

Committee on Resources

Subcommittee on Energy & Mineral Resources

Witness Statement

**HOUSE COMMITTEE ON RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
TESTIMONY OF SENATOR MICHAEL B. ENZI
ON H.R. 4297, THE "POWDER RIVER BASIN RESOURCE
DEVELOPMENT ACT OF 2000"
July 20, 2000**

Madam Chairwoman, (Ranking member), members of the subcommittee, Good Afternoon.

Thank you for holding this hearing to discuss a bill of great importance to the State of Wyoming, the "Powder River Basin Resource Development of 2000". This legislation provides a mechanism whereby conflicts of overlapping leases between coal producers and oil and gas producers can be reconciled in a manner that is fair, expeditious, and economical to all the parties involved. As you know, I introduced with Senator Thomas the counterpart to H.R. 4297, S. 1950, last fall. After undergoing numerous revisions, this bill was favorably reported out of the Senate Energy Committee on June 7th of this year. I applaud your leadership in the House on this legislation that is of such great importance to mineral development in our home State of Wyoming.

It might be helpful for this committee to hear how this legislation has developed. In the summer of 1998 the 10th Circuit Court of Appeals in the case of Southern Ute v. Amoco determined that the ownership of coalbed methane was reserved to the federal government as part of the coal estate. Consequently, all the oil and gas lessees who thought they owned the cbm as part of their oil and gas rights were in considerable trouble. Many of them had already started production, entered into contracts with drilling companies and pipelines, and put considerable investment into developing what they believed were entitled to under their leases.

As a result of this judicial turmoil in cbm ownership, many of the cbm producers, landowners, and pipeline interests came to Congress to pass a law that would grandfather all the existing cbm property rights regardless of what the Supreme Court decided in the Southern Ute case. I worked with Congresswoman Cubin and others to successfully pass legislation that protected these cbm owners. We got that legislation enacted into law in what might still be some sort of a legislative record.

One of the major issues that came up as we were working on S. 2500 was the issue of cbm and coal conflicts. The coal companies were concerned that passage of that legislation would further exacerbate their problems with overlapping mineral leases in the Powder River Basin. In order to get full cooperation on the passage of S.2500 from all the affected mineral owners, we made an agreement that following the enactment of that bill, we would come back and address the problem of these conflicts the next year.

This commitment was essential to the passage of S.2500 because given the very tight timeline we had- less

than two months at the end of the session- we had to get unanimous consent in the Senate and full cooperation in the House. The objection of even one Senator could have spelled the end of that important piece of legislation. We did end up getting full cooperation in both Houses, we passed the bill and got it signed into law, and we got the coal producers to sit down with the cbm folks to start negotiations on a conflict bill shortly after the 105th Congress ended.

The bill before the committee is the product of over a year of negotiations between the coal producers, Coalbed Methane Ad Hoc Committee, and deep oil and gas interests. Both the State of Wyoming and the Bureau of Land Management were consulted on this legislation as it was being drafted and changes were made to reflect their concerns. Even after Senator Thomas and I introduced the Senate companion legislation last, I have solicited comments from all the stakeholders. On the Senate side, I and my staff have asked that anyone who has specific amendment language to give it to us so we could take a look at it and consider it.

When we had our first hearing on the original S.1950 in the Senate Subcommittee on Public Lands, the Independent Petroleum Association of America opposed the legislation as written. Following the hearing, my staff worked with representatives from the IPAA, the NMA, and the BLM to make additional changes that would ensure that we had a bill that treated all the stakeholders fairly: the oil and gas lessees, the coal producers, the federal government, and the State of Wyoming. After several weeks of negotiations and more than 30 substantive changes to the legislation, the IPAA removed its objections to the bill and publicly stated that this legislation ensures that any producer who has to forego production will be given fair-market compensation for his mineral interests. In short, s.1950 is a consensus bill. While not perfect, this bill represents a reasonable approach to solving conflicts between coal producers and oil and gas interests without the expense, delay, and uncertainty of unbridled litigation.

Madam Chairwoman, I do not intend to revisit all the details of this important piece of legislation, but I would like to highlight a few of the reasons why I believe the "Powder River Basin Resource Development Act" represents a considerable improvement over the current method of settling mineral conflicts in the Powder River Basin in Wyoming. First, this bill requires that parties who hold conflicting mineral leases in the Basin attempt to negotiate a private settlement before either party can file a petition in federal court. No such requirement currently exists.

Second, the legislation provides an expeditious mechanism to resolve disputes if parties are unable to reach resolution among themselves. The current regulatory and legal scheme is a cumbersome, lengthy, and expensive means for both parties to resolve conflicts where time is often of the essence in order to maximize development of all the resources. Moreover, the status quo is marked with uncertainty since no one really knows how these conflicts would be resolved if the cases were to be litigated and appealed to their final conclusion.

Third, this bill establishes a valuation process that is fair to all the parties concerned. By allowing an independent panel of experts to establish the value of any resource that has to be temporarily suspended or foregone, this legislation guarantees that fair compensation will be paid to a producer while eliminating any incentive for inflated settlements. We have made over 36 changes to our legislation to ensure that the oil and gas producers, pipeline companies, and any other affected third-party contractors would be made whole in the case where resource suspension or termination had to take place. I believe that we have succeeded in the goal. I might add that the Independent Petroleum Association of America also believes that this legislation guarantees fair-market value for any producer who has to suspend or terminate his lease rights. This bill is

not designed to give either party an economic advantage in compensation. It is designed, however, to prohibit individuals from using their federal leases to make more money off of mineral conflicts than they would have from actually producing their resources.

Finally, this legislation directs the Secretary of the Interior to encourage expedited development of oil and gas and coal in the conflict areas, where possible, in order to maximize the production of both minerals. This provision, which was included at the request of the BLM, will encourage all parties to produce as much of their resource as possible in a timely manner in order to minimize conflicts that might otherwise lead to suspension of any lease rights.

I want to thank the Chairwoman and the Ranking Member of the Subcommittee for holding this important hearing and I look forward to working with my House counterparts in enacting this legislation that is of great interest to the State of Wyoming.

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