

111TH CONGRESS  
1ST SESSION

# S. 1856

To amend the Energy Policy Act of 2005 to clarify policies regarding ownership of pore space.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 22, 2009

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the Energy Policy Act of 2005 to clarify policies regarding ownership of pore space.

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. PORE SPACE OWNERSHIP.**

4 Subtitle F of title IX of the Energy Policy Act of  
5 2005 (42 U.S.C. 16291 et seq.) is amended by inserting  
6 after section 963 (42 U.S.C. 16293) the following:

7 **“SEC. 963A. PORE SPACE OWNERSHIP.**

8 “(a) DEFINITION OF PORE SPACE.—In this section,  
9 the term ‘pore space’ means a subsurface space of any

1 size that can be used as storage space for carbon dioxide  
 2 or other substances injected into the space for storage.

3 “(b) OWNERSHIP.—The ownership of any subsurface  
 4 pore space located below a Federal surface estate shall be  
 5 vested in the Federal Government.

6 “(c) CONVEYANCE.—

7 “(1) IN GENERAL.—A conveyance of the sur-  
 8 face ownership of Federal land shall include the con-  
 9 veyance of the Federal pore space in all strata below  
 10 the surface of the Federal land (other than pre-  
 11 viously reserved mineral rights) unless the ownership  
 12 interest in the pore space has previously been sev-  
 13 ered from the surface ownership.

14 “(2) LIMITATION.—Subject to subsections (d)  
 15 and (e), no agreement conveying Federal mineral in-  
 16 terests or other interests underlying the surface of  
 17 the land shall convey ownership of any Federal pore  
 18 space in the stratum unless the agreement explicitly  
 19 conveys the interest in pore space.

20 “(3) CONVEYANCE INSTRUMENTS.—

21 “(A) IN GENERAL.—Any instrument that  
 22 conveys the rights to use Federal pore space  
 23 under this section shall describe the scope of  
 24 any right to use the surface estate.

1           “(B) USE OF PORE SPACE.—The holder of  
 2           any pore space right conveyed under this sec-  
 3           tion shall have no right to use the surface es-  
 4           tate except for the uses, if any, described in a  
 5           properly recorded instrument.

6           “(C) APPLICABLE LAW.—All conveyances  
 7           of Federal land executed before the date of en-  
 8           actment of this section shall be construed in ac-  
 9           cordance with the provisions of this section un-  
 10          less a person claiming ownership interest con-  
 11          trary to the provisions of this section estab-  
 12          lishes ownership by a preponderance of the evi-  
 13          dence in an action to establish ownership of the  
 14          interest.

15          “(d) PRIORITY.—For the purpose of determining the  
 16          priority of subsurface uses between a mineral estate and  
 17          pore space, the mineral estate is dominant.

18          “(e) DOMINANCE OF MINERAL ESTATE.—Nothing in  
 19          this section alters any laws or case law in existence on  
 20          the date of enactment of this section relating to the rights  
 21          belonging to, or the dominance of, the mineral estate.

22          “(f) NOTIFICATION REQUIREMENTS.—No provision  
 23          of law (including regulations) that requires notice to be  
 24          given to a surface owner, an owner of the mineral interest,  
 25          or both shall be construed to require notice to persons

- 1 holding ownership interest in any pore space in the under-
- 2 lying strata unless the law specifically provides that notice
- 3 to those persons is required.”.

