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Testimony of Shaun Andrikopoulos, Rimfire Ranch, LLC

Surface Owner Property Right Protection

Before the House Energy and Minerals Subcommittee

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I am here today representing my family and myself. We are ranchers in Sublette County, Wyoming and are owners of surface lands that are affected by Federally owned minerals. Our family has also long been a part of the Wyoming oil and gas industry.

The United States' need for natural gas production today is greater than it has ever been. According to Cambridge Energy Associates production will need to increase 40-60% over the next five years in order to keep up with increasing demand. Categorized as a clean, inexpensive energy alternative to coal or fuel oil energy, the demand for natural gas by the American public is certain to remain strong for the foreseeable future. Coupled with the need for energy independence, it stands to reason that the United States should expeditiously develop its proprietary energy resources. Fortunately, dramatic advancements in technology are enabling us to exploit our reserves at an increasing rate and at a decreasing cost. It is the combination of these factors that has led us to the current natural gas "gold rush" in Wyoming.

This gas gold rush, however, comes with an inevitable cost not only to the environment but also to private property owners impacted by gas development. There are few legal protections for the land owners controlling the 11.6 million acres of fee surface that sits on top of Federally owned minerals in Wyoming. The way in which the minerals will be developed and the way in which the property rights of these land owners will be protected are public policy issues that transcend the boundaries of this state or region and must be addressed by our Congress. It seems inequitable that the American society as a whole should benefit from inexpensive, clean energy at the sole expense of a few.

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In 2002 Wyoming produced 7.1 percent of the nation's natural gas output. At the same time, according to the USGS, Wyoming basins held 19% of the total recoverable reserves and 55% of the priority reserves in the nation. It is clear from these estimates that regardless of what we do as citizens and what the Congress does to put in place important checks and balances the industry is here to stay. We are at the beginning of the gold rush.

Another economic trend that cannot be ignored is that of increasing demand and decreasing supply of open spaces across the West. According to the USDA the average dollar value of agricultural land in Wyoming has increased nearly 50% over the past ten years. This increase in surface value is reflective of a recent and tectonic market shift in highest and best uses for the surface estate. The desire of the public to own large open spaces with important amenities such as hunting, fishing, and solitude is driving land value in our state to levels that far exceed those supported by agricultural production. Yet current Federal laws fall short because they only require that surface owners be compensated for growing crops and agricultural improvements in the case of oil and gas development.

If we place this region's modern-day wealth in resources and American societal values in the context of current Federal statute we find that there is an asymmetry in thinking. The concept that the mineral estate is dominant to all others dates back to 13th century English common law. This relic of the legal past has been perpetuated in U.S. statutes with such acts as the 1916 Stock raising Homestead Act, which severed all mineral rights from surface homestead claims. At that time it was impossible for the Congress to foresee the potential and the impacts that we are experiencing in the 21st century. It is time that this imperial thinking be modernized to reflect the 21st century societal values of private property right protection and of capitalistic balance.

One can only stop and ask why such a large portion of the American public is opposed to oil and gas development in the largely unpopulated Arctic National Wildlife Reserve, yet it seems that few are aware of the impacts on private property owned by American citizens. According to the Energy Information Administration Wyoming is ranked 45th in petroleum consumption, yet we are ranked second in natural gas production. With 43% of Wyoming's private surface sitting on top of Federal minerals it is clear that the whole of the country will benefit as a few incur the cost.

The petroleum industry has lived in relative harmony with the largely agricultural land base in Wyoming for many years. The custom and culture of the industry has been to accommodate other uses of the surface and to fairly and adequately compensate surface owners for their lost productivity, lost privacy, and lost land values. Recently, however, three key factors have driven a dramatic change in the custom and culture of the local oil and gas economy: technological advancement, industry consolidation, and increased demand for natural gas. Under these conditions the old custom and culture of working with surface owners has had little chance of survival. In the case of our family ranch we are attempting to negotiate with a multinational company that has little, if any, long-term stake in our community or local environment.

The Petroleum Association of Wyoming has collaborated with agricultural industry associations in the state to establish "voluntary" protocols that can help alleviate some of the conflicts that exist between industry and landowners in Wyoming. While these are positive steps, they are far from binding and reflect what "good players" are already practicing. Voluntary measures do nothing to hold the "bad actors" in the industry accountable. Moreover, in a gold rush environment "voluntary" accommodation will usually take a back seat to speed. This is especially true when the decision-making authority of these companies is located in another state or another country. In sum, the old rules simply don't work in today's environment.

If this were an issue that affected only ten percent of the split estate surface owners we would not be here today discussing this issue. Anecdotally, as we discuss the interplay of the petroleum industry with our fellow ranchers we are hard pressed to find split-estate land owners that feel that they have been kept whole by the industry. Conversely we do not hear about legal battles ensuing from the issue. This is because the legal gate swings decidedly one way in favor of the petroleum industry and few ranchers have the time or legal resources to challenge unfair damage settlements.

So what can be done to solve the inevitable conflict between mineral developers and surface owners? The mining industry is held accountable in Federal statute to give ample notice and to negotiate surface use agreements prior to being permitted to mineral development. The oil and gas industry is specifically exempted from the requirements that were established in the early 1970's, a time when the surface impact from petroleum exploration was minimal relative to mining. Technology, demand, and economic factors have now created an environment where the petroleum industry needs to be held to the same standards as the mining industry. A double standard should not exist. Despite these more rigorous legal standards the mining industry has thrived over the past 30 years in Wyoming, one can only assume that so will the petroleum industry when held to the same standards.

The three key components necessary to solve the issues surrounding split estate conflicts and to protect the existing property rights of surface owners are: (1) to require that detailed notice of operations be provided to surface owners well in advance of operations, (2) to require mineral developers to compensate surface owners for their "real" losses including the diminution in the real-estate value, and (3) to provide a mechanism for solving conflicts in an equitable manner through binding arbitration or through the courts. These measures, appropriately drafted and implemented, will have little impact on the timing or magnitude of the extraction of our valuable Federal resources.

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In summary, the time for legislative action is now. The inequity that exists between Federal mineral leaseholders and owners of private surface property can only be solved through Federal legislative action. Voluntary actions will do little to solve the problem in the face of accelerating development. Abdicating the responsibility to the bureaucracy of the Bureau of Land Management is not a solution; the Congress must address the issue.

In the early 20th century our Congress did not have the benefit of knowing how much energy we would need as a nation in the 21st century. Nor could they foresee the conflicts that would arise from the split estate situation. Fortunately, in 2003, we can forecast the future and we can put in place the necessary protections for our private landowners so that the current gold rush does not come at the expense of the

private property rights of surface owners in the United States.