

107TH CONGRESS
1ST SESSION

H. R. 1710

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

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mrs. CUBIN introduced the following bill; which was referred to the Committee on Resources

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **SEC. 3. DEFINITIONS.**

19 As used in this Act:

20 (1) APPROVED OR PROPOSED MINING PLAN.—

21 The term “approved or proposed mining plan”
22 means a mining plan that is approved by, or has
23 been submitted for the approval of, the Secretary.

24 (2) COALBED METHANE.—The term “coalbed
25 methane” shall have the meaning given that term in

1 section 1339(p)(2) of the Energy Policy Act of 1992
2 (106 Stat. 2992, 42 U.S.C. 13368(p)(2)).

3 (3) COMMON AREA.—The term “common area”
4 means an area in the Basin in which all or a portion
5 of a Federal coal lease (including any area of State
6 or private coal within a logical mining unit with the
7 Federal coal lease) overlaps all or a portion of an oil
8 and gas property.

9 (4) DEVELOP OR DEVELOPMENT.—The term
10 “develop” or “development” means to develop or to
11 produce, or both, or the development or production,
12 or both, respectively, including all incidental oper-
13 ations.

14 (5) FEDERAL COAL LEASE.—The term “Fed-
15 eral coal lease” means a lease of Federal coal in the
16 Basin issued pursuant to the Mineral Leasing Act.

17 (6) FEDERAL COAL LESSEE.—The term “Fed-
18 eral coal lessee” means the holder of a Federal coal
19 lease.

20 (7) FEDERAL OIL AND GAS LEASE.—The term
21 “Federal oil and gas lease” means a lease of Federal
22 oil and gas in the Basin issued pursuant to the Min-
23 eral Leasing Act.

24 (8) MINERAL LEASING ACT.—The term “Min-
25 eral Leasing Act” means the Act of February 25,

1 1920 (41 Stat. 437), as amended (30 U.S.C. 181 et
2 seq.).

3 (9) NON-FEDERAL OIL AND GAS LEASE OR
4 RIGHT TO DEVELOP.—The term “non-Federal oil
5 and gas lease or right to develop” means a lease for
6 or right to develop oil and gas in the Basin provided
7 by a State or private owner of the resources.

8 (10) OIL AND GAS DEVELOPER.—The term “oil
9 and gas developer” means the holder of an oil and
10 gas lease or right to develop.

11 (11) OIL AND GAS LEASE OR RIGHT TO DE-
12 VELOP.—The term “oil and gas lease or right to de-
13 velop” means a Federal oil and gas lease or a lease
14 for or right to develop oil and gas in the Basin pro-
15 vided by a State or private owner of the resources.

16 (12) OIL AND GAS PROPERTY.—The term “oil
17 and gas property” means an area in the Basin which
18 is subject to an oil and gas lease or right to develop
19 held by an oil and gas developer.

20 (13) OWNERS OF ANY INTEREST IN THE OIL
21 AND GAS PROPERTY.—The term “owners of any in-
22 terest in the oil and gas property” means persons
23 who own the working interest, lease interest, oper-
24 ating interest, mineral interest, royalty interest, or
25 any other interest in the oil and gas property, and

1 any other persons who might receive compensation
2 for unavoidable fixed expenses under an order con-
3 cerning the oil and gas property issued pursuant to
4 section 11(d).

5 (14) OWNERS OF ANY NON-FEDERAL INTEREST
6 IN THE OIL AND GAS PROPERTY.—The term “own-
7 ers of any non-Federal interest in the oil and gas
8 property” means all owners of any interest in the oil
9 and gas property except the Federal Government or
10 any agency or department thereof.

11 (15) POWDER RIVER BASIN OR BASIN.—The
12 term “Powder River Basin” or “Basin” means the
13 area designated as Powder River Basin on a map
14 entitled MLA Section 44 Powder River Basin Area,
15 dated July 1, 1999, and on file in the Wyoming and
16 Montana State Offices of the Bureau of Land Man-
17 agement, Department of the Interior.

18 (16) SECRETARY.—The term “Secretary”
19 means the Secretary of the Interior.

20 (17) SECTION 21 LANDS.—The term “Section
21 21 Lands” means the area designated as Section 21
22 Lands on the map described in paragraph (1).

1 **SEC. 4. PARTIES ENCOURAGED TO ENTER INTO WRITTEN**
2 **AGREEMENT.**

3 In any common area, the Federal coal lessee and oil
4 and gas developer, subject to applicable Federal and State
5 laws, regulations, and lease terms, may and are encour-
6 aged to enter into a written agreement that details oper-
7 ations and assigns or assesses costs or compensation for
8 the concurrent or sequential development of those re-
9 sources.

10 **SEC. 5. MINERAL CONSERVATION.**

11 The Secretary shall employ any authority the Sec-
12 retary possesses to encourage expedited development of
13 any oil or gas resource and any coal resource that—

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

16 (2) are within common areas; and

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

19 **SEC. 6. NEGOTIATIONS CONCERNING DEVELOPMENT PRI-**
20 **ORITY FOR CERTAIN OPERATIONS IN THE**
21 **BASIN.**

22 (a) OBLIGATION TO PROVIDE WRITTEN NOTICE OF
23 CONFLICT.—Whenever a Federal coal lessee or an oil and
24 gas developer determines that its Federal coal lease (or
25 a logical mining unit including the Federal coal lease) or
26 its oil and gas property is located in a common area, and,

1 pursuant to an approved or proposed mining plan, mining
2 operations or facilities in support of mining for coal on
3 the Federal coal lease or the logical mining unit will be
4 located within the common area, the Federal coal lessee
5 or the oil and gas developer shall deliver written notice
6 of the determination to the other party and the Secretary
7 no later than 240 days prior to the date on which the
8 mining operations or construction of the mine support fa-
9 cilities is projected by the approved or proposed mining
10 plan to commence in the common area.

11 (b) OBLIGATION TO NEGOTIATE.—Promptly after
12 providing the notice referred to in subsection (a), the party
13 which provided the notice shall seek to negotiate a written
14 agreement with the other party that resolves any conflict
15 between the development of gas or oil and development
16 of coal in the common area.

17 **SEC. 7. PETITION FOR RELIEF.**

18 (a) SUBMISSION OF PETITION.—

19 (1) If notice is submitted timely pursuant to
20 section 6(a) and the Federal coal lessee and the oil
21 and gas developer engage in negotiations, but do not
22 reach agreement, pursuant to section 6(b), the Fed-
23 eral coal lessee or the oil and gas developer may file
24 a petition for relief as described in paragraph (3) in
25 the United States district court for the district in

1 which the common area is located on any date which
2 is not less than 180 days prior to the date on which
3 the mining operations or construction of the mine
4 support facilities is projected by the approved or
5 proposed mining plan to commence in the common
6 area.

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

12 (3) The petition for relief shall include the fol-
13 lowing:

14 (A) A description and map of the Federal
15 coal lease, oil and gas property, and the com-
16 mon area.

17 (B) A list containing the names and ad-
18 dresses of all owners of any non-Federal inter-
19 est in the oil and gas property and all owners
20 of any non-Federal interest in the Federal coal
21 lease or logical mining unit. The petitioner shall
22 list those owners of any non-Federal interest in
23 the oil and gas property and of the Federal coal
24 lease or logical mining unit whom the petitioner
25 is able to ascertain from the properly indexed

1 records of the county recorder of the county or
2 counties in which the oil and gas property and
3 Federal coal lease or logical mining unit are lo-
4 cated, and the respondent shall file with the
5 court and serve on the petitioner and the Sec-
6 retary any corrections of, additions to, or dele-
7 tions from the list known to the respondent
8 within 10 days of the date of service of the peti-
9 tion for relief pursuant to paragraph (2).
10 Thereafter, whenever any correction of, addition
11 to, or deletion from the list becomes known to
12 either the petitioner or the respondent, that
13 party shall promptly file with the court and
14 serve on the other party and the Secretary the
15 addition, correction, or deletion. Any person
16 who believes he or she is an owner of any non-
17 Federal interest in the oil and gas property or
18 in the Federal coal lease or logical mining unit
19 and is omitted from the list may file a motion
20 in the court to be added to the list at any time
21 prior to the issuance of an order pursuant to
22 section 11(d) or section 12(d).

23 (C) A certified copy of the notice described
24 in section 6(a).

1 (D) A sworn statement by a senior officer
2 of the petitioner with authority to commit the
3 petitioner in any negotiation under section 6(b)
4 stating, and all documents demonstrating, that
5 the petitioner negotiated or attempted to nego-
6 tiate in good faith with the respondent a vol-
7 untary agreement, pursuant to section 6(b).

8 (4) The Federal coal lessee shall submit a copy
9 of the approved or proposed mining plan for the
10 mining operations or support facilities that are the
11 subject of the petition for relief—

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

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

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

22 (c) PARTIES' RESPONSE TO PETITION.—The non-
23 Federal respondent or respondents may provide to the
24 Secretary a response to the petition within 30 days from
25 the date of filing of the petition for relief pursuant to sub-

1 section (a)(1). The Secretary may require the petitioner
2 and the respondent or respondents to submit such docu-
3 ments and/or provide such testimony as the Secretary
4 deems appropriate within 60 days of such date of filing.

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

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

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

12 (1) whether a common area exists; and

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

18 (c) PUBLIC INTEREST DETERMINATION.—

19 (1) If existence of the common area and inter-
20 section of, or construction in, the common area are
21 determined pursuant to subsection (b), the Secretary
22 shall determine whether the public interest is best
23 realized by delaying or forgoing development of
24 either—

1 (A) the oil or gas resource to permit the
2 mining operations to intersect, or the mine sup-
3 port facilities to be constructed in, the common
4 area in accordance with the approved or pro-
5 posed mining plan; or

6 (B) the coal resource to permit commence-
7 ment or continuation of the development of the
8 oil or gas resource in the common area after
9 the date on which the mining operations or con-
10 struction of the mine support facilities is pro-
11 jected by the approved or proposed mining plan
12 to commence in the common area.

13 (2) The Secretary shall make the public interest
14 determination described in paragraph (1) solely by
15 the calculation of the greater economic benefit to be
16 realized by comparison, on a net present value basis,
17 of the Federal and State revenues from royalties and
18 severance taxes likely to be generated from each re-
19 source underlying the common area to which the pe-
20 tition for relief applies.

21 (d) LEASE SUSPENSION.—If any portion of the re-
22 source for which delayed or forgone development is deter-
23 mined to be in the public interest pursuant to subsection
24 (c) is subject to a lease issued pursuant to the Mineral
25 Leasing Act, the Secretary shall suspend all or any portion

1 of, including any geographical area of or zone or reservoir
2 subject to, the lease to accommodate development of the
3 other resource in the common area during the period be-
4 ginning on a date no later than the commencement date
5 referred to in section 7(a)(1) and provided in the notice
6 submitted pursuant to section 7(a)(3)(C) and ending on
7 the date on which an order is issued pursuant to section
8 11(d) or section 12(d).

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

14 (1) no common area exists; or

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

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

20 (1) not delegate the determinations made pur-
21 suant to this section;

22 (2) report the determinations made pursuant to
23 subsections (b) and (c) or subsection (e) and any
24 suspension made pursuant to subsection (d), includ-
25 ing the administrative record therefor, with the

1 court in which the petition for relief is filed pursuant
2 to section 7(a)(1); and

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

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

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

12 (b) PARTIES' OBJECTIONS TO REPORT.—

13 (1) The petitioner and respondent or respond-
14 ents shall have 30 days from the date upon which
15 the report of the Secretary is filed with the court
16 pursuant to section 8(f) in which to file with the
17 court any objection to any determination of the Sec-
18 retary required by section 8.

19 (2) If any objection is filed pursuant to para-
20 graph (1), the court shall, within 60 days of receipt
21 of the report of the Secretary pursuant to section
22 8(f), make the determination that is the subject of
23 the objection on the basis of the administrative
24 record filed with the report and in accordance with

1 the applicable requirements or standards of sub-
2 section (b) or subsection (c) of section 8.

3 (3) Any determination made by the court pur-
4 suant to paragraph (3) shall be an independent judi-
5 cial determination that is de novo, without regard to
6 the prior determination of the Secretary.

7 (4) If no objection is filed pursuant to para-
8 graph (1), the determinations of the Secretary re-
9 quired by section 8 shall be final and approved by
10 the court in the order issued pursuant to subsection
11 (c) or subsection (f).

12 (c) COURT ORDER.—Within 90 days of the date of
13 receipt of the report of the Secretary pursuant to section
14 8(f), the court, except as provided in subsection (f), shall
15 issue an order that—

16 (1) suspends all or any part of, including any
17 geographical area of or reservoir subject to, any non-
18 Federal oil and gas lease or right to develop, or any
19 non-Federal interest in any logical mining unit that
20 includes the Federal coal lease, in the common area
21 in accordance with the determination of the Sec-
22 retary pursuant to subparagraph (A) or subpara-
23 graph (B), respectively, of section 8(c)(1) or in ac-
24 cordance with the determination of the court pursu-
25 ant to subsection (b)(2);

1 (2) if required by a determination of the court
2 pursuant to subsection (b)(2), terminates a suspen-
3 sion of a lease issued pursuant to the Mineral Leas-
4 ing Act imposed by the Secretary pursuant to sec-
5 tion 8(d), or imposes a suspension of a lease issued
6 pursuant to the Mineral Leasing Act, or both, in ac-
7 cordance with the determination;

8 (3) if all or any part of the oil and gas lease
9 or right to develop is suspended pursuant to section
10 8(d) or this subsection, fixes the date upon which
11 the Federal coal lessee may commence mining oper-
12 ations or construction of mine support facilities in
13 the common area, which may be no later than the
14 commencement date referred to in section 7(a)(1)
15 and provided in the notice submitted pursuant to
16 section 7(a)(3)(C), except for good cause shown; and

17 (4) if all or any part of the Federal coal lease
18 and/or any non-Federal interest in the logical mining
19 unit that includes the Federal coal lease is sus-
20 pended pursuant to section 8(d) or this subsection,
21 prohibits the mining operations from intersecting, or
22 the support facilities from being constructed in, all
23 or a portion of the common area.

24 (d) EXPIRATION OF ORDER.—The order of the court
25 issued pursuant to subsection (c) shall expire upon the

1 issuance of an order pursuant to section 11(d), or section
2 12(d).

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

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

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

11 (A) no common area exists; or

12 (B) the approved or proposed mining plan
13 submitted pursuant to section 7(a)(4) does not
14 provide for the mining operations to intersect,
15 or the mine support facilities to be constructed
16 in, the common area.

17 (f) TERMINATION OF PROCEEDING.—If the Secretary
18 makes a determination described in section 8(e) or the
19 court makes a determination described in subsection
20 (e)(2), the court shall issue an order terminating the pro-
21 ceeding under this Act.

22 **SEC. 10. APPOINTMENT OF EXPERTS.**

23 (a) APPOINTMENT PROCEDURE.—Within 30 days of
24 the date of issuance of an order pursuant to section 9(c),
25 to assist the court in making the determinations pursuant

1 to section 11 or section 12, the Federal coal lessee and
2 the oil and gas developer shall each appoint a person who
3 is an expert in appraising the value of, and right to de-
4 velop, gas or oil if all or any part of the oil and gas lease
5 or right to develop is suspended, or coal if all or any part
6 of the Federal coal lease and/or any non-Federal interest
7 in the logical mining unit that includes the Federal coal
8 lease is suspended, pursuant to section 8(d) and/or section
9 9(c), and these persons shall agree upon and appoint a
10 third person with such expertise. If no agreement is
11 reached on the date of appointment of a third person, the
12 court shall make the appointment.

13 (b) COMPENSATION.—The Federal coal lessee shall
14 be responsible for compensation of the expert appointed
15 by it; the oil and gas developer shall be responsible for
16 compensation of the expert appointed by it; and the Fed-
17 eral coal lessee and oil and gas developer shall each pay
18 one-half of the compensation for the third expert.

19 (c) INFORMATION AND DATA.—

20 (1) The Federal coal lessee, oil and gas devel-
21 oper, and Secretary shall each submit to the panel
22 of experts within 30 days of the date of appointment
23 of the panel pursuant to subsection (a) all informa-
24 tion and data in the possession of such party that
25 is pertinent to the determinations to be made pursu-

1 ant to section 11 or section 12, and shall each sub-
2 mit to the panel of experts thereafter any additional
3 pertinent information and data in the possession of
4 such party that the panel requests of such party in
5 writing.

6 (2) Except as provided in paragraph (3), the
7 court shall ensure that any information and data
8 submitted to the panel of experts pursuant to para-
9 graphs (1) and (4) shall have the protection of con-
10 fidentiality that is applicable, and may be accorded,
11 to them by law and the Federal rules of civil proce-
12 dure and evidence.

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

17 (4)(A) The Federal coal lessee may drill for and
18 otherwise collect data or information on coalbed
19 methane at any site or sites within the common area
20 that are not within a spacing unit containing a well
21 that is producing or capable of producing coalbed
22 methane under the conditions set forth in subpara-
23 graph (B).

24 (B) The drilling or collection of data or infor-
25 mation authorized by subparagraph (A) shall be for

1 the sole purpose of submission of information and
2 data pursuant to this paragraph.

3 (C) The Federal coal lessee shall not produce
4 any coalbed methane as a result of any drilling au-
5 thorized by subparagraph (A) and shall comply with
6 any Federal or State requirements applicable to such
7 activity.

8 (D) The Federal coal lessee shall submit to the
9 Secretary an exploration plan to conduct any drilling
10 pursuant to subparagraph (A). The Secretary shall
11 approve, approve as modified, or reject the plan,
12 within 15 days of the date of its submission. The
13 Secretary may modify or reject the plan only for
14 good cause fully set forth in writing and provided to
15 the Federal coal lessee. The Federal coal lessee shall
16 adhere to the plan, as approved by the Secretary.

17 (d) SUBMISSION OF BRIEFS AND HEARING.—

18 (1) Within 45 days of the date of appointment
19 of the panel of experts pursuant to subsection (a),
20 all parties may submit briefs concerning the deter-
21 minations to be made pursuant to section 11 or sec-
22 tion 12.

23 (2) Within 60 days of the date of appointment
24 of the panel of experts pursuant to subsection (a),
25 the panel may, or if requested by the petitioner or

1 a respondent shall, receive testimony from all parties
2 concerning the determinations to be made pursuant
3 to section 11 or section 12.

4 (e) EXPERTS' REPORT.—Within 120 days of the date
5 of appointment of the panel of experts pursuant to sub-
6 section (a), the panel shall submit a written report to the
7 court providing in detail the panel's recommendations on
8 the determinations to be made pursuant to section 11 or
9 section 12.

10 **SEC. 11. COURT'S FINAL RESPONSE TO PETITION: VALU-**
11 **ATION CONCERNING ECONOMICALLY RECOV-**
12 **ERABLE OIL OR GAS RESOURCES LOST OR**
13 **DELAYED, SUSPENSION OR TERMINATION,**
14 **AND PAYMENT ORDER.**

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

21 (b) SUSPENSION OR TERMINATION DETERMINA-
22 TION.—

23 (1) The court shall determine whether, as a re-
24 sult of the order or any action of the Secretary, all
25 or any part of, including any geographical area of or

1 zone or reservoir subject to, the oil and gas lease or
2 right to develop should be suspended during any re-
3 maining period in which the mining operations or
4 support facilities occupy the common area or wheth-
5 er the oil and gas lease or right to develop should
6 be terminated.

7 (2) Any determination to suspend pursuant to
8 paragraph (1) shall, wherever possible or appro-
9 priate, limit the suspension or phase the suspension
10 to permit the optimum development of the oil or gas
11 prior to the time at which the mining operations
12 would reach the area within the common area that
13 is subject to the suspension or particular phase of
14 the suspension.

15 (3) Any determination to terminate pursuant to
16 paragraph (1) shall be made only if the court finds
17 that the economically recoverable oil and gas re-
18 sources subject to compensation pursuant to sub-
19 section (d) would be entirely lost or rendered im-
20 practicable to produce as a consequence of the min-
21 ing operations in the common area and that such re-
22 sources constitute all of the economically recoverable
23 resources within the oil and gas property.

24 (c) COMPENSATION DETERMINATION.—

1 (1) If the court makes a determination to sus-
2 pend pursuant to subsection (b), the court shall
3 determine—

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

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

14 (i) delay in development of economi-
15 cally recoverable resources of coalbed
16 methane in the common area; and

17 (ii) the loss of any economically recov-
18 erable resources of coalbed methane from
19 the coal to be extracted by the mining op-
20 erations in the common area; and

21 (iii) the loss of any economically re-
22 coverable resources of coalbed methane un-
23 derlying any area that is within the oil and
24 gas property associated with the common
25 area and that extends outward from each

1 exposed coal face of the mining operations
2 for a distance from which drainage of such
3 resources is established to the satisfaction
4 of the court; and

5 (C) any of the following damages that will
6 be incurred by the owners of any interest in the
7 oil and gas property as a consequence of the
8 suspension: any unavoidable fixed expenses (in-
9 cluding, but not limited to, the expenses of
10 shutting in production from, maintenance of,
11 testing of, and redrilling or reconnecting an ex-
12 isting well; relaying pipeline; and all other ex-
13 penses reasonably related to reestablishing any
14 existing oil or gas production); expenses associ-
15 ated with stranded costs of drilling equipment
16 and facilities; any lost royalties on oil or gas
17 not produced by the oil and gas developer; and
18 any lost income associated with temporarily
19 shutting in production from wells outside of the
20 common area as needed for reconnection to a
21 gathering system or pipeline to market. If the
22 court determines that the unavoidable fixed ex-
23 penses to achieve post-suspension recovery of all
24 or certain economically recoverable resources of
25 oil or gas in the common area will exceed the

1 net income to be derived from the resources, the
2 court shall determine the amount of the net in-
3 come and lost royalties in lieu of the unavoid-
4 able fixed expenses.

5 (2) The determinations made pursuant to para-
6 graph (1) shall not include any decrease in net in-
7 come or damages resulting from loss of any oil or
8 gas resources that occurred before the date of the
9 determinations and is caused by mining within or
10 outside of the common area on the Federal coal
11 lease or logical mining unit that is the subject of the
12 common area determination made pursuant to sec-
13 tion 8(b)(1) or section 9(b)(2).

14 (3) If the court makes a determination to ter-
15 minate pursuant to subsection (b), the court shall
16 determine the amount of any net income that will
17 not be realized and any damages due to the loss of,
18 or impracticability to produce, the economically re-
19 coverable resources of oil or gas in the oil and gas
20 property in the same manner as provided in para-
21 graph (1).

22 (4) In determining the amount of net income
23 that will not be realized pursuant to paragraph (1)
24 or paragraph (3) and the sum of money to be
25 awarded pursuant to subsection (d), the court shall

1 ensure to the best of its ability that the Federal coal
2 lessee is not required to pay for the same gas or oil
3 lost, delayed in development, or rendered impracti-
4 cable to develop to more than one oil and gas devel-
5 oper or the owners of any interest in more than one
6 oil and gas property.

7 (d) COURT ORDER.—The court shall issue an order
8 that—

9 (1) suspends all or any part of, suspends in
10 phases parts of, or terminates the oil and gas lease
11 or right to develop, including any applicable payment
12 or production obligations, in accordance with the de-
13 termination made pursuant to subsection (b); and

14 (2) awards to the oil and gas developer and all
15 other owners of any interest in the oil and gas prop-
16 erty, as their interests may appear, a sum of money
17 from the Federal coal lessee equal to the net income
18 amount and damages determined pursuant sub-
19 section (c).

1 **SEC. 12. COURT'S FINAL RESPONSE TO PETITION: VALU-**
2 **ATION CONCERNING ECONOMICALLY RECOV-**
3 **ERABLE COAL RESOURCES LOST OR DE-**
4 **LAYED, SUSPENSION OR TERMINATION AND**
5 **PAYMENT ORDER.**

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

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

18 (c) COMPENSATION DETERMINATION.—If the court
19 makes a determination to suspend pursuant to subsection
20 (b), the court shall determine the amount of any net in-
21 come that will not be realized from the loss or delay in
22 development of economically recoverable resources of coal,
23 and the unavoidable fixed expenses (including, but not lim-
24 ited to, additional expenses associated with reclamation,
25 expenses associated with stranded costs of mining equip-
26 ment and facilities, a proportionate refund of the lease

1 bonus, and any lost royalties on coal not produced by the
2 Federal coal lessee) that will be incurred, by the Federal
3 coal lessee as a consequence of the suspension.

4 (d) COURT ORDER.—The court shall issue an order
5 that—

6 (1) suspends, in accordance with the determina-
7 tion made pursuant to subsection (b), all or any part
8 of the Federal coal lease and/or any non-Federal in-
9 terest in the logical mining unit, including any appli-
10 cable payment or production obligations on the lease
11 or logical mining unit, for the period necessary for
12 expeditious development in the common area of the
13 gas or oil that is the subject of the petition for relief
14 as demonstrated to the court in a production plan
15 submitted by the oil and gas developer; and

16 (2) awards to the Federal coal lessee and all
17 other owners of any interest in the Federal coal
18 lease or logical mining unit, as their interests may
19 appear, a sum of money equal to the net income
20 amount and unavoidable fixed expenses determined
21 pursuant to subsection (c).

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

23 (a) The court shall make the determinations required
24 by section 11 or section 12 after reviewing the report of

1 the panel of experts submitted pursuant to section 10(e)
2 and the hearing required by subsection (b).

3 (b) After submission of the report of the panel of ex-
4 perts pursuant to section 10(e) and prior to making the
5 determinations required by section 11 or section 12, the
6 court shall hold a hearing in which the panel of experts
7 shall present their report and the parties to the proceeding
8 shall have the opportunity to examine the panel and pro-
9 vide to the court any evidence or arguments they may have
10 to support or contravene the recommendations of the re-
11 port.

12 **SEC. 14. DISBURSEMENT OF PAYMENTS.**

13 (a) PAYMENT TO OIL AND GAS DEVELOPER.—

14 (1) At the election of the oil and gas developer,
15 the sum of money awarded by the court pursuant to
16 section 11(d)(2) shall be—

17 (A) paid in full within 60 days of the date
18 of issuance of the order pursuant to section
19 11(d); or

20 (B) divided into the number of tons of re-
21 coverable coal in the common area and paid in
22 per ton increments as the coal is mined in ac-
23 cordance with paragraph (2) and subsection (c).

24 (2) The Federal coal lessee shall make the pay-
25 ments required by paragraph (1)(B) on a quarterly

1 basis in advance based on the Federal coal lessee's
2 estimate of the number of tons of coal to be mined
3 in the common area during the following quarter,
4 and shall add or subtract an amount to or from the
5 advance payment for the next quarter to reflect the
6 coal actually sold or transferred.

7 (b) PAYMENT TO FEDERAL COAL LESSEE.—

8 (1) At the election of the Federal coal lessee,
9 the sum of money awarded by the court pursuant to
10 section 12(d)(2) shall be—

11 (A) paid in full within 60 days of the date
12 of issuance of the order pursuant to section
13 12(d); or

14 (B) divided into the number of barrels of
15 recoverable oil or cubic feet of recoverable gas
16 in the common area and paid in per barrel or
17 cubic feet increments as the oil or gas is pro-
18 duced in accordance with paragraph (2) and
19 subsection (c).

20 (2) The oil and gas developer shall make the
21 payments required by paragraph (1)(B) on a quar-
22 terly basis in advance based on the oil and gas devel-
23 oper's estimate of the number of barrels of oil or
24 cubic feet of gas to be produced in the common area
25 during the following quarter, and shall add or sub-

1 tract an amount to or from the advance payment for
2 the next quarter to reflect the oil or gas actually
3 produced.

4 (c) FINAL PAYMENT.—If the mining or production
5 necessary to make full payment of the sum of money
6 awarded by the court in accordance with subsection
7 (a)(1)(B) or subsection (b)(1)(B) does not occur within
8 5 years of the date of issuance of the court order pursuant
9 to section 11(d) or section 12(d), the unpaid balance shall
10 be paid within 60 days thereafter.

11 **SEC. 15. TERMINATION OF OIL AND GAS LEASE SUSPEN-**
12 **SION.**

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

16 (1) the Federal coal lessee shall notify the court
17 and the oil and gas developer when the portion of
18 the common area subject to the order issued pursu-
19 ant to section 11(d) is no longer required for mining
20 operations or support facilities; and

21 (2) within 120 days of the date of receipt by
22 the court of the notification pursuant to paragraph
23 (1) or within 60 days prior to the date on which the
24 period established by the court in the order issued
25 pursuant to section 11(d) concludes, the oil and gas

1 lessee may petition the court for an order that ter-
2 minates the suspension and fixes the date and terms
3 on which the oil and gas developer may resume oper-
4 ations within the portion of the common area subject
5 to the order issued pursuant to section 11(d).

6 (b) COURT ORDER TO TERMINATE SUSPENSION OF
7 LEASE OR RIGHT TO DEVELOP.—The court shall issue
8 the order sought under subsection (a)(2) within 30 days
9 of the date of receipt of the petition pursuant to subsection
10 (a)(2).

11 (c) TERMINATION OF LEASE OR RIGHT TO DE-
12 VELOP.—

13 (1) If the oil and gas developer determines that,
14 as a consequence of the order of the court issued
15 pursuant to section 9(c) and an order to suspend all
16 or any part of the oil and gas lease or right to de-
17 velop pursuant to section 11(d), the conditions de-
18 scribed in section 11(b)(3) exist, the oil and gas de-
19 veloper may petition the court to terminate the oil
20 and gas lease or right to develop.

21 (2) The petition referred to in paragraph (1)
22 may be filed any time after issuance of the order of
23 the court pursuant to section 11(d) but not later
24 than 120 days after the date of receipt by the court
25 of the notification pursuant to subsection (a)(1).

1 (3) Upon receipt of a petition pursuant to para-
2 graph (1), the court shall make a determination
3 whether to issue an order to terminate the oil and
4 gas lease or right to develop and award an addi-
5 tional amount from the Federal coal lessee to the oil
6 and gas developer and all other owners of any inter-
7 est in the oil and gas property, as their interests
8 may appear, in accordance with the procedures and
9 deadlines established in section 7(a) and sections 10
10 through 14.

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

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

17 (1) the oil and gas developer shall notify the
18 court and the Federal coal lessee when the portion
19 of the common area subject to the order issued pur-
20 suant to section 12(d) is no longer required for gas
21 or oil production from such portion; and

22 (2) within 120 days of the date of receipt by
23 the court of the notification pursuant to paragraph
24 (1) or within 60 days prior to the date on which the
25 period established by the court in the order issued

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

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

15 (c) TERMINATION OF LEASE.—

16 (1) If the Federal coal lessee determines that,
17 as a consequence of the order of the court issued
18 pursuant to section 12(d), further development of all
19 or any part of the Federal coal lease and/or any
20 non-Federal interest in the logical mining unit is im-
21 practicable, the Federal coal lessee may petition the
22 court to terminate all or any part of the Federal coal
23 lease and/or any non-Federal interest in the logical
24 mining unit.

1 (2) The petition referred to in paragraph (1)
2 may be filed any time after issuance of the order of
3 the court pursuant to section 12(d) but not later
4 than 120 days after the date of receipt by the court
5 of the notification pursuant to subsection (a)(1).

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

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

18 (a) PETITION SUBMITTAL.—

19 (1) If, at any time after the issuance of an
20 order pursuant to section 11(d) or section 12(d), the
21 mining plan that is the basis of the order is altered
22 in a manner that may warrant suspension of an ad-
23 ditional part or all of, or termination of, the oil and
24 gas lease or right to develop or suspension of an ad-
25 ditional part of the Federal coal lease and/or any

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

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

12 (b) COURT ORDER.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (a) IN GENERAL.—

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

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

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

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

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

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

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

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

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

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

○