

Committee on Resources

Subcommittee on Energy & Mineral Resources

Witness Statement

**Testimony of Wyoming Governor, Jim Geringer,
Delivered to the U. S. House of Representatives,
Committee on Resources,
Subcommittee on Energy and Mineral Resources
The Honorable Barbara Cubin, Chair
June 27, 2000
H. R. 4297
"Powder River Basin Resource Development Act of 2000"**

Madam Chairwoman, members of the Subcommittee, thank you for your invitation to address H.R. 4297, the "Powder River Basin Resource Development Act 2000" introduced by you in April 2000. I commend you for your work to assure orderly development in this vital natural resource area for our state and our nation.

I am Bob Ugland, here today on behalf of Wyoming Governor Jim Geringer speaking in my capacity of Director of the Minerals Division of the Wyoming Business Council. Both the Governor and I ask that you guide your legislative activity from two perspectives. First, the State oversees lands held in trust for our public schools. The Governor, as trustee and lessor of the school trust lands in the Powder River Basin must assure certainty in how federal lands are leased, as they can and do affect state operations, due to the intermingled ownership pattern typical of the Basin. Federal actions cannot be viewed as independent of state ownership, since activity on one affects the other. The Governor is keenly aware that Wyoming is a recipient of Federal Mineral Royalties which in the majority, are also allocated to our education system. As such, we are very interested in the federal mineral operations and urge that they be **efficient in capturing the most income possible** from the resources, **with the least amount of costly conflict**.

With these high moral and financial interests, I speak in favor of HR 4297 in that it will offer a remedy for those few conflicts between multiple resources in the federal estate. We must assure that development can proceed in an efficient and orderly fashion with certainty for all stakeholders, including state and federal beneficiaries, the industry segments and certainly our communities who benefit from appropriate mineral development activity.

You would be justified in asking "Why are we here today? Why are we continuing to spend thousands of dollars in this legislative arena, adding costs to Wyoming resources, to address what seems to be a very limited set of circumstances in the region?" The answer becomes obvious once we realize that the problem has a fundamental basis in how the Bureau of Land Management allocates mineral development rights. The BLM's leasing strategies and operational schemes of leasing multiple resources, which may become conflicted, make no provision for what has become an inevitable conflict. In this case, the conflicting resources are coal, as a mineral, and coal bed methane gas, which cannot be developed simultaneously. The basic approach taken by the BLM in leasing resources is to place them in the market place, award

development rights and then wait to see what happens. The presumption seems to have been that the lessees will resolve any conflicts that arise, a presumption that is fundamentally flawed. Unfortunately, the BLM process has created a dilemma that it is unable to resolve, so now the conflicting parties have had to come before you to seek remedy.

Before I speak to certain details of the bill, let me give you a brief background regarding the State of Wyoming's position within the Powder River Basin development area. Wyoming's state-owned trust land represents only 6% of the potential development area. The Board of Land Commissioners, of which the Governor is President, has been very aggressive in leasing these lands and encouraging development of coal bed methane for the economic benefit of our schools. We have been able to take advantage of the market by getting to the market first. However, our state trust lands are scattered and interspersed within and among federal lands. Because of this fragmented pattern the state has never been able to aggressively pursue the leasing of the other mineral involved, namely coal, because we could not put together a logical mining unit of state land to stand alone at auction. Therefore, state trust land is much less likely to encounter conflicting development in the manner that federal lands might. Nevertheless, the Board of Land Commissioners has adopted rules which provide for the resolution of conflicts. I would like you to take note of a few principles contained in those rules:

- The Board may issue separate leases for different minerals on the same tract of land.
- When conflicting lessees cannot resolve interference conflict, the Director of the Office of State Lands may resolve the conflict under the Board's authority.
- The subsections guiding the Director's options provide for broad authority to choose
 - a negotiated plan for concurrent development,
 - a deferment of one or more of the conflicting resources in favor of another, or,
 - termination of lessee operations in favor of other lessee operations determined in the same manner as if the right were being condemned in eminent domain proceedings.

This summary is from Board of Land Commission Rules and Regulations, Chapter 18 - Leasing of Oil and Gas, Section 18 - Multiple Use. These rules are as much detail as the Board of Land Commissioners believes are necessary to deal with those few instances of conflict which may arise in the development of multiple mineral resources on state trust lands. They make sense and allow the appointed official, in charge of managing the state's assets, to resolve the conflicts.

We strongly recommend that you provide the BLM with authority to resolve conflict. So the motivation to develop these resources for the maximum possible federal and state benefit has fallen into your hands. We support the bill but in order to produce the coal bed methane, there may be consequences, and I want to address the specific consequences in this bill which could have significant impacts upon future governmental land asset management.

Sec. 3 (f) COMPENSATION PROCEDURES FOR ASSIGNMENT OF DEVELOPMENT PRIORITY. In Governor Geringer's testimony, (attached for the record), before the Senate Committee on Energy and Natural Resources on S. 1950, this bill's companion, he refers to "an expeditious adjudication procedure if the conflict is not avoided early in the development." We believe that the proposed procedure is as expeditious as it can get under the circumstances considering the current lack of a clear regulatory or policy directive from the BLM. The procedure would allow for the predictable outcome of the conflict. However, the BLM does need to take a rigorous approach to improving their own procedures ahead of leasing and development, rather than living with the controversy and forcing industry to spend money after the fact.

As Chief Executive Officer of the State of Wyoming the Governor represents all citizens who are beneficiaries of a portion of the mineral royalties from leasing and production activity on federal land. Therefore, any revenue impacts resulting from leasing and production strategies on federal land have a direct effect on the ability of the state's citizens to enjoy the benefits of royalty receipts. This Act introduces the concept of credits against those federal royalties for the mitigation and costs arising from the adjudication procedure. Let me briefly comment on this notion:

Sec. 3 (h) CREDIT AGAINST ROYALTIES

It is unfortunate, but ultimately fair, that parties subjected to the final consequences of this process should feel relief from the very party, namely the federal BLM, whose lack of planning and dysfunctional operational scheme put them there. Not only does this Act speak to the lessee parties involved in the conflict but it intelligently embraces relief for the states, who would suffer through no fault of their own. In fact in contrast to the federal approach, the state has procedures already in place to effectively deal with conflict.

Without the provisions contained within Sec. 3 (h) of the proposed Act, the BLM would have no motivation to enable more efficient and orderly development of multiple use resources from the beginning of their process and to remain committed to avoiding such conflicts in this area. We believe that there many more opportunities for them to improve on their leasing strategies and tactics and believe that this bill will be a good first step toward improvement.

Madam Chair, I appreciate the time you have allowed today, I encourage you to continue to search and reach for a resolution on this matter, as it has already cost Wyoming much time, energy and money. On behalf of the Governor, Thank You and the members of the Committee for your help!

**Senate Committee on Energy and Natural Resources
Testimony of Wyoming Governor, Jim Geringer,
Delivered to the U. S. Senate
Subcommittee on Forests and Public Land Management
The Honorable Larry Craig, Chairman
February 24,2000
S. 1950
"Powder River Basin Resource Development Act"**

Mr. Chairman, members of the Committee, my name is Bob Ugland. Thank you for your invitation to address S. 1950, the "Powder River Basin Resource Development Act" of 1999, sponsored by Senator Enzi and by Senator Thomas. I commend you for your efforts to work with individuals, industry, associations and state governments concerned with this issue.

I am here today speaking for the Governor of Wyoming in my capacity as Director of Minerals and Energy with the Wyoming Business Council.

Mr. Chairman, I speak in favor of this legislation that would enhance the responsible development of one of the world's richest energy resource regions; the Powder River Basin in Wyoming and Montana.

The Powder River Basin contains the largest reserves of coal in the United States as well as significant deposits of oil and natural gas, including coal bed methane. Ownership of the mineral

estate in Wyoming is predominantly federal. Federal ownership constitutes nearly 50 percent of all surface acreage, and 70 percent of the mineral estate. Fully 92 percent of all coal is owned by the

federal Government, making Wyoming largely a mineral colony subject to federal policies and actions that allow very little state influence. Extraction of the coal in the Powder River Basin is through leases to coal producers under the Bureau of Land Management (BLM) and the Mineral Leasing Act.

Likewise, much of the oil and gas in the Powder River Basin is owned by the federal government along with lesser ownership by the state school trust and private parties. Statewide, federal ownership of oil is over 60 percent and methane gas is over 75 percent, and as with coal, are part of the public lands and leased to oil and gas lessees by the BLM under the Mineral Leasing Act. The privately-owned oil and gas 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 successors to those original producers.

The rights to develop and extract federal coal, oil and gas have been leased or sold by the BLM in some locations in such a fashion that development may be under different ownership. As a result of overlapping leases, disputes have arisen among the lessees concerning plans for development of those resources. Development of any one of those resources could result in the loss of the other, either by making recovery impossible if coal is developed ahead of coal bed methane, or uneconomical in the case of deep natural gas, oil, or coal.

There are many situations where coal lessees and oil and gas lessees have been able to come to an agreement regarding equitable compensation one resource developer should receive for losses resulting from the development of the other resource in the same location. There are, however, some situations where the competing interests have not been able to reach an accord, or settlement is achieved in a manner that resembles blackmail. The problem arises out of lack of planning by the BLM in advance of issuing the conflicting leases and is aggravated by the lack of clear regulatory or legislative directives for conflict resolution. The result has brought on business uncertainties, delayed development, reduced federal and state revenues and threats of expensive litigation. Thus, there is a problem.

The nature, extent, and value of any loss or delay in development of the gas, oil, or coal resources due to the conflicting development of another of these resources should be determined and fair market value, and only fair market value, for the loss or delay should be provided either by an advance agreement between the parties or an expeditious adjudication procedure if the conflict is not avoided early in the development. The provisions of S. 1950 would reduce uncertainties, promote expeditious resource recovery, and establish a fair and predictable procedure for resolving resource development conflicts. S. 1950 can resolve the problem.

When similar development conflicts arise on State lands, Wyoming already has procedures in place that parallel what S. 1950 would enable for Federal mineral conflicts. Under the Rules and Regulations of the Wyoming Office of State Lands and Investments (Chapter 18; Section 18-Multiple Use), which were adopted pursuant to the authority granted in Wyoming Statute 36-6-101(b), we have been successful in the resolution of development conflict within the extraction industries. I recommend that you consider preventive and mediation practices for federal minerals similar to what we have in Wyoming.

The state of Wyoming benefits substantially from mineral extraction, most significantly for the public schools. While tax revenue and royalties are significant, I also note that we have a significant employment

base within the mineral industries and in the service businesses that support their efforts. Given the role that federal mineral production plays in both the national as well as Wyoming's economy, we must encourage all sides to work together. The bill before you today requires that parties in conflict must first attempt to reach a development agreement among themselves before either side can avail itself of the judicial proceedings that the bill outlines. While we should encourage private development agreements among the affected parties, the BLM should enable more effective and efficient agreements ahead of leasing and development regardless of whether this legislation is approved. Coal companies and oil and gas folks would much rather spend their money providing jobs and developing minerals than having to resort to almost unending and unproductive litigation.

Mr. Chairman, thank you for giving me the opportunity to testify on behalf of Wyoming. I will be glad to take your questions.

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