect the oil or gas actually produced.

"(C) If the mining or production necessary to make full payment of the sum of money awarded by the court in accordance with subparagraph (A)(i)(II) or subparagraph (B)(i)(II) does not occur within 5 years of the date of issuance of the court order pursuant to paragraph (10(E) or paragraph (11)(C), the unpaid balance shall be paid within 60 days thereafter.

"(14) TERMINATION OF OIL AND GAS LEASE SUSPENSION.—

"(A) If the court issues an order to suspend all or any part of the oil and gas lease or right to develop pursuant to paragraph (10(E)—

"(i) the Federal coal lessee shall notify the court and the oil and gas developer when the portion of the common area subject to the order

issued pursuant to paragraph (10)(E) is no longer required for mining operations or support facilities; and

"(ii) within 120 days of the date of receipt by the court of the notification pursuant to clause (i) or within 60 days prior to the date on which the period established by the court in the order issued pursuant to paragraph (10)(E) concludes, the oil and gas lessee may petition the court for an order that terminates the suspension and fixes the date and terms on which the oil and gas lessee may resume operations within the portion of the common area subject to the order issued pursuant to paragraph (10)(E).

"(B) The court shall issue the order sought under subparagraph (A)(ii) within 30 days of the date of receipt of the petition pursuant to subparagraph (A)(ii).

"(C)(i) If the oil and gas developer determines that, as a consequence of the order of the court issued pursuant to paragraph (5)(B) and an order to suspend all or any part of the oil and gas lease or right to develop pursuant to paragraph (10)(E), the conditions described in paragraph (10)(A)(iii) exist, the oil and developer may petition the court to terminate the oil and gas and lease or right to develop.

"(ii) The petition referred to in clause (i) may be filed any time after issuance of the order of the court pursuant to paragraph (10)(E) but not later than 120 days after the date of receipt by the court of the notification pursuant to subparagraph (A)(i).

"(iii) Upon receipt of a petition pursuant to clause (i), the court shall make a determination whether to issue an order to terminate the oil and gas lease or right to develop and award an additional amount from the Federal coal lessee to the oil or gas developer and all other owners of any interest in the oil and gas property, as their interests may appear, in accordance with the procedures and deadlines established in paragraphs (1) and (6) through (13).

"(15) TERMINATION OF COAL LEASE SUSPENSION.—

"(A) If the court issues an order requiring suspension of all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit that includes the Federal coal lease pursuant to paragraph (11)(C)—

"(i) the oil and gas developer shall notify the court and the Federal coal lessee when the portion of the common area subject to the order issued pursuant to paragraph (11)(C) is no longer required for gas or oil production from such portion; and

"(ii) within 120 days of the date of receipt by the court of the notification pursuant to clause (i) or within 60 days prior to the date on which the period established by the court in the order issued pursuant to paragraph (11)(C) concludes, the Federal coal lessee may petition the court for an order that fixes the date and terms on which the Federal coal lessee may commence mining operations or construction of support facilities in the portion of the common area subject to the order issued pursuant to paragraph (11)(C) and, if all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit is suspended, terminates the suspension.

"(B) The court shall issue the order sought under subparagraph (a)(ii) within 30 days of the date of receipt of the petition pursuant to subparagraph (A)(ii).

"(C)(i) If the Federal coal lessee determines that, as a consequence of the order of the court issued pursuant to paragraph (11)(C), further development of all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit is impracticable, the Federal coal lessee may petition the court to terminate all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit.

"(ii) The petition referred to in clause (i) may be filed any time after issuance of the order of the court pursuant to paragraph (11)(C) but not later than 120 days after the date of receipt by the court of the notification pursuant to subparagraph (A)(i).

"(iii) Upon receipt of a petition pursuant to clause (i), the court shall make a determination whether to issue an order to terminate all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit and award an additional amount from the oil and gas developer to the Federal coal lessee and all other owners of any interest in the Federal coal lease or logical mining unit, as their interests may appear, in

accordance with the procedures and deadlines established in paragraphs (1) and (6) through (13).

"(16) SUPPLEMENTAL PETITION FOR RELIEF.—

"(A) If, at any time after the issuance of an order pursuant to paragraph (10(E) or paragraph (11)(C), the mining plan that is the basis of the order is altered in a manner that may warrant suspension of an additional part or all of, or termination of, the oil and gas lease or right to develop or suspension of an additional part of the Federal coal lease and/or any non-Federal interest in the local mining unit that includes the Federal coal lease and/or an increase in the sum of money that was awarded under the order, either the Federal coal lessee or the oil and gas developer may, if necessary after compliance with the requirements of subsection (d), file a supplemental petition of relief with the court to amend the order.

"(B) The requirements of paragraphs (1) and (6) through (13) shall apply to the supplemental petition submitted pursuant to subparagraph (A).

"(C)(i) Upon completion of the process required by subparagraph (B), the court shall make a determination whether to suspend an additional part or all of, or terminate, the oil and gas lease or right to develop or to suspend an additional part of the Federal coal lease and/or any non-Federal interest in the logical mining unit as described in, and to award an additional sum of money calculated in accordance with, paragraph (10) or paragraph (11).

"(ii) The court shall issue any order resulting from the determinations made pursuant to clause (i) within 90 days of the date of filing of the supplemental petition for relief.

"(iii) Any award of an additional sum of money shall be paid in accordance with paragraph (13).

"(17) APPEAL OF COURT ORDERS.—

"(A) Any order issued pursuant to paragraph (5)(B), paragraph (5)(E), paragraph (14(B), or paragraph (15)(B) is final and may not be appealed.

"(B) Any order issued pursuant to paragraph (10)(E), paragraph (11)(C), paragraph (14)(C)(iii), paragraph (15)(C)(iii), or paragraph (16)(C)(ii) may be appealed, but the appeal, and any disposition thereof, may not disturb any order referred to in subparagraph (A).

"(18) SUSPENSION TERM.—

"(A) If all or any part of any lease issued pursuant to this Act is suspended in whole or in part by the Secretary or the court under this subsection—

"(i) the lessee shall not be required to pay any rental for the lease for the period of the suspension; and

"(ii) if the lease is a Federal oil or gas lease and is in the primary term or if the lease is a Federal coal lease, the term of the lease shall be extended by the length of the period of the suspension plus one year; or

"(iii) the lease shall not terminate due to lack of production for the period of the suspension plus one year.

"(B) If any non-Federal oil and gas lease or right to develop or any non-Federal interest in a logical mining unit is suspended in whole or in part by the court under this subsection, the court shall establish terms for the suspension comparable to the terms set forth in subparagraph (A).

"(f) LIABILITY LIMITATION.—

"(1) FEDERAL COAL LESSEE—Except as provided in a written agreement reached pursuant to subsection (d)(2) or reached on or after September 1, 1999, and before the date of enactment of this section, or as provided by an order of the court pursuant to subsection (e), neither the holder of a Federal coal lease subject to the agreement or order nor the United States shall be liable to the oil and gas developer of, or any owner of an interest in, any oil and gas property subject to the agreement or order for any decrease in or depletion of, or any impairment of the ability to recover, any gas or oil from the property that may result from the development of any coal on the Federal coal leasehold or within a logical mining unit that includes the Federal coal lease.

"(2) OIL AND GAS DEVELOPER.—Except as provided in a written agreement reached pursuant to subsection (d)(2) or reached on or after September 1, 1999, and before the date of enactment of this section, or as provided by an order of the court pursuant to subsection (e), neither the oil and gas developer of an oil and gas property subject to the agreement or order nor the United States shall be liable to a holder of a Federal coal lease subject to the agreement or order, or any owner of any non-Federal interest in a logical mining unit that includes the Federal coal lease, or the United States for any impairment of the ability

to recover coal from the Federal coal leasehold or logical mining unit that may result from the development of gas or oil on the property.

"(g) CREDIT AGAINST ROYALTIES.—

"(1) IN GENERAL.—

"(A) Whenever a holder of a Federal coal lease is required by a written agreement reached pursuant to subsection (d)(2) and approved by the Bureau of Land Management or reached prior to the date of enactment of this section and approved by the Bureau of Land Management on or after September 1, 1999, or by a court order issued pursuant to paragraph (10(E), paragraph (14)(C)(iii), or paragraph (16)(C)(ii) of subsection (e), to pay an amount for suspension of all or part of, or termination of, a Federal oil and gas lease for coalbed methane located within the Subsection (g) Lands, the amount so paid shall be credited against any royalties on production required by section 7(a) or any other provision of this Act from any lease of Federal coal issued under this Act to such holder or any affiliate thereof.

"(B) Whenever a holder of a Federal oil and gas lease is required by a written agreement reached pursuant to subsection (d)(2) and approved by the Bureau of Land Management or reached prior to the date of enactment of this section and approved by the Bureau of Land Management on or after September 1, 1999, or by a court order issued pursuant to paragraph (11)(C), paragraph (15)(C)(iii), or paragraph (16)(C)(ii) of subsection (e), to pay an amount for suspension or termination of all or part of a Federal coal lease located within the Subsection (g) Lands, the amount so paid shall be credited against any royalties on production required by subsection (b)(1)(A) or subsection (c)(1) of section 17 or any other provision of this Act from any lease of Federal oil and gas issued under this Act to such holder or any affiliate thereof.

"(2) TREATMENT OF ROYALTIES TO STATES.—The Secretary shall pay to the State in which the Federal coal lease or Federal oil and gas lease referred to in paragraph (1)(A) or paragraph (1)(B), respectively, is located 50 percent of the amount of any credit against royalties provided under paragraph (1)(A) or paragraph (1)(B), respectively,—

"(A) in the same manner as if the credit against royalties had been paid in money as royalties and distributed under section 35(a) of this Act; and

"(B) from amounts received as royalties, rentals, or bonuses derived from leases issued under this Act that otherwise would be deposited to miscellaneous receipts under section 35(a) of this Act.

"(B) from amounts received as royalties, rentals, or bonuses derived from leases issued under this Act that otherwise would be deposited to miscellaneous receipts under section 35(a) of this Act.

"(h) DENIAL OF USE AS PRECEDENT.—Nothing in this section shall be applicable to any lease under this Act for any mineral, or shall be applicable to, or supersede any statutory or common law otherwise applicable in, any proceeding in any Federal or State court involving development of any mineral, outside of any common area, as defined in subsection (a)(11), within or outside of the Powder River Basin, as defined in subsection (a)(1).".

SEC. 4. EFFECTIVE DATE.

This Act shall be effective upon the date of its enactment.

2. Amend the title so as to read:

To Amend the Mineral Leasing Act of 1920 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.

PURPOSE OF THE MEASURE

S. 1950 would amend the Mineral Leasing Act by establishing a procedure for resolving disputes over the development of coal and coalbed methane where the development rights are held by different parties.

BACKGROUND AND NEED

The energy-rich Powder River Basin is located in Wyoming and Montana. It contains the largest reserves of coal in the United

States and significant deposits of oil and natural gas. Some of the gas, known as coalbed methane, is captured within the coal seams.

The coal is predominately federally owned and managed by the Bureau of Land Management (BLM), Department of the Interior, either as part of the public domain or reserved by the Government when public domain lands were sold into private ownership under homestead laws enacted in 1909, 1910, and 1916. The oil and gas are under mixed Federal, State, and private ownership. The Federal coal, oil, and gas may be leased for development by the BLM under the Mineral Leasing Act. The State-owned oil and gas are also made available by leasing rights that were conveyed under the three homestead acts. These rights are typically sold or leased to oil and gas developers by successors to the original homesteaders. Last year, the Supreme Court ruled that coalbed methane underlying the homestead lands was conveyed with them as part of the oil and gas estate and not retained by the federal government in the reserved coal estate. Accordingly, rights to develop this privately-owned coalbed methane are leased or sold in the same manner as the development rights for private oil and deep gas.

Production of all three minerals, coal, gas, and oil, is occurring in the Basin. The BLM frequently has issued both coal leases and oil and gas leases for the same locations, allowing the minerals to be developed without restrictions or guidance as to the timing of their respective development processes. Although these minerals are frequently developed sequentially, for safety and operational reasons they typically cannot be developed concurrently. The order of development of the minerals can be important because production of any one of them can result in the loss of another. For example, the coalbed methane will be vented if the coal is mined first; the coal may be bypassed if the coalbed methane owner fails to produce the gas before the mine face progresses past the gas lease. Even if the one resource is not lost, costs can be incurred due to the delay or interruption in its development to accommodate the earlier production of the other resource. In such circumstances, disputes have arisen between the coal developers and the oil and gas developers over their resource development plans.

No clear statutory or regulatory direction to resolve these disputes exists. The Federal lessor, the BLM, historically has taken the position that the disputes must be settled by the lessees. In some situations, the two resources' developers have been able to reach agreement on the timing of development of the multiple minerals in the same location and the equitable compensation the first developer will pay to the second for its losses. There are, however, situations in which the resource developers have not been able to reach an accord. These unresolved disputes create business uncertainties, may make conservation of the resource difficult or impossible, and reduce Federal and State revenues. The legislation is intended to provide statutory direction and establish procedures for resolution of these disputes within a well defined period of time.

LEGISLATIVE HISTORY

S. 1950 was introduced by Senator Enzi for himself and Senator Thomas and referred to the Committee on Energy and Natural Resources on November 17, 1999. The Subcommittee on Forests and

Public Land Management held a hearing on S. 1950 on February 24, 2000.

During the consideration of S. 1950 on June 7, 2000, the Committee on Energy and Natural Resources adopted an amendment in the nature of a substitute offered by Senator Thomas after rejecting a substitute to the Thomas amendment offered by Senator Bingaman. The Committee on Energy and Natural Resources then ordered S. 1950, as amended by the Thomas Substitute, favorably reported.

COMMITTE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 7, 2000, by a majority voice vote of a quorum present recommends that the Senate pass S. 1950 if amended as described herein.

The rollcall vote on the Bingaman substitute to the Thomas substitute was not agreed to by a vote of 9 yeas, 11 nays as follows:

YEAS	NAYS
Mr. Bingaman	Mr. Murkowski
Mr. Akaka [1]	Mr. Domenici [1]
Mr. Dorgan	Mr. Nickles [1]
Mr. Graham	Mr. Craig
Mr. Wyden	Mr. Campbell
Mr. Johnson [1]	Mr. Thomas
Ms. Landrieu [1]	Mr. Smith
Mr. Bayh [1]	Mr. Bunning
Ms. Lincoln	Mr. Fitzgerald
	Mr. Gorton
	Mr. Burns

[1] Indicates vote by proxy.

The Committee adopted the Thomas substitute by voice vote, and ordered S. 1950, as amended, favorably reported by voice vote, with Senator Bingaman asking that his vote against the bill as ordered reported by the Committee be recorded.

COMMITTEE AMENDMENTS

During the consideration of S. 1950, the Committee adopted an amendment in the nature of a substitute offered by Senator Thomas. The major changes made by the Thomas substitute are described in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title.

Section 2 presents findings and purpose.

Section 3 amends the Mineral Leasing Act by renumbering section 44 as section 45 and adding a new section 44.

New section 44(a) defines terms used in the Act.

New subsection (b) contains provisions which emphasize that the bill's dispute resolution proceeding is to be considered and employed as a last resort.

New subsection (c) urges the Secretary of the Interior to use the mineral conservation authorities he possesses to encourage expedited development in the common areas of any federally leased

minerals that otherwise may be lost or bypassed due to the development of another mineral.

New subsection (d) obligates both the coal developer and the oil and gas developer to give written notice to each other and the Secretary if either determines that a common area exists and that coal mining operations are planned in the common area. The subsection also requires the party which provided the notice to attempt to negotiate a written settlement with the other party of any conflicts regarding development in the common area.

New subsection (e) establishes the judicial dispute resolution process that must be used if the negotiations required by subsection (d) do not result in the voluntary settlement of differences between the coal developer and the oil and gas developer.

Paragraph (e)(1) provides that, if the negotiations required under subsection (d) do not result in an agreement regarding priority of mineral development, either the coal developer or the oil and gas developer may file a petition asking the United States District Court to resolve the conflict. The mineral developer which is the petitioner is required to serve the petition on the Secretary and on other mineral developer and any other owners of interests in the lease or development right for that mineral.

Paragraph (e)(2) provides that all parties affected by the petition are automatically joined in the proceedings.

Paragraph (e)(3) allows non-federal respondents to file their responses to the petition within 30 days after receipt of service.

Paragraph (e)(4) provides that within 90 days after the filing of the petition, the Secretary will: (i) verify that a common area exists; (ii) determine that coal mining operations are planned in the common area; and (iii) make an initial determination whether the public interest is best served by delaying or foregoing the oil and gas development or the coal development in the common area. The Secretary will make this decision solely on the basis of which mineral (coal or oil/gas) will generate federal royalties and state severance taxes having the largest net present value. If the mineral which will incur delayed or forgone development is subject to a federal lease, the Secretary will suspend all or any portion of, including any geographical area of or zone or reservoir subject to, the lease to accommodate the development of the other mineral in the common area. The Secretary will report to the Federal district court his determinations and any lease suspension ordered under this paragraph.

Paragraph (e)(5) provides for the District Courts response to the Secretary's determination. If no objection to the Secretary's report is made by the parties to the proceeding, the court shall approve the Secretary's decision. The Court will also suspend all or part of any non-Federal lease or development right necessary to accommodate development of the prevailing mineral interest. If an objection is filed to any determination or lease suspension decision of the Secretary, then the Court shall make an independent determination. If the Secretary's and/or the court's suspension order suspends oil and gas development, that order will set a date on which the coal developer may commence activities in the common area. That date must not be later than the date that the coal developer plans to commence activities in the common area in accordance with the developer's mining plan approved, or submitted for approval, by the

BLM. The suspension will last until the court has determined compensation for lost or foregone oil and gas development and issued its second order in the dispute resolution proceeding under paragraph (10). If the Secretary's and/or the court's order suspends coal development in the common area, that order will prohibit coal mining activities in the common area until compensation is determined for the lost or foregone coal development and a second court order is issued under paragraph (11). The court may receive briefs and/or testimony from the parties to assist it in these determinations.

The Secretary may refrain from issuing a suspension order and the court may refrain from issuing its first order only if either finds that no common area exists or that the coal developer plans no mining operations in the common area. In such a case, the court will dismiss the petition and the dispute resolution proceeding terminates.

Paragraph (e)(6) provides that where all or part of leases are suspended or terminated by order of the Court, the oil and coal developers shall appoint a panel of three experts in the valuation of mineral properties to advise the court in the preparation of the order under paragraph (10) or paragraph (11). Each party must compensate its own selected panel member and share the cost of the third member,

Paragraph (e)(7) requires the mineral developers to submit all relevant data to the expert panel within 30 days of the panel's appointment. It also ensures confidentiality for the data outside of the dispute resolution proceeding. Finally, it allows the coal developer to drill for (but not develop) coalbed methane in spacing units in the common area that have not been drilled by the oil and gas developer, and to submit the drilling information to the panel.

Paragraph (e)(8) provide that, all parties (including the Secretary) may submit briefs and give testimony to the court on the valuation issues described in paragraph (10) or (11) within 45 days and 60 days, respectively, after appointment of the expert panel.

Paragraph (e)(9) requires that within 120 days after the appointment of the expert panel, the panel must issue a report to the court with recommendations regarding the valuation issues described in paragraph (10) or paragraph (11).

Paragraph (e)(10) provides that the court issued an initial order to suspend or terminate the oil and gas lease or development right under paragraph (5), within 210 days the court must make a final determination whether to suspend further or terminate all or part of the oil and gas lease or development right while the coal developers's mining operations occur in the common area. If the court decides to suspend further or terminate all or part of the oil and gas lease or development right, the court must issue a second order to that effect and award to the oil and gas developer and all other owners of interests in the oil and gas property a sum of money from the coal developer equal to the net income lost and unavoidable fixed expenses incurred by the oil/gas interests owners and certain other parties.

Paragraph (e)(11) states that if the court issued an initial order to suspend the Federal coal lease under paragraph (5), within 210 days the court must make a final determination whether to suspend further the Federal coal lease to accommodate oil or gas production in the common area. If the court decides to suspend further

the Federal coal lease in the common area, the court must issue the second order to that effect and award to the coal developer and all other owners of interests in the Federal coal lease a sum of money from the oil and gas developer equal to the net income lost and unavoidable fixed expenses incurred by the Federal coal lease interest owners.

Paragraph (e)(12) specifies that prior to making the determinations required by paragraph (10) or paragraph (11), the court will receive the report of the panel of experts and hold a hearing at which the petitioner and the respondents may question the panel report.

Paragraph (e)(13) provides that the money awarded by the court under paragraph (10) or paragraph (11) will be provided in either of two manners, at the option of the mineral developer which receives the payment. The first manner is full payment within 60 days of the court's order under paragraph (10) or paragraph (11). The second manner is quarterly payments over a five-year period (i) to the oil and gas developer and the other owners of interests in the oil and gas lease or development right in per ton increments as coal is mined, if coal is to be developed first, or (ii) to the to the coal developer and other owners of interests in the Federal coal lease in per barrel or cubic feet increments as oil or gas is extracted, if coal development is delayed.

Paragraphs (e)(14) and (15) provide for conclusion of the development of the economically superior mineral, and lifting of the suspension for development of the other mineral.

If the court has suspended the oil and gas lease or development right in the common area, when the developer determines that it no longer needs the common area for coal mining operations, it must notify the court. The oil and gas developer may then petition the court to terminate the suspension of the oil and gas lease or development right. The court will issue an order granting the petition to terminate the suspension. If the oil and gas developer believes that the court's suspension of the oil and gas lease or development right in the common area has made development of the oil or gas impracticable, the oil and gas developer may petition the court to terminate its lease or development right in the common area.

Conversely, if the court has suspended a Federal coal lease in the common area, when the oil and gas developer determines that it no longer needs the common area for oil or gas extraction activities, it must so notify the court. The coal developer may then petition the court to terminate the suspension of the Federal coal lease. The court will issue an order granting the petition to terminate the suspension of the Federal coal lease. If the coal developer believes that the court's suspension of the lease in the common area makes development impracticable, the developer may petition the court to terminate all or part of the lease.

Paragraph (e)(16) provides that if there is a change in the mine plan that was the basis for the court's order under paragraph (10) or paragraph (11), either party may petition the court for additional relief using procedures similar to those employed in the original petition for relief.

Paragraph (e)(17) provides that lease suspension and termination orders, or orders approving commencement of operations or prohib-

iting operations, or terminating proceedings, are final and may not be appealed.

New subsection (f) states that, except for certain pre-existing agreements, the liability of the United States and oil and gas and coal developers for depletion or impairment in the ability to recover the resource in question shall be limited to amounts ordered by the Court under subsection (e).

New subsection (g) provides that when a court order issued under subsection (e) or an agreement reached under subsection (d) which the BLM ratifies requires a Federal coal lessee to pay an amount of money to the owners of any interest in a Federal oil and gas lease for termination or suspension of coalbed methane rights, the Federal coal lessee, or any of its affiliates, will be allowed to take credits in the same amount against Federal coal royalty payments otherwise due. Likewise, when a court order or an agreement ratified by BLM requires a Federal oil and gas lessee to pay an amount of money to owners of any interest in a Federal coal lease for suspension of the Federal coal lease, the oil and gas lessee, or any of its affiliates, shall be entitled to a credit in the same amount against Federal oil and gas royalty payments otherwise due.

New subsection (h) makes it clear that Congress does not intend that this legislation apply to or affect any other mineral development dispute, or to affect how a court should rule concerning the application of the common law in any such dispute, that is not subject to the bill's dispute resolution procedure or that concerns minerals located outside of the common areas in the Basin.

Section 4 is the effective date and is self explanatory.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 14, 2000.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1950, the Powder River Basin Resource Development Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs), Marjorie Miller and Susan Van Deventer (for the impact on state, local and tribal governments), and Gail Cohen (for the impact on the private sector).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen.)

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1950—Powder River Basin Resource Development Act of 2000—As ordered reported by the Senate Committee on Energy and Natural Resources on June 7, 2000

SUMMARY

S. 1950 would establish a process for resolving disputes over the development of coal and coalbed methane in cases where the rights to develop those resources underlying the same piece of land are owned by different parties. The bill would apply only to certain disputes within the Powder River Basin, located in Wyoming and Montana and depicted on a map identified in the bill. CBO estimates that enacting this legislation would reduce offsetting receipts from royalties on federal resources by at least $13 million over the 2001–2010 period. Because the bill would affect direct spending (including offsetting receipts), pay-as-you-go procedures would apply.

S. 1950 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill could benefit the states of Wyoming and Montana and some tribal governments within those states if the process for revolving disputes allows for the timely development of coal, oil, and gas resources, thereby protecting, and possibly increasing, revenues collected by those governments. Enactment of this legislation would have no impact on the budgets of other state, local and tribal governments.

S. 1950 would impose a private-sector mandate as defined by UMRA on certain developers of mineral resources involved in disputes over the sequence of coal and oil or gas development in the Powder River Basin. CBO estimates that the cost of complying with the mandate would be well below the threshold established by UMRA ($109 million in 2000, adjusted annually for inflation) for any of the first five years that the mandate is in effect.

BACKGROUND

In the Powder River Basin, as in many parts of the west, ownership of the subsurface estate is split: the coal estate, oil and gas estate, and hardrock mineral estate may all be separately owned. Thus, conflicts may arise when overlapping rights to develop those resources are owned by different parties. Historically, lessees of coal rights and lessees of oil and gas rights have been able to develop both resources without significant loss of either resource because traditional oil and gas deposits lie far below the coal resources.

In the past several years conflicts have developed, however, between those who own the right to develop coal resources and those who own the right to develop oil and gas resources, including coalbed methane, underlying the same piece of land. These conflicts mostly concern a recent increase in oil and gas producers' interest in developing coalbed methane, a type of natural gas that is found within coal reserves. Coal and coalbed methane cannot be produced simultaneously, and initial development of one resource can make recovery of the other more expensive, or even impossible.

In response to these types of conflicts between federal lessees, the Bureau of Land Management (BLM) developed a policy, in February 2000, aimed at optimizing the development of both resources.

Historically, conflicts between federal lessees tended to be resolved by allowing the lessee with the older lease to proceed with production ahead of junior lease. In the Powder River Basin, such a policy would tend to favor oil and gas, and hence, coalbed methane producers, whose leases were issued before many federal coal leases. Under BLM's new policy, however, the agency uses its authority under existing law and lease terms to require the optimal sequential recovery of coalbed methane and coal.

MAJOR PROVISIONS

S. 1950 would establish a process for resolving disputes over the development of coal and coalbed methane in cases where the rights to develop those resources underlying the same land are owned by different parties. The bill would apply only to disputes that occur in "common areas" within the Powder River Basin as defined by the bill.

Under S. 1950, coal and oil and gas developers within common areas would be required, at least 240 days prior to the date when their operations are expected to intersect, to notify each other and the Secretary of the Interior of the anticipated conflict. If the parties cannot negotiate a voluntary agreement to settle the conflict, either party could file a petition asking the U.S. District Court to resolve it. The Secretary of the Interior would have 90 days to recommend to the court whether either lease should be suspended to allow production under the other lease to proceed. Within 90 days of receiving the Secretary's recommendations, the District Court would review any objections to those recommendations and, if necessary, issue an order to suspend any federal or nonfederal lease. S. 1950 would require the Secretary and the District Court to make such decisions on the basis of maximizing the net present value of the federal and state income from royalties and severance taxes that would be generated from the production of both resources.

Once the District Court orders or confirms an initial suspension of a lease, S. 1950 would require the court, within 210 days, to determine the amount of compensation to be awarded to the lessee (and all other owners of any interest in the resource) whose lease is suspended or terminated. A panel of experts would advise the court on that amount, which would be based on the amount of net income that would be forgone by owners of any interest in the resource whose production would be delayed as well as the amount of any unavoidable fixed costs incurred by those parties. Decisions regarding compensation awards would be subject to appeal. Under the bill, compensation costs must be paid by the lessee who is permitted to proceed to develop a resource within 62 months of the court order to pay such costs.

S. 1950 would allow certain federal lessees who are ordered by the court to pay compensation to credit such compensation costs against federal royalty payments that would otherwise be due under current law. That provision of the bill also would apply to federal lessees who must pay compensation costs pursuant to certain voluntarily negotiated settlement agreements ratified by BLM on or after September 1, 1999. The royalty credit provision would apply only to conflicts involving federally owned resources that occur within areas identified in the bill.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

For this estimate, CBO assumes that S. 1950 will be enacted near the start of fiscal year 2001. The estimated budgetary impact of S. 1950 on direct spending is shown in the following table. The legislation also would affect spending subject to appropriation, but CBO estimates that any such changes would be less than $500,000 a year. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars				
	2001	2002	2003	2004	2005
CHANGES IN DIRECT SPENDING [1]					
Estimated Budget Authority	3	4	1	2	2
Estimated Outlays	3	4	1	2	2

[1] Implementing S. 1950 also would increase discretionary spending by less than $500,000 a year to conduct the new dispute resolution process.

BASIS OF ESTIMATE

CBO estimates that allowing certain federal lessees to credit their compensation costs against federal royalty payments would reduce federal receipts from those payments. The provisions allowing for royalty credits to pay compensation costs in S. 1950 would apply to a major settlement agreement between a coal operator and an oil and gas operator that has already been resolved. Based on information from BLM and parties to that agreement, CBO estimates that enactment of the bill would allow the operator to claim royalty credits amounting to about $13 million over the 2001–2006 period.

Forgone royalty payments under S. 1950 could be higher over the next 10 years if additional disputes arise between different resource developers, and more compensation costs must be paid. However, the cost of any future compensation paid through royalty credits could be at least partially offset, on a net present value basis, by an increase in receipts from bonus bids paid by companies to secure new leases for federal resources. According to BLM and industry experts, there is considerable uncertainty regarding the number of disputes that may occur in the future. Hence, CBO has no basis for predicting the amount of compensation that may be ordered to be paid in the future, or the effect this might have on bonus bids for land that has not yet been leased.

Royalty payments and compensation credits

Under current law, when federally owned resources are produced, the federal government collects royalty payments from those who lease the right to develop those resources. States generally receive about 50 percent of those receipts. S. 1950 would allow certain federal lessees to take as a credit against royalties due to the federal government the costs of compensation pursuant to a court order issued under S. 1950 or a settlement agreement approved by BLM on or after September 1, 1999. That provision would apply only to conflicts between federal lessees operating within lands referenced in the bill. S. 1950 provides that subsequent payments to states would not be reduced as a result of that provision.

Under S. 1950, certain producers that already have paid bonus bids to secure leases for federal resources within the Powder River Basin could qualify for credits against federal royalty payments. CBO estimates that allowing those lessees to credit their compensation costs against federal royalties would result in forgone offsetting receipts totaling at least $13 million over the 2001–2010 period. That amount is based on information provided by parties to one major recently negotiated settlement agreement that would be included under the royalty credit provisions in S. 1950. Under that agreement, we estimate that the amount of compensation costs that could be credited against royalty payments would be about $3 million in 2001, and $10 million over the 2002–2006 period.

The total amount of forgone receipts from S. 1950's royalty credit provision could be greater depending on whether other eligible settlement agreements or court orders involving existing or future federal leases occur. Because any such effects depend on the outcome of court proceedings or negotiations in involving nonfederal parties, CBO cannot estimate the timing or magnitude of any additional forgone receipts under S. 1950. Although the number of conflicts that might occur is uncertain, we expect that, on average, there would be a couple such conflicts each year. Based on information from BLM and industry representatives, we expect that few, if any, of those conflicts would result in compensation costs as large as those that resulted from the settlement agreement referenced above. Other recent settlement agreements in the region have involved compensation payments of less than $1 million.

Bonus bids

CBO estimates that allowing some federal lessees to take royalty credits could affect bonus bids paid by producers to secure new leases for federal resources, particularly for coal. A bonus bid reflects a company's willingness to pay for the right to develop a federal resource, based on the estimated net present value of that lease to that company. Under current law, coal companies typically take the estimated cost of resolving conflicts with oil and gas producers that may arise into consideration when preparing bonus bids. We expect that allowing certain producers to credit those costs against royalty payments under some future leases would increase the value of those leases to the companies that would bid on them.

Enacting S. 1950 could result in an increase in offsetting receipts from higher bonus bids for coal lease within the areas of the Powder River Basin where the bill's royalty credit provisions would apply. Any higher bonus bids would partially offset, on a present value basis, the cost to the government of forgone royalty payments from those provisions. CBO cannot estimate the timing or magnitude of any increases in bonus bids because such a change would depend on the judgments of resource developers about the likelihood of any future disputes in the Powder River Basin and the outcomes of such disputes. As mentioned above, and based on information from BLM and industry experts, we expect that any increases to bonus bids under S. 1950 would involve leases where compensation costs are likely to range from less than $1 million to no more than $13 million per conflict.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or recipes. Because S. 1950 would affect federal offsetting receipts from royalties and bonus bids, pay-as-you-go procedures would apply. The changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year (in millions of dollars)										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	0	3	4	1	2	2	1	0	0	0	0
Changes in receipts	Not applicable										

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 1950 contains no intergovernmental mandates as defined in UMRA. Coal, oil and gas development generates revenues for state and tribal governments from bonus bids, rents, royalties, and taxes. States received revenues from the development of state-owned resources and share in bonus bids, rentals, and royalties paid to the federal government for federally owned resources. CBO expects that enactment of this legislation could benefit the states of Wyoming, Montana, and some tribal governments within those states insofar as it promotes the timely development of coal, oil, and gas resources in the Powder River Basin.

In a few specific cases, S. 1950 could result in a decrease in revenues to state or tribal governments. Such a decrease could occur if mining of resources owned by states or tribes were delayed or forgone in order to allow mining under a federal lease to proceed, and if the compensation the states or tribal governments received failed to cover their litigation costs.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 1950 would impose a private-sector mandate as defined by UMRA on certain developers of mineral resources involved in disputes over the sequence of coal and oil or gas development in the Powder River Basin. CBO estimates that the cost of complying with the mandate would be well below the threshold established by UMRA ($109 million in 2000, adjusted annually for inflation) for any of the first five years that the mandate is in effect.

The bill would require certain resource developers to participate in a new dispute resolution process when a resource developer with interests that conflict with another developer files a written notice of conflict with the Secretary of the Interior. Typically, conflicts that arise in the Powder River Basin occur when different parties own overlapping rights to develop coal and oil or gas and the two resources cannot be developed simultaneously. Currently, such conflicts between resource developers are settled (with a negotiated settlement or by a court judgment) with one developer compensating the other for lost production or delays in production. The bill's dispute resolution process would require the parties involved

in such a dispute to adhere to time lines, procedures, and compensation mechanisms that differ from practices under current law. Moreover, under the new resolution process, developers would not be able to appeal a court order to suspend or terminate their right to develop a resource. According to most industry experts, the amount of compensation under the bill's dispute resolution process would tend to be less than it would be in the absence of the bill. The cost of the mandate would be the difference between the settlements or judgments (net compensation) that certain developers of mineral resources would be able to obtain under current law and under S. 1950.

Based on information from various industry representatives and state and private geologists, CBO estimates that the current net income of developers of mineral resources who would most likely be subject to compensation under the bill is less than $20 million annually. Further, CBO estimates that net income of those developers would be less than the private-sector threshold even if production and prices of those mineral were to increase significantly over the next five years as some industry observers predict. CBO expects that only a subset of those developers would be affected by the mandate and thus, the cost of the mandate would be some fraction of the net income of the group as a whole. Consequently, CBO estimates that the direct costs of the mandate would be well below the private-sector threshold for at least the first five years that the mandate is in effect. Over time, the potential area of conflict under the bill would expand as mineral producers continue to develop in more areas of the Powder River Basin. Thus, to the extent that conflicts among developers arise in those expanded areas, more developers in those areas would be subject to the bill's dispute resolution process.

ESTIMATE PREPARED BY

Federal Costs: Megan Carroll.

Impact on State, Local, and Tribal Governments: Susan Van Deventer and Marjorie Miller.

Impact on the Private Sector: Gail Cohen.

ESTIMATE APPROVED BY

Peter H. Fontaine, Deputy Assistant Director for Budget Analysis

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1950.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1950, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 7, 2000 the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and budget setting forth Executive agency recommendations on S. 1950. These reports had not been received at the time the report on S. 1950 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

STATEMENT OF JOHN NORTHINGTON, SENIOR ADVISOR TO THE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. Chairman, Members of the Committee, thank you for the opportunity to come before you to provide the Administration's views on S. 1950, another amendment to the Mineral Leasing Act which seeks to ensure the orderly development of coal, coalbed methane, natural gas, and oil in the Powder River Basin of Wyoming and Montana.

Regarding S. 1950, the Bureau of Land Management (BLM) has sought to address the increasing demand for coalbed methane gas. We thank the Members for their assistance as we have dealt with various aspects of this issue. While we appreciate the Committee's interest and effort in attempting to resolve the conflicts between federal oil and gas, coal and coalbed methane interests through S. 1950, we believe this legislation does not provide the most effective remedy to resolve these issues. Consequently, the Department of the Interior cannot support this bill.

Conflicts between federal oil and gas and Federal coal lessees have historically involved oil and gas resources contained in reservoirs much deeper than the coal, thereby allowing for development of one resource without loss of the other. Heightened interest in coalbed methane development has prompted the BLM to take a second look at these conflicts and put into place a policy which coincides with our mandate to maximize recovery of all the resources. The BLM has existing authority under the Mineral Leasing Act and federal regulations to resolve the conflicts presented in such instances. In rectifying these disputes, we have three goals in mind—(1) protect the rights of its lessee under the terms of its lease and the Mineral Leasing Act, including implementing regulations and those concerning conservation of natural resources; (2) optimize the recovery of both resources, thereby maximizing the return to the public; and, (3) optimize the return to the public while protecting public safety and the environment and minimizing impacts on local communities.

Our policy provides that the initial course of action is to facilitate an agreement between the lessees. However, absent a settlement, we can and will utilize existing law and regulations in conjunction with the lease provisions to optimize recovery of both resources. We expect a vast number

of oil and gas operators will readily comply with the BLM's regulatory and statutory orders. As a reinforcement measure, we would not oppose legislation which seeks to strengthen our sanctioning power in cases where such operators fail to comply. The BLM believes this approach will allow for needed flexibility and use of judgment in individual circumstances. While the BLM has sought to work diligently with Committee staff to craft legislation to appropriately address this issue, S. 1950 deprives the Bureau and industry of these options.

First, the bill is limited to the Powder River Basin of Wyoming and Montana. As noted in the bill, the Powder River Basin is indeed one of the world's richest energy resource regions with significant deposits of oil and natural gas, including coalbed methane. However, it is not the only area of potential conflict. As development occurs in coalbed methane basins throughout the United States—specifically, Utah, Colorado and New Mexico, the potential for conflict remains. These disputes can be resolved by BLM under our current regulatory and statutory authority. Were S. 1950 to become law, unwarranted and unnecessary precedent could be set for additional legislation to resolve similar conflicts in other areas.

Second, the legislation usurps the regulatory authority of the Secretary of the Interior and the BLM with regard to such matters as suspension of leases, termination of leases, and public interest determinations and diligence, by placing these responsibilities under the jurisdiction of the courts. Further, any financial loss incurred by the dominant coal or oil and gas lessee as a result of the court's decision or an agreed upon settlement rests with the American taxpayer. The prevailing party can recapture any costs incurred through credit against future royalty. In addition, the bill mandates that the taxpayer bears the cost of compensating the state for its share of loss royalties—requiring the Secretary to compensate the state for 50% of any credit against royalties provided. Fundamental fairness dictates that the state share equally in the risk associated with such conflicts by sharing in the expense of compensating one of the lessees. For taxpayers to bear these costs while states remain financially whole is neither a standard nor a precedent we wish to set.

Finally, Federal laws, regulations and lease terms applicable to federal mineral development provide authority to the Secretary, upon determination that it is in the public interest, to conserve natural resources, to encourage the greatest ultimate recovery, and to protect the interests of the United States. Accordingly, the BLM is vested with authority to require cooperative development and the power to suspend operations of oil and gas leases, and to direct the rate of oil and gas development. Likewise for coal, BLM has authority to suspend lease operations, to ensure Maximum Economic Recovery through approval of a Resource Recovery and Protection Plan, and to order immediate cessation of mining operations for non-compliance

with the regulations or lease terms. Under these existing laws and authorities, the BLM is able to promote orderly, environmentally sound development of all of the resources in the Powder River Basin and elsewhere without detriment to the others.

The best case scenario provides that both coal and oil and gas producers will converge and develop a production agreement which promotes the greatest recovery of the coalbed methane, coal, natural gas and oil resources. The BLM stands ready to assist and foster this effort. However, in cases where these entities cannot agree, the BLM is also poised to exercise its existing authority to ensure optimized production of each resource.

Coalbed methane development and production has increased at an unprecedented rate, and we appreciate the Committee's support and assistance as the BLM has sought to address the many issues surrounding this boom. We look forward to continuing to work with you as we operate within our current authorities to promote orderly development of these resources in conflict areas.

Thank you for the opportunity to testify before you today. I welcome any questions the Committee may have.

MINORITY VIEWS OF SENATOR BINGAMAN ON S. 1950

S. 1950 turns over the Federal Government's power of eminent domain to private mining companies so that they might take the private property rights of other mining companies. To the best of my knowledge, this measure is unprecedented. While some of the states have extended state eminent domain authority to mining companies, I am not aware of any instance in which Congress has farmed out the federal eminent domain power to private mining company to use for its economic advantage.

To make matters worse, the bill abandons the traditional, constitutional "public interest" test for when the United States may take private property in favor of a new economic test that simply measures which source is more valuable. It replaces the traditional fair market value measure of just compensation with a new loss of income plus consequential damages standard and passes the entire expense on to the Federal Treasure and, ultimately, the taxpayers. And, instead of relying on traditional condemnation law and procedures, it erects a complex and cumbersome new system.

Although I strongly disagree with the approach taken in S. 1950, I recognize that the bill is a well intended effort to resolve a serious conflict between the owners of coal beds in the Powder River Basin and the owners of the coalbed methane imbedded with in the coal. Ownership of the two resources often lies in separate hands and one resource cannot be extracted without loss of interference with the other.

The Supreme Court recognized the possibility of this conflict when it ruled little more than a year ago that coalbed methane was not part of the coal estate. "Were a case arise in which there are two commercially valuable estates and one is to be damaged in the course of extracting the other," the Court said, "a dispute might result, but it could be resolved in the ordinary course of negotiation or adjudication." Time has proved the Court correct. The two major conflicts between coal and coalbed methane producers in the Powder River Basin have been resolved by the parties without legislation, without the use of eminent domain, and without taxpayer subsidies.

Even so, I was willing in Committee to agree to a reasonable legislation solution to the problem. I offered a substitute to Senator Thomas's substitute, which would have allowed the Secretary of the Interior to begin eminent domain proceedings to acquire the rights to coalbed methane deposits on behalf of the coal owner where the Secretary determined that the public interest in the timely and orderly development of the coal outweighed the public interest in the development of the coalbed methane. Unlike S. 1950 and Senator Thomas's substitute, my proposal would have made use of existing condemnation law and procedures. Regrettably, the Committee voted down my substitute on a party-line vote and

adopted Senator Thomas's substitute, which retains the serious problems inherent in S. 1950 as originally introduced.

JEFF BINGAMAN.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1950, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MINERAL LEASING ACT

* * * * * * *

SEC. 44. DEVELOPMENT OF COAL, NATURAL GAS, AND OIL IN THE POWDER RIVER BASIN.

(a) DEFINITIONS.—As used in this section:

(1) The term "Powder River Basin" or "Basin" means the area designated as "Powder River Basin" on a map entitled "MLA Section 44 Powder River Basin Area," dated July 1, 1999, and on file in the Wyoming and Montana State Offices of the Bureau of Land Management, Department of the Interior.

(2) The term "Subsection (g) Lands" means the area designated as "Subsection (g) Lands" on the map described in paragraph (1).

(3) The term "Secretary" means the Secretary of the Interior.

(4) The term "Federal coal lease" means a lease of Federal coal in the Basin issued pursuant to this Act.

(5) The term "Federal coal lessee" means the holder of a Federal coal lease.

(6) The term "Federal oil and gas lease" means a lease of Federal oil and gas in the Basin issued pursuant to the Act.

(7) The term "oil and gas lease or right to develop" means a Federal oil and gas lease or a lease for or right to develop oil and gas in the Basin provided by a State or private owner of the resources.

(8) The term "non-Federal oil and gas lease or right to develop" means a lease for or right to develop oil and gas in the Basin provided by a State or private owner of the resources.

(9) The term "oil and gas developer" means the holder of an oil or gas lease or right to develop.

(10) The term "oil and gas property" means an area in the Basin which is subject to an oil or gas lease or right to develop held by an oil or gas developer.

(11) The term "common area" means an area in the Basin in which all or a portion of a Federal coal lease (including any area of State or private coal within a logical mining unit with the Federal coal lease) overlaps all or a portion of an oil and gas property.

(12) The term "approved or proposed mining plan" means a mining plan that is approved by, or has been submitted for the approval of, the Secretary.

(13) The term "coalbed methane" shall be the meaning given that term in section 1339(p)(2) of the Energy Policy Act of 1992 (106 Stat. 2992, 42 U.S.C 13368(p)(2)).

(14) The term "owners of any interest in the oil and gas property" means persons who own the working interest, lease inter-

est, operating interest, mineral interest, royalty interest, or any other interest in the oil and gas property, and any other persons who might receive compensation for unavoidable fixed expense under an order concerning the oil and gas property issued pursuant to subsection (e)(10)(E).

(15) The term "owners of any non-Federal interest in the oil and gas property" means all owners of any interest in the oil and gas property except the Federal government or any agency or department thereof.

(16) The term "develop" or "development" means to develop or to produce, or both, or the development or production, or both, respectively, including all incidental operations.

(b) PARTIES ENCOURAGED TO ENTER INTO WRITTEN AGREEMENT.—In any common area, the Federal coal lessee and oil and gas developer, subject to applicable Federal and State laws, regulations, and lease terms, may and are encouraged to enter into a written agreement that details operations and assigns or assesses costs or compensation for the concurrent or sequential development of those resources.

(c) MINERAL CONSERVATION.—The Secretary shall employ any authority the Secretary possesses to encourage expedited development of any oil and gas resources and any coal resource that—

(1) are leased pursuant to this Act;

(2) are within common areas; and

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

(d) NEGOTIATIONS CONCERNING DEVELOPMENT PRIORITY FOR CERTAIN OPERATIONS IN THE BASIN.—

(1) OBLIGATION TO PROVIDE WRITTEN NOTICE OF CONFLICT.—Whenever a Federal coal lessee or an oil and gas developer determines that its Federal coal lease (or a logical mining unit including the Federal coal lease) or its oil and gas property is located in a common area, and, pursuant to an approved or proposed mining plan, mining operations or facilities in support of mining for coal on the Federal coal lease or the logical mining unit will be located within the common area, the Federal coal lessee or the oil and gas developer shall deliver written notice of the determination to the other party and the Secretary no later than 240 days prior to the date on which the mining operations or construction of the mine support facilities is projected by the approved or proposed mining plan to commence in the common area.

(2) OBLIGATION TO NEGOTIATE.—Promptly after providing the notice referred to in paragraph (1), the party which provided the notice shall seek to negotiate a written agreement with the other party that resolves any conflict between the development of gas or oil and development of coal in the common area.

(e) COMPENSATION PROCEDURES FOR ASSIGNMENT OF DEVELOPMENT PRIORITY.—

(1) PETITION FOR RELIEF.—

(A) If notice is submitted timely pursuant to subsection (d)(1) and the Federal coal lessee and the oil and gas developer engage in negotiations, but do not reach agreement, pursuant to subsection (d)(2), the Federal coal lessee or the

oil and gas developer may file a petition for relief as described in subparagraph (C) in the United States district court for the district in which the common area is located on any date which is not less than 180 days prior to the date on which the mining operations or construction of the mine support facilities is projected by the approved or proposed mining plan to commence in the common area.

(B) The petitioner shall serve the oil and gas developer or the Federal coal lessee, as the case may be, and the Secretary with a copy of the petition for relief on the same date upon which the petition is filed with the court pursuant to subparagraph (A).

(C) The petition for relief shall include the following:

(i) A description and map of the Federal coal lease, the oil and gas property, and the common area.

(ii) A list containing the names and addresses of all owners of any non-Federal interest in the oil and gas property and all owners of any non-Federal interest in the Federal coal lease or logical mining unit. The petitioner shall list those owners of any non-Federal interest in the oil and gas property and of the Federal coal lease or logical mining unit whom the petitioner is able to ascertain from the properly indexed records of the county recorder of the county or counties in which the oil and gas property and Federal coal lease or logical mining unit are located, and the respondent shall file with the court and serve on the petitioner and the Secretary any corrections of, additions to, or deletions from the list known to the respondent within 10 days of the date of service of the petition for relief pursuant to subparagraph (B). Thereafter, whenever any correction of, addition to, or deletion from the list becomes known to either the petitioner or the respondent, that party shall promptly file with the court and serve on the other party and the Secretary the addition, correction, or deletion. Any person who believes he or she is an owner of any non-Federal interest in the oil and gas property or in the Federal coal lease or logical mining unit and is omitted from the list may file a motion in the court to be added to the list at any time prior to the issuance of an order pursuant to paragraph (10)(E) or paragraph (11)(C).

(iii) A certified copy of the notice described in subsection (d)(1).

(iv) A sworn statement by a senior officer of the petitioner with authority to commit the petitioner in any negotiation under subsection (d)(2) stating, and all documents demonstrating, that the petitioner negotiated or attempted to negotiate in good faith with the respondent a voluntary agreement, pursuant to subsection (d)(2).

(D) The Federal coal lessee shall submit a copy of the approved or proposed mining plan for the mining operations

or support facilities that are the subject of the petition for relief—

(i) with the petition for relief if the Federal coal lessee is the petitioner; or

(ii) within 5 days of the date of service of the petition for relief pursuant to subparagraph (B) if the Federal coal lessee is the respondent.

(2) JOINDER OF PARTIES.—The Secretary and all owners of any non-Federal interest in the oil and gas property and in the Federal coal lease or logical mining unit identified pursuant to paragraph (1)(C)(ii) shall be joined in the proceedings established pursuant to this subsection.

(3) PARTIES' RESPONSE TO PETITION.—The non-Federal respondent or respondents may provide to the Secretary a response to the petition within 30 days from the date of filing of the petition for relief pursuant to paragraph (1)(A). The Secretary may require the petitioner and the respondent or respondents to submit such documents and/or provide such testimony as the Secretary deems appropriate within 60 days of such date of filing.

(4) SECRETARY'S INITIAL RESPONSE TO PETITION.—Within 90 days of the date of filing of the petition for relief pursuant to paragraph (1)(A) the Secretary shall take the follow actions:

(A) The Secretary shall determine, with petitioner having the burden of proof—

(i) whether a common area exists; and

(ii) whether the approved or proposed mining plan submitted pursuant to paragraph (3)(D) provides for the mining operations to intersect, or the mine support facilities to be constructed in, any portion of the common area.

(B)(i) If existence of the common area and intersection of, or construction in, the common area are determined pursuant to subparagraph (A), the Secretary shall determine whether the public interest is best realized by delaying or forgoing development of either—

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

(II) the coal resource to permit commencement or continuation of the development of the oil or gas resource in the common area after the date on which the mining operations or construction of the mine support facilities is projected by the approved or proposed mining plan to commence in the common area.

(ii) The Secretary shall make the public interest determination described in clause (i) solely by the calculation of the greater economic benefit to be realized by comparison, on a net present value basis, of the Federal and State revenues from royalties and severance taxes likely to be generated from each resource underlying the common area to which the petition for relief applies.

(C)(i) If any portion of the resource for which delayed or forgone development is determined to be in the public interest pursuant to subparagraph (B) is subject to a lease issued pursuant to this Act, the Secretary shall suspend all or any portion of, including any geographical area of or zone or reservoir subject to, the lease to accommodate development of the other resource in the common area during the period beginning on a date no later than the commencement date referred to in paragraph (1)(A) and provided in the notice submitted pursuant to paragraph (1)(C)(iii) and ending on the date on which an order is issued pursuant to paragraph (10)(E) or paragraph (11)(C).

(ii) The Secretary may refrain from either making the determinations required by subparagraphs (A) and (B) or suspending all or any portion of a lease issued pursuant to this Act as required by clause (i) only if the Secretary determines that—

(I) no common area exists; or

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

(D) The Secretary shall—

(i) report the determinations made pursuant to subparagraph (A) and (B) or subparagraph (C)(ii) and any suspension made pursuant to subparagraph (C)(i), including the administrative record therefor, with the court in which the petition for relief is filed pursuant to paragraph (1)(A); and

(ii) provide the petitioner and respondent or respondents with copies of the report and record.

(5) COURT INITIAL RESPONSE TO PETITION.—

(A)(i) The court in which the petition is filed pursuant to paragraph (1)(A) shall have exclusive jurisdiction to receive and review the report of the Secretary required by paragraph (4)(D), and the determinations made and any action taken by the Secretary pursuant to paragraph (4).

(ii) The petitioner and respondent or respondents shall have 30 days from the date upon which the report of the Secretary is filed with the court pursuant to paragraph (4)(D) in which to file with the court any objection to any determination of the Secretary required by paragraph (4).

(iii) If any objection is filed pursuant to clause (ii), the court shall, within 60 days of receipt of the report of the Secretary pursuant to paragraph (4)(D), make the determination that is the subject of the objection on the basis of the administrative record filed with the report and in accordance with the applicable requirements or standards of subparagraph (A) or subparagraph (B) of paragraph (4).

(iv) Any determination made by the court pursuant to clause (iii) shall be an independent judicial determination that is de novo, without regard to the prior determination of the Secretary.

(v) If no objection is filed pursuant to clause (ii), the determinations of the Secretary required by paragraph (4) shall be final and approved by the court in the order issued pursuant to subparagraph (B) or subparagraph (E).

(B) Within 90 days of the date of receipt of the report of the Secretary pursuant to paragraph (4)(D), the court, except as provided in subparagraph (E), shall issue an order that—

(i) suspends all or any part of, including any geographical area of or reservoir subject to, any non-Federal oil and gas lease or right to develop, or any non-Federal interest in any logical mining unit that includes the Federal coal lease, in the common area in accordance with the determination of the Secretary pursuant to subclause (I) or subclause (II), respectively, of paragraph (4)(B)(i) or in accordance with the determination of the court pursuant to subparagraph (A)(iii); and

(ii) if required by a determination of the court pursuant to subparagraph (A)(iii), terminates a suspension of a lease issued pursuant to this Act imposed by the Secretary pursuant to paragraph (4)(C)(i), or imposes a suspension of a lease issued pursuant to this Act, or both, in accordance with the determination; and

(iii) if all or any part of the oil and gas lease or right to develop is suspended pursuant to paragraph (4)(C)(i) or this subparagraph, fixes the date upon which the Federal coal lessee may commence mining operations or construction of mine supported facilities in the common area, which may be no later than the commencement date referred to in paragraph (1)(A) and provided in the notice submitted pursuant to paragraph (1)(c)(iii), except for good cause shown; and

(iv) if all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit that includes the Federal coal lease is suspended pursuant to paragraph (4)(C)(i) or this paragraph, prohibits the mining operations from intersecting, or the support facilities from being constructed in, all or a portion of the common area.

(C) The order of the court issued pursuant to subparagraph (B) shall expire upon the issuance of an order pursuant to paragraph (10)(E) or paragraph (11)(C).

(D) The court may refrain from issuing the order required by subparagraph (B), only if—

(i) the Secretary makes a determination described in paragraph (4)(C)(ii); or

(ii) the court, acting on an objection filed pursuant to subparagraph (A)(ii), determines that—

(I) no common area exists; or

(II) the approved or proposed mining plan submitted pursuant to paragraph (1)(D) does not provide for the mining operations to intersect, or the mine support facilities to be constructed in, the common area.

(E) If the Secretary makes a determination described in paragraph (4)(C)(ii) or the court makes a determination described in subparagraph (D)(ii), the court shall issue an order terminating the proceeding under this subsection.

(6) VALUATION PROCEDURE: APPOINTMENT OF EXPERTS.—

(A) Within 30 days of the date of issuance of an order pursuant to paragraph (5)(B), to assist the court in making the determinations pursuant to paragraph (10) or paragraph (11), the Federal coal lessee and the oil and gas developer shall each appoint a person who is an expert in appraising the value of, and right to develop, gas or oil if all or any part of the oil and gas lease or right to develop is suspended, or coal if all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit that includes the Federal coal lease is suspended, pursuant to paragraph (4)(C) and/or paragraph (5)(B), and these persons shall agree upon and appoint a third person with such expertise. If no agreement is reached on the date of appointment of a third person, the court shall make the appointment.

(B) The Federal coal lessee shall be responsible for compensation of the expert appointed by it; the oil and gas developer shall be responsible for compensation of the expert appointed by it; and the Federal coal lessee and oil and gas developer shall each pay one-half of the compensation for the third expert.

(7) INFORMATION AND DATA.—

(A) The Federal coal lessee, oil and gas developer, and Secretary shall each submit to the panel of experts within 30 days of the date of appointment of the panel pursuant to paragraph (6) all information and data in the possession of such party that is pertinent to the determinations to be made pursuant to paragraph (10) or paragraph (11), and shall each submit to the panel of experts thereafter any additional pertinent information and data in the possession of such party that the panel requests of such party in writing.

(B) Except as provided in subparagraph (C), the court shall ensure that any information and data submitted to the panel of experts pursuant to subparagraphs (A) and (D) shall have the protection of confidentiality that is applicable, and may be accorded, to them by and the federal rules of civil procedure and evidence.

(C) All information and data submitted to the panel of experts pursuant to subparagraphs (A) and (D) shall be available for review by all parties unless an ex parte order is issued by the court.

(D)(i) The Federal coal lessee may drill for an otherwise collect data or information on coalbed methane at any site or sites within the common area that are not within a spacing unit containing a well that is producing or capable of producing coalbed methane under the conditions set forth in clause (ii).

(ii) The drilling or collection of data or information authorized by clause (i) shall be for the sole purpose of sub-

mission of information and data pursuant to this paragraph.

(iii) The Federal coal lessee shall not produce any coalbed methane as a result of any drilling authorized by clause (i) and shall comply with any Federal or State requirements applicable to such activity.

(iv) The Federal coal lessee shall submit to the Secretary an exploration plan to conduct any drilling pursuant to clause (i). The Secretary shall approve, approve as modified, or reject the plan, within 15 days of the date of its submission. The Secretary may modify or reject the plan only for good cause fully set forth in writing and provided to the Federal coal lessee. The Federal coal lessee shall adhere to the plan, as approved by the Secretary.

(8) SUBMISSION OF BRIEFS AND HEARING.—

(A) Within 45 days of the date of appointment of the panel of experts pursuant to paragraph (6), all parties may submit briefs concerning the determinations to be made pursuant to paragraph (10) or paragraph (11).

(B) Within 60 days of the date of appointment of the panel of experts pursuant to paragraph (6), the panel may, or if requested by the petitioner or a respondent shall, receive testimony from all parties concerning the determination to be made pursuant to paragraph (10) or paragraph (11).

(9) EXPERTS REPORT.—Within 120 days of the date of appointment of the panel of experts pursuant to paragraph (6), the panel shall submit a written report to the court providing in detail the panel's recommendations on the determinations to be made pursuant to paragraph (10) or paragraph (11).

(10) COURT'S FINAL RESPONSE TO PETITION: VALUATION CONCERNING ECONOMICALLY RECOVERABLE OIL OR GAS RESOURCES LOST OR DELAYED, SUSPENSION OR TERMINATION, AND PAYMENT ORDER.—Within 210 days of the date of issuance of an order pursuant to paragraph (5)(B), by which, or by any action of the Secretary pursuant to paragraph (4)(C)(i), all or any part of the oil and gas lease or right to develop is suspended, the court shall take the following actions:

(A)(i) The court shall determine whether, as a result of the order or any action of the Secretary, all or any part of, including any geographical area of or zone or reservoir subject to, the oil and gas lease or right to develop should be suspended during any remaining period in which the mining operations or support facilities occupy the common area or whether the oil and gas lease or right to develop should be terminated.

(ii) Any determination to suspend pursuant to clause (i) shall, wherever possible or appropriate, limit the suspension or phase the suspension to permit the optimum development of the oil or gas prior to the time at which the mining operations would reach the area within the common area that is subject to the suspension or particular phase of the suspension.

(iii) Any determination to terminate pursuant to clause (i) shall be made only if the court finds that the economically recoverable oil and gas resources subject to compensation pursuant to subparagraph (E) would be entirely lost or rendered impracticable to produce as a consequence of the mining operations in the common area and that such resources constitute all of the economically recoverable resources within the oil and gas property.

(B) If the court makes a determination to suspend pursuant to subparagraph (A), the court shall determine—

(i) the amount of any net income that will not be realized due to delay in development of economically recoverable resources of oil or gas, other than coalbed methane, from the common area, whether or not such development has commenced;

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

(I) delay in development of economically recoverable resources of coalbed methane in the common area; and

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

(III) the loss of any economically recoverable resources of coalbed methane underlying any area that is within the oil and gas property associated with the common area and that extends outward from each exposed coal face of the mining operations for a distance from which drainage of such resources is established to the satisfaction of the court; and

(iii) any of the following damages that will be incurred by the owners of any interest in the oil and gas property as a consequence of the suspension: any unavoidable fixed expenses (including, but not limited to, the expense of shutting in production from, maintenance of, testing of, and redrilling or reconnecting an existing well; relaying pipeline; and all other expenses reasonably related to reestablishing any existing oil or gas production); expenses associated with stranded costs of drilling equipment and facilities; any lost royalties on oil or gas not produced by the oil and gas developer; and any lost income associated with temporarily shutting in production from wells outside of the common area as needed for reconnection to a gathering system or pipeline to market.

(C) The determinations made pursuant to subparagraph (B) shall not include any decrease in net income or damages resulting from loss of any oil or gas resources that occurred before the date of the determinations and is caused by mining within or outside of the common area on the Federal coal lease or logical mining unit that is the subject

of the common area determination made pursuant to paragraph (4)(A)(i).

(D) If the court makes a determination to terminate pursuant to subparagraph (A), the court shall determine the amount of any net income that will not be realized and any damages due to the loss of, or impracticability to produce the economically recoverable resources of oil or gas in the oil and gas property in the same manner as provided in subparagraph (B).

(E) The court shall issue an order that—

(i) suspends all or any part of, suspends in phases parts of, or terminates the oil and gas lease or right to develop, including any applicable payment or production obligations, in accordance with the determination made pursuant to subparagraph (A); and

(ii) awards to the oil and gas developer and all other owners of any interest in the oil and gas property, as their interests may appear, a sum of money from the Federal coal lessee equal to the net income amount and damages determined pursuant to subparagraph (B) or subparagraph (D).

(F) In determining the amount of net income that will not be realized pursuant to subparagraph (B) or subparagraph (D) and the sum of money to be awarded pursuant to subparagraph (E), the court shall ensure to the best of its ability that the Federal coal lessee is not required to pay for the same gas lost, delayed in development, or rendered impracticable to develop to more than one oil and gas developer or the owners of any interest in more than one oil and gas property.

(11) COURT'S FINAL RESPONSE TO PETITION: VALUATION CONCERNING ECONOMICALLY RECOVERABLE COAL RESOURCES LOST OR DELAYED, SUSPENSION OR TERMINATION AND PAYMENT ORDER.—Within 210 days of the date of issuance of an order pursuant to paragraph (5)(B) by which, or by any action by the Secretary pursuant to paragraph (4)(C)(i), the Federal coal lease and/or any non-Federal interest in the logical mining unit is suspended, the court—

(A) shall determine whether, as a result of the order or any action of the Secretary, the Federal coal lease and/or any non-Federal interest in the logical mining unit shall be suspended in whole or in part to further accommodate oil or gas development in the common area; and

(B) shall determine the amount of any net income that will not be realized from the loss or delay in development of economically recoverable resources of coal, and the unavoidable fixed expenses (including, but not limited to, additional expenses associated with reclamation, expenses associated with stranded costs of mining equipment and facilities, a proportionate refund of the lease bonus, and any lost royalties on coal not produced by the Federal coal lessee) that will be incurred, by the Federal coal lessee as a consequence of the suspension; and

(C) shall issue an order that—

(i) suspends, in accordance with the determination made pursuant to subparagraph (A), all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit, including any applicable payment or production obligations on the lease or logical mining unit, for the period necessary for expeditious development in the common area of the gas or oil that is the subject of the petition for relief as demonstrated to the court in a production plan submitted by the oil and gas developer; and

(ii) awards to the Federal coal lessee and all other owners of any interest in the Federal coal lease or logical mining unit, as their interests may appear, a sum of money equal to the net income amount and unavoidable fixed expenses determined pursuant to subparagraph (B).

(12) REVIEW OF EXPERTS' REPORT.—

(A) The court shall make the determinations required by paragraph (10) or paragraph (11) after reviewing the report of the panel of experts submitted pursuant to paragraph (9) and the hearing required by subparagraph (B).

(B) After submission of the report of the panel of experts pursuant to paragraph (9) and prior to making the determinations required by paragraph (10) or paragraph (11), the court shall hold a hearing in which the panel of experts shall present their report and the parties to the proceeding shall have the opportunity to examine the panel and provide to the court any evidence or arguments they may have to support or contravene the recommendations of the report.

(13) DISBURSEMENT OF PAYMENTS.—

(A)(i) At the election of the oil and gas developer, the sum of money awarded by the court pursuant to paragraph (10)(E) shall be—

(I) paid in full within 60 days of the date of issuance of the order pursuant to paragraph (10)(E); or

(II) divided into the number of tons of recoverable coal in the common area and paid in per ton increments as the coal is mined in accordance with clause (ii) and subparagraph (C).

(ii) The Federal coal lessee shall make the payments required by clause (i)(II) on a quarterly basis in advance based on the Federal coal lessee's estimate of the number of tons of coal to be mined in the common area during the following quarter, and shall add or subtract an amount to or from the advance payment for the next quarter to reflect the coal actually sold or transferred.

(B)(i) At the election of the Federal coal lessee, the sum of money awarded by the court pursuant to paragraph (11)(C) shall be:

(I) paid in full within 60 days of the date of issuance of the order pursuant to paragraph (11)(C); or

(II) divided into the number of barrels of recoverable oil or cubic feet of recoverable gas in the common area and paid in per barrel or cubic feet increments as the

oil or gas is produced in accordance with clause (ii) and subparagraph (C).

(ii) The oil and gas developer shall make the payments required by clause (i)(II) on a quarterly basis in advance based on the oil and gas developer's estimate of the number of barrels of oil or cubic feet of gas to be produced in the common area during the following quarter, and shall add or subtract an amount to or from the advance payment for the next quarter to reflect the oil or gas actually produced.

(C) If the mining or production necessary to make full payment of the sum of money awarded by the court in accordance with subparagraph (A)(i)(II) or subparagraph (B)(i)(II) does not occur within 5 years of the date of issuance of the court order pursuant to paragraph (10)(E) or paragraph (11)(C), the unpaid balance shall be paid within 60 days thereafter.

(14) TERMINATION OF OIL AND GAS LEASE SUSPENSION.—

(A) If the court issues an order to suspend all or any part of the oil and gas lease or right to develop pursuant to paragraph (10)(E)—

(i) the Federal coal lessee shall notify the court and the oil and gas developer when the portion of the common area subject to the order issued pursuant to paragraph (10)(E) is no longer required for mining operations or support facilities; and

(ii) within 120 days of the date of receipt by the court of the notification pursuant to clause (i) or within 60 days prior to the date on which the period established by the court in the order issued pursuant to paragraph (10)(E) concludes, the oil and gas lessee may petition the court for an order that terminates the suspension and fixes the date and terms on which the oil and gas lessee may resume operations within the portion of the common area subject to the order issued pursuant to paragraph (10)(E).

(B) The court shall issue the order sought under subparagraph (A)(ii) within 30 days of the date of receipt of the petition pursuant to subparagraph (A)(ii).

(C)(i) If the oil and gas developer determines that, as a consequence of the order of the court issued pursuant to paragraph (5)(B) and an order to suspend all or any part of the oil and gas lease or right to develop pursuant to paragraph (10)(E), the conditions described in paragraph (10)(A)(iii) exist, the oil and gas developer may petition the court to terminate the oil and gas lease or right to develop.

(ii) The petition referred to in clause (i) may be filed any time after issuance of the order of the court pursuant to paragraph (10)(E) but not later than 120 days after the date of receipt by the court of the notification pursuant to subparagraph (A)(i).

(iii) Upon receipt of a petition pursuant to clause (i), the court shall make a determination whether to issue an order to terminate the oil and gas lease or right to develop and award an additional mount from the Federal coal lessee to

the oil or gas developer and all other owners of any interest in the oil and gas property, as their interests may appear, in accordance with the procedures and deadlines established in paragraphs (1) and (6) through (13).

(15) TERMINATION OF COAL LEASE SUSPENSION.—

(A) If the court issues an order requiring suspension of all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit that includes the Federal coal lease pursuant to paragraph (11)(C)—

(i) the oil and gas developer shall notify the court and the Federal coal lessee when the portion of the common area subject to the order issued pursuant to paragraph (11)(C) is no longer required for gas or oil production from such portion; and

(ii) within 120 days of the date of receipt by the court of the notification pursuant to clause (i) or within 60 days prior to the date on which the period established by the court in the order issued pursuant to paragraph (11)(C) concludes, the Federal coal lessee may petition the court for an order that fixes the date and terms on which the Federal coal lessee may commence mining operations or construction of support facilities in the portion of the common area subject to the order issued pursuant to paragraph (11)(C) and, if all or any part of the Federal coal lease and/or non-Federal interest in the logical mining unit is suspended, terminates the suspension.

(B) The court shall issue the order sought under subparagraph (A)(ii) within 30 days of the date of receipt of the petition pursuant to subparagraph (A)(ii).

(C)(i) If the Federal coal lessee determines that, as a consequence of the order of the court issued pursuant to paragraph (11)(C), further development of all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit is impracticable, the Federal coal lessee may petition the court to terminate all or part of the Federal coal lease and/or any non-Federal interest in the logical mining unit.

(ii) The petition referred to in clause (i) may be filed any time after issuance of the order of the court pursuant to paragraph (11)(C) but not later than 120 days after the date of receipt by the court of the notification pursuant to subparagraph (A)(i).

(iii) Upon receipt of a petition pursuant to clause (i), the court shall make a determination whether to issue an order to terminate all or any part of the Federal coal lease and/or any non-Federal interest in the logical mining unit and award an additional amount from the oil and gas developer to the Federal coal lease and all other owners of any interest in the Federal coal lease or logical mining unit, as their interests may appear, in accordance with the procedures and deadlines established in paragraphs (1) and (6) through (13).

(16) SUPPLEMENTAL PETITION FOR RELIEF.—

(A) If, at any time after the issuance of an order pursuant to paragraph (10)(E) or paragraph (11)(C), the mining plan that is the basis of the order is altered in a manner that may warrant suspension of an additional part or all of, or termination of, the oil and gas lease or right to develop or suspension of an additional part of the Federal coal lease and/or any non-Federal interest in the logical mining unit that includes the Federal coal lease and/or an increase in the sum of money that was awarded under the order, either the Federal coal lessee or the oil and gas developer may, if necessary after compliance with the requirements of subsection (d), file a supplemental petition for relief with the court to amend the order.

(B) The requirements of paragraphs (1) and (6) through (13) shall apply to the supplemental petition submitted pursuant to subparagraph (A).

(C)(i) Upon completion of the process required by subparagraph (B), the court shall make a determination whether to suspend an additional part or all of, or terminate, the oil and gas lease or right to develop or to suspend an additional part of the Federal coal lease and/or any non-Federal interest in the logical mining unit as described in, and to award an additional sum of money calculated in accordance with, paragraph (10) or paragraph (11).

(ii) The court shall issue any order resulting from the determinations made pursuant to clause (i) within 90 days of the date of filing of the supplemental petition for relief.

(iii) Any award of an additional sum of money shall be paid in accordance with paragraph (13).

(17) APPEAL OF COURT ORDERS.—

(A) Any order issued pursuant to paragraph (5)(B), paragraph (5)(E), paragraph (14)(B), or paragraph (15)(B) is final and may not be appealed.

(B) Any order issued pursuant to paragraph (10)(E) paragraph (11)(C), paragraph (14)(C)(iii), paragraph (15)(C)(iii), or paragraph (16)(C)(ii) may be appealed, but the appeal, and any disposition thereof, may not disturb any order referred to in subparagraph (A).

(18) SUSPENSION TERM.—

(A) If all or any part of any lease issued pursuant to this Act is suspended in whole or in part by the Secretary or the court under this subsection—

(i) the lessee shall not be required to pay any rental for the lease for the period of the suspension; and

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

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

(B) If any non-Federal oil and gas lease or right to develop or any non-Federal interest in a logical mining unit is suspended in whole or in part by the court under this

subsection, the court shall establish terms for the suspension comparable to the terms set forth in subparagraph (A).

(f) LIABILITY LIMITATION.—

(1) FEDERAL COAL LESSEE.—Except as provided in a written agreement reached pursuant to subsection (d)(2) or reached on or after September 1, 1999, and before the date of enactment of this section, or as provided by an order of the court pursuant to subsection (e), neither the holder of a Federal coal lease subject to the agreement or order nor the United States shall be liable to the oil and gas developer of, or any owner of an interest in, any oil and gas property subject to the agreement or order for any decrease in or depletion of, or any impairment of the ability to recover, any gas or oil from the property that may result from the development of any coal on the Federal coal leasehold or within a logical mining unit that includes the Federal coal lease.

(2) OIL AND GAS DEVELOPER.—Except as provided in a written agreement reached pursuant to subsection (d)(2) or reached on or after September 1, 1999, and before the date of enactment of this section, or as provided by an order of the court pursuant to subsection (e), neither the oil and gas developer of an oil and gas property subject to the agreement or order nor the United States shall be liable to a holder of a Federal coal lease subject to the agreement or order, or any owner of any non-Federal interest in a logical mining unit that includes the Federal coal lease, or the United States for any impairment of the ability to recover coal from the Federal coal leasehold or logical mining unit that may result from the development of gas or oil on the property.

(g) CREDIT AGAINST ROYALTIES.—

(1) IN GENERAL.—

(A) Whenever a holder of a Federal coal lease is required by a written agreement reached pursuant to subsection (d)(2) and approved by the Bureau of Land Management or reached prior to the date of enactment of this section and approved by the Bureau of Land Management on or after September 1, 1999, or by a court order issued pursuant to paragraph (10)(E), paragraph (14)(C)(iii), or paragraph (16)(C)(ii) of subsection (e), to pay an amount of suspension of all or part of, or termination of, a Federal oil and gas lease for coalbed methane located within the Subsection (g) Lands, the amount so paid shall be credited against any royalties on production required by section 7(a) or any other provision of this Act from any lease of Federal coal issued under this Act to such holder or any affiliate thereof.

(B) Whenever a holder of a Federal oil and gas lease is required by a written agreement reached pursuant to subsection (d)(2) and approved by the Bureau of Land Management or reached prior to the date of enactment of this section and approved by the Bureau of Land Management on or after September 1, 1999, or by a court order issued pursuant to paragraph (11)(C), paragraph (15)(C)(iii), or paragraph (16)(C)(ii) of subsection (e), to pay an amount for suspension or termination of all or part of a Federal

coal lease located within the Subsection (g) Lands, the amount so paid shall be credited against any royalties on production required by subsection (b)(1)(A) or subsection (c)(1) of section 17 or any other provision of this Act from any lease of Federal oil and gas issued under this Act to such holder or any affiliate thereof.

(2) TREATMENT OF ROYALTIES TO STATES.—The Secretary shall pay to the State in which the Federal coal lease or Federal oil and gas lease referred to in paragraph (1)(A) or paragraph (1)(B), respectively, is located 50 percent of the amount of any credit against royalties provided under paragraph (1)(A) or paragraph (1)(B) respectively,—

(A) in the same manner as if the credit against royalties had been paid in money as royalties and distributed under section 35(a) of this Act; and

(B) from amounts received as royalties, rentals, or bonuses derived from leases issued under this Act that otherwise would be deposited to miscellaneous receipts under section 35(a) of this Act.

(h) DENIAL OF USE AS PRECEDENT.—Nothing in this section shall be applicable to any lease under this Act for any mineral, or shall be applicable to, or supersede any statutory or common law otherwise applicable in, any proceeding in any Federal or State court involving development of any mineral, outside of any common area, as defined in subsection (a)(11), within or outside of the Powder River Basin, as defined in subsection (a)(1).

[SEC. [44] *45.* SHORT TITLE

○