Statement of Eric Barlow

On behalf of the Western Organization of Resource Councils

and

Powder River Basin Resource Council

Legislative Hearing on Energy Policy

House Resources Committee

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Mr. Chairman, my name is Eric Barlow. I am a cattle rancher from northeast Wyoming and a veterinarian, and my family has been in the ranching business for over a century. Thank you for the opportunity to present my views to this Committee regarding the nation's energy future. As a landowner and cattle rancher, I want to share with you what is happening on the ground in Wyoming and in other parts of the West, and talk about what it will take for the oil and gas industry to "Do It Right."

I am here today representing two non-profit organizations that have fought for responsible energy development in the West for more than 30 years – the Western Organization of Resource Councils (WORC) and the Powder River Basin Resource Council (PRBRC). WORC is a network of grassroots organizations from seven western states that include 8,250 members and 46 local community groups. About a third of WORC's members are family farmers and ranchers, many of whom are directly impacted by oil and gas development. PRBRC is a grassroots organization dedicated to good stewardship of Wyoming's natural resources, and the preservation of the state's agricultural heritage.

There have been numerous changes in our ranching operation over the years just as there have been in the nation and world. Our ranch is blessed with a multiplicity of resources, and my families' goal is to be good stewards of the resources available to us. The soil, water, air and sunlight provide our fundamental resources. These combine to produce forage which livestock can utilize and convert into a marketable product. The stewardship we provide determines the health of the resources and their ability to provide a sustainable future.

But our ability to be good stewards of the land and earn a living is threatened by irresponsible oil and gas development. Mr. Chairman, I want you to know that the organizations I represent here today support responsible oil and gas development. For several years now we've been asking industry, federal agencies and Congress to "Do It Right," and the result has been lots of rhetoric and little action. For example, we've asked that:

§ surface owners be given more say in the course of mineral development on their land, but we've been stonewalled,

§ the BLM strengthen its oil and gas bonding requirements, but draft rules have languished since January 2001,

§ coal bed methane development be phased-in and the best technology employed, but the attitude seems to be full steam ahead.

The sheer scale and magnitude of coal bed methane development alone is unprecedented. Without meaningful government oversight, the industry has no incentive to operate responsibly and, to no one's

surprise, is not doing so.

Thousands of landowners in the West face a growing threat to their livelihoods and quality of life from oil and gas development, not to mention the damage that could be done to air, land and water resources. Some of the damage that can occur to private surface owners from the development of the oil and gas estate includes:

ü reduction in property values,

ü loss of income,

ü impairment of water quality and quantity,

ü seepage of methane into drinking water wells and under people's homes,

ü the introduction and spread of noxious weeds,

ü noise from compressor stations, generators, traffic and drilling,

ü soil damage, contamination and erosion, and

ü harm to wildlife species and habitat.

My first-hand experience is that the current direction of energy development is resulting in the degradation and ruination of many vital resources and private property rights. And it is my contention that if these areas are not addressed by Congress, proactively and aggressively, that any energy policy brought forward will neither enhance nor secure this nation's energy future.

I believe it is safe to say that agriculture faces a myriad of challenges, and ranching in Wyoming and throughout the West faces an ever-increasing onslaught. Oil and gas development is now reaching an unprecedented crescendo and the health and security of our vital resources are being placed in grave jeopardy.

DEFEND PRIVATE PROPERTY RIGHTS

Mr. Chairman, I know you are concerned about private property rights. The West's agricultural economy is based on strong protections for private property rights and water rights. Individual landowners steward their own land and water with a view toward long term productivity, which benefits the whole region. Oil and gas development, especially coal bed methane production, threatens this careful balance if not done right.

In fact, there are thousands of surface owners in the West who do not own the minerals under their own land (known as a "split estate"). The most common split estate situation involves federally owned minerals under private surface. About 58 million acres of privately owned land in the United States are estimated to overlie federal minerals with most of this acreage in the West.

In the Wyoming portion of the Powder River Basin private property owners hold 75% of the surface land (about 6 million acres), and the federal government owns approximately 63% of the mineral rights under the surface. A similar percentage of split–estate lands occur in the Montana portion of the Powder River Basin.

Because mineral owners have a legal right to retrieve their minerals, landowners who don't own the minerals are largely powerless to stop irresponsible development on their land. Meanwhile, mineral owners have little incentive to develop responsibly because, unlike landowners, they will not have to live with the long-term implications of destroyed soils, degraded water, and dried up aquifers.

The reality is that the lessee of Federal minerals has dominance over the surface estate. The property rights of the surface owner, their hopes and dreams, and the values they place on their property are immediately and unequivocally superceded when a mineral lessee chooses to exercise their right. I can think of no other case where an innocent citizen's rights can be so abruptly stripped away. Nearly 80% of the private land on our ranch is in a split estate situation. We have been told several times by oil and gas companies that they can and will use as much of our surface as they want, while at the same time they purport to be our neighbors.

The best way to ensure responsible oil and gas development is to empower landowners to have a real say in the course of mineral development on their land. Congress can help landowners protect their property rights by taking three straightforward, proactive steps.

1. Obtain the consent to lease of the surface owner

Surface owner consent must be sought before federal leases are issued for oil and gas resources underlying private lands. This idea parallels an existing provision in the Surface Mining Control and Reclamation Act. The coal industry has operated under this requirement for twenty years and appears to be very healthy. There is no reason the oil and gas industry couldn't do so as well.

2. Require mandatory surface use and damage agreements

Additional measures are needed to provide a degree of relief to landowners. One such measure is to require mandatory surface use agreements between landowners and oil and gas operators prior to oil and gas development, with standardized terms which offer a minimum and consistent level of protection.

Such agreements would level the playing field and allow the landowner to be informed and engaged in the development process. By negotiating an agreement the landowner can more accurately assess the ramifications to his/her property and participate in the planning process to minimize the potential adverse impacts to the use and enjoyment of her/his property. Agreements between landowners and companies are fairly common practice, but they are only as good as the company will allow. Companies have publicly described these agreements as "voluntary," "unnecessary" and for "public relations" purposes.

Requiring mandatory surface use and damage agreements will not prevent the development of the mineral estate, but simply empower surface owners to have a real say in the course of mineral development on their lands. It also represents true local control because it places power and authority in the hands of oil and gas operators and surface owners.

3. Improve notification to landowners regarding lease sales and drilling applications

Many surface owners are unaware that Federal minerals have been leased under their land, nor do they have any knowledge of or input into lease requirements, lease modifications and drilling permits. To correct this injustice, the BLM needs to notify surface owners in writing:

(a) at least 45 days in advance of lease sales and, once leases are issued, about who has leased the minerals under their property,

(b) about any decisions regarding the lease (such as modifying or waiving stipulations, approving rights of way, etc.), and

(c) within five working days after an Application Permit to Drill (APD) is submitted to the BLM, and immediately after the BLM has issued the APD.

A recent report prepared by the U.S. Institute for Environmental Conflict Resolution (IECR) on split estate issues in the Powder River Basin states that "many of those interviewed, especially state and local government officials, acknowledged that additional notice, public outreach and education to landowners would serve a valuable purpose and could reduce conflict." Among other recommendations, the authors of the report recommend that surface estate owners be given notice when the minerals under their land have been leased, and when permits related to CBM development are applied for (pgs. 53-54; emphasis added).

Without the three steps described above, I am left with little or nothing when the government's lessee comes a-knocking. A friend and rancher recently questioned the sensibility of anyone who owns their land but not the underlying minerals. It seemed to him that there are only two privileges that accompany land ownership. The first is the privilege to pay property taxes, and the second is to provide a doormat for the mineral lessee. I share that sentiment.

PROTECT OUR CLEAN WATER

If it were not enough for the land to be placed under duress, our clean water is also under attack. Many of the oil and gas extraction processes place at great peril the water resources of this nation and certainly our region. Both the quality and quantity of our water is being adversely affected. Whether it is the dewatering

involved in coal bed methane production or the hydraulic fracturing of formations to enhance oil and gas production, our water resources are being irretrievably affected. This is another example of one resource being developed at the expense of another and another property right being victimized.

Congress must raise the bar when it comes to protecting water resources by amending the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 30 U.S.C. 226 to: (a) replace water supplies affected by oil and gas operations, (b) reinject and treat coal bed methane produced water, and (c) require a water management plan.

The ground water and surface waters of this nation are a precious and life-sustaining resource that must be protected and used prudently. In the future, water will prove to be far more valuable than all the precious metals and fossil fuels this nation has produced in its history.

HOLD INDUSTRY ACCOUNTABLE FOR CLEAN-UP COSTS AND DAMAGES

Another critical issue that must be addressed by Congress is that of industry accountability for clean-up costs and damages. The exploration for and extraction of minerals can and often does cause damage to the land and other resources. There must be a functional and timely system in place which ensures that mitigation and reclamation occurs. This is necessary to correct the physical manifestations of the damage and to make whole the rights of the affected parties. Too often there is procrastination or the turning of a blind eye to the problems. This leads to a backlog and, in time, a compounding effect that is overwhelming. We are all taught from a young age to clean-up our messes, and that is all we are asking the oil and gas industry to do.

We have been striving to achieve proper reclamation on our ranch for over twenty years. Whether it is ruts created in muddy conditions, leaking pipelines, idle wells or numerous other items, there is a continual need to identify and correct the shortcomings. It is my belief that while the BLM generally desires to appropriately address these issues, it is unable to do so effectively. This is partly because the agency has an inadequate number of inspectors and partly because it lacks the regulatory fortitude to ensure industry compliance. Instead, the BLM relies on the good faith efforts of the industry and an out of sight, out of mind mentality. For example, the BLM has allowed three oil wells to remain idle for over a decade on our ranch without proper reclamation.

We have what I would characterize as a working relationship with our local BLM field office. However, it seems to us that it is only at our request that any effort is undertaken to deal with failures in industry performance. On the other hand, when the industry wants to drill more wells, the agency seems all to eager to expedite and streamline the permitting process.

As a general principle, we believe that oil and gas operators must be required to restore the affected land to a condition capable of supporting the uses it could support before oil and gas activity began, or to higher and better uses, and establish a permanent vegetative cover in the area, using native vegetation. More specifically, we support the following three oil and gas reclamation initiatives.

1. Institute a program to clean-up idled, abandoned and orphaned wells

We ask Congress to include a provision in federal energy legislation that requires the Secretary of Interior to establish a program to clean-up idled, abandoned and orphaned wells, and authorize $10 million over two years to implement it.

2. Require detailed reclamation plans and complete and timely reclamation

Congress needs to amend the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 30 U.S.C. 226 to ensure complete and timely reclamation.

3. Add oil and gas to the list of minerals covered under subsections (b) through

(o) of the Stock Raising Homestead Act

Many of the private lands in the West were acquired under the Stock Raising Homestead Act (SRHA) of 1916. The people who homesteaded this land received ownership of the surface, while the federal government retained ownership of the minerals. Subsections (b) through (o) of the SRHA place additional requirements on mineral developers for bonding, filing a plan of operation, assuring contemporaneous

reclamation, and allowing surface owners to request an inspection. Unfortunately, minerals subject to disposition under the Mineral Leasing Act (in other words, oil and gas) are not covered under subsections (b) through (o). It is time for Congress to rectify this omission by amending the Stock Raising Homestead Act.

Another area of accountability that is sorely lacking is current bonding requirements. The financial level of bonding is inadequate. The current bonding levels have no relation to the extent of the activities a company undertakes or the costs associated with plugging and abandoning a single well (much less multiple wells). Additionally, most wells are supported by numerous ancillary facilities and any reclamation of these sites as guaranteed by current bonding is unimaginable.

Oil and gas bonding requirements must be strengthened, and the oil and gas industry must shoulder the burden of liability created by its activities, not affected landowners or taxpayers. We ask Congress to support one of the following approaches aimed at strengthening oil and gas bonding requirements.

1. Require bonds for entire fields or project areas

Congress needs to amend the Federal Onshore Oil and Gas Leasing Reform Act so that a bond covers a specific oil and gas field or project area (such as the CX Field in Montana or the Lower Prairie Dog Project Area in Wyoming). As additional fields or project areas are developed, the operator would post additional bonds with the regulatory authority.

Bonds must cover not only wells, but also all other associated facilities. The amount of the bond required for each field or project area would depend on the type and intensity of oil and gas operations, and reflect the probable difficulty of reclamation considering such factors as topography, geology, hydrology, vegetation, wildlife populations, and so on. The amount of the bond would be determined by the regulatory authority, and must be sufficient to ensure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture. The regulatory authority could adjust the amount of the bond as affected land acreages increase or decrease, or where the cost of future reclamation changes. The bond must be based on the worst-case scenario. Citizens would have the right to participate in bond release proceedings, attend an on-site inspection during bond release proceedings, and file written objections to a proposed bond release.

2. Impose a per well bond of $20,000

In lieu of the first approach outlined above, Congress could amend the Federal Onshore Oil and Gas Leasing Reform Act to require companies to post a $20,000 per well bond. Such bonds must cover not only the costs of plugging the well and restoring the site around the well, but the costs of reclaiming roads, compressor station sites, produced water containment ponds, and all other associated facilities and impacts for which a bond is not otherwise provided.

Finally, Congress needs to rectify the chronic lack of adequate funds for the BLM's Inspection and Enforcement Program. Inspection and enforcement is a critical component of the federal oil and gas program. Yet, in the past, the BLM has suffered from a chronic lack of adequate funds for these activities. The Farmington (NM) Field Office, for example, conducted a technical and procedural review of its I & E program in July 2000 and found numerous problems, including inadequate personnel and failures to reclaim after resource extraction was complete. It took Senator Bingaman going directly to BLM Director Kathleen Clarke before new inspectors for this field office and for the rest of the state were authorized. With the Bush Administration pushing for expanded leasing and production from the public lands, it is essential that this problem not be perpetuated. We recommend adoption of the following statutory language:

By October 1 of each year the Secretary of Interior shall certify to Congress that available staff and budgets are adequate to meet quantified inspection and enforcement needs of the federal oil and gas program. The required certification shall be provided for each field office of the Bureau of Land Management that is managing valid federal oil and gas leases as well as each field office that intends to issue such leases in the fiscal year. The Secretary shall make all such certifications, including the budgetary and other documentation on which they were based, publicly available. In the event such certification cannot be issued for a given field office, that field office shall not issue or approve any new leases, new project level or full-field development projects or applications for permit to drill, unless and until the required certification is provided.

Mr. Chairman, in summary I have the following recommendations for this Committee based on my personal experience as a cattle rancher and as someone who has been intimately involved with oil and gas development issues for many years.

Defend private property rights by:

obtaining the consent to lease of the surface owner,
requiring mandatory surface use and damage agreements, and
improving notification to landowners.

Hold the oil and gas industry accountable for clean-up costs and damages by:

instituting a program to clean-up idled, abandoned and orphaned wells,
requiring detailed reclamation plans and complete and timely reclamation,
· adding oil and gas to the list of minerals covered under subsections (b) through (o) of the Stock Raising Homestead Act,

requiring bonds for entire fields or project areas or imposing a per well bond of $20,000, and
addressing BLM's chronic lack of adequate funds for its Inspection and Enforcement Program.

Protect our clean water by requiring:

the replacement of water supplies affected by oil and gas operations,
reinjection and treatment of coal bed methane produced water, and
a water management plan.

This leads me to my final point, which is that there has not been a meaningful acknowledgement that we must move beyond nonrenewable sources of energy. It is time for this nation to be a world leader and transform our energy paradigm. True security for this nation will be based, in part, on clean and sustainable sources of energy. It is reasonable to expect that fossil fuels will have a role to play, but it must be one of transition and not reliance. The costs to our resources and security are far too great to continue as we are.

Attachments:

Western Energy Agenda
New Mexico Cattle Growers' Association Oil and Gas Position Paper