

STATEMENT OF TOM FULTON
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE RESOURCES SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
ON
HR 2952, "THE POWDER RIVER BASIN RESOURCE DEVELOPMENT ACT"
October 11, 2001

Madame Chairman and Members of the Subcommittee, thank you for the opportunity to appear here today to discuss HR 2952, the Powder River Basin Development Act of 2001, which would establish a process for resolving disputes between developers of coal and developers of coalbed methane (CBM) in certain areas of the Wyoming portion of the Powder River Basin. I am accompanied by Erick Kaarlela, Senior Petroleum Engineer with the Bureau of Land Management (BLM).

The Department of the Interior (Department) appreciates the Subcommittee's interest and efforts in attempting to resolve the conflicts between oil and gas, coal, and coalbed methane interests through HR 2952. The Department supports the intent of this legislation. However, we are concerned about certain provisions of the bill for reasons discussed below.

The environmentally-responsible development of all these resources in the energy-rich Powder River Basin is an important element in meeting our national energy needs. The President's National Energy Policy specifically calls for the Department to remove or reduce impediments to domestic energy production, and to provide for a reliable energy supply. The bill provides for timely conflict resolution where the inability to reach a settlement agreement could result in bypassing vast amounts of valuable coal or possibly even the premature closing of major mining operations. Together with the administrative measures the BLM has initiated under existing law, HR 2952 will optimize the recovery of both the CBM and coal resources in the Basin.

CBM Development in the Powder River Basin in Wyoming

The Powder River Basin has experienced a particularly dramatic increase in coalbed methane exploration and development. It contains the largest coal reserves of any basin in the United States. Over 90% of the Basin's coal estate is in Federal ownership and accounts for one-third of all U.S. coal production. About 45% of the oil and gas estate (including coalbed methane) in the "dispute resolution area" identified by the bill is under Federal ownership. The remainder of the oil and gas estate in that area under state or private ownership.

Conflicts Between Developers

Extensive CBM development activity was not anticipated at the time most of the overlapping Federal coal leases were issued on these lands. In the past, traditional oil and gas and coal conflicts generally involved oil and gas resources contained in reservoirs much deeper than the coal, thereby allowing for development of coal without loss of the oil and gas. Since CBM is trapped within the coal seams and was considered a valueless gas which escaped from coal, rather than part of the valuable coal fuel itself, coal companies routinely vented the gas to the atmosphere. However, escalating interest in CBM exploration and development as a result of new technology, a better understanding of the resource, and increasing energy demand has created a unique mineral conflict situation for the BLM. CBM development adjacent to active coal mines raises a number of questions about the simultaneous development of both the methane and coal resources. Coal mining will eliminate the methane resource, yet waiting for methane development may delay coal mining operations such that production of the coal may no longer be economical.

BLM leases provide that the BLM may lease the same tract for the development of more than one mineral resource, provided that it does not unreasonably interfere with the operations of the senior lessee and subject to Departmental regulations regarding conservation. Most of the oil and gas leases in the coal/CBM dispute resolution area are senior in time to the coal leases. The coal lessees were aware of the existing senior leases at the time of the issuance of the coal lease, and the leases specifically provide that coal mining cannot unreasonably interfere with oil and gas development under the senior leases. It was thought that deep oil and gas wells could be shut in, then reopened following the completion of the surface mining operations. However, it was not envisioned at the time most of the leases were issued that CBM would become economically valuable or that the resulting conflict would occur. Consistent with the principles embodied in the Mineral Leasing Act to conserve the natural resources and with the Federal Land Policy and Management Act's multiple-use mandate, the BLM supports multiple mineral development and optimization of the recovery of both resources, and has worked to encourage settlement agreements between developers.

Conflicts & Agreements in Powder River Basin in Wyoming

The sale of the Thundercloud coal tract in 1998 was the catalyst of the coal/CBM conflict issue in the Powder River Basin in Wyoming. Four distinct conflicts arose concerning this coal lease. To address some of these conflicts, the BLM sponsored Federal mediation among Arch Minerals Inc., Jacobs Ranch Coal Co. (Kennecott Energy Co.), M&K Oil Co., and RIM Operating Co. A number of other conflicts still exist between operators and others are anticipated to develop in the future.

BLM Policy

The BLM has some existing authority under the Mineral Leasing Act, Federal regulations, and lease provisions to address conflicting development schemes when the rights to develop both resources are held by Federal lessees. In dealing with these disputes, the Bureau has three goals in mind -- 1) to protect the rights of the lessee under the terms of its lease and the Mineral Leasing Act, including implementing regulations and those concerning conservation of natural resources; 2) to optimize the recovery of both resources (thereby maximizing the return to the public); and 3) to protect public safety and the environment and minimizing impacts on local communities. The BLM policy provides that the initial course of action is to attempt to facilitate an agreement between the lessees. However, absent a settlement, the BLM can utilize existing law and regulations, in conjunction with the lease provisions, to optimize the recovery of both resources.

The BLM is in the process of clarifying and strengthening its existing conflict resolution policy - which would work in concert with the conflict resolution provisions of HR 2952 - in order to facilitate more timely

resolution and a greater degree of certainty to industry. Where it is economical to drill to produce methane that might otherwise be vented during mining, the BLM is prepared to order such drilling sooner to avoid the waste of this resource. This approach would encourage conservation of the CBM and coal resources and facilitate conflict resolution.

The BLM policy will take into consideration the conservation of the coal resources, while still optimizing CBM recovery, and provide for high priority processing of CBM applications for permit to drill (or APDs) in certain conflict zones.

HR 2952

Many of the provisions of HR 2952 will help facilitate the orderly resolution of the resource development conflicts in the Powder River Basin in Wyoming. The conflict resolution procedures set forth in the bill will work in conjunction with the BLM conflict resolution policies outlined above. Furthermore, the legislation will provide procedures for timely resolution of conflicts between oil and gas and coal lessees in those circumstances where the BLM has little or no authority to regulate non-Federal oil and gas operations (constituting 55% of the oil and gas estate in the dispute resolution area). H.R. 2952 encourages the conservation of the CBM and the coal resource. The Department supports the objective of conserving both resources.

The bill mandates a specific schedule for the Secretary of the Interior and the courts to resolve any development conflicts between the two resources and provides for the appointment of experts to appraise the value of potential resource losses. These steps will ensure a timely and firm resolution of the conflicts between coal and CBM development. HR 2952 permits the suspension of CBM operations in order to allow coal production to continue while providing a means for the oil and gas lessee to be paid equitable compensation. The bill also provides a means for the termination of producible oil and gas leases, with compensation for the opportunities foregone, when continued operation could lead to the bypass of the coal resource.

In resolving these conflicts, time is of the essence. The potential that coal operations could be suspended while the conflicting development plans are resolved through traditional administrative and judicial proceedings has created uneven bargaining power among the parties in such disputes. The bill provides for expedited judicial review of orders to suspend operations and production or the Secretary's decision not to order such suspension. HR 2952 provides not only for compensation of the oil and gas lessee for its losses, but also assures that the bill's compensation provisions are the exclusive remedy.

We are concerned that the bill allows certain credits against future royalties to compensate for payments made to Federal CBM developers. The Department is concerned that the burden of resolving disputes between private oil and gas and coal companies may result in a reduction of proceeds being received by the American taxpayer. Nevertheless, we recognize that there are financial burdens associated with resolving these disputes. HR 2952 provides a judicial process for resolving these resource development conflicts. In addition, the Department is considering alternative dispute resolution or other means to constructively allow the lessees to move forward, while keeping any adverse impacts to the American taxpayer at a minimum. Overall, we believe that long term benefits will result by facilitating the planned development of these resources in the future.

The Department also opposes Section 16(b) of the bill, which would require that the Secretary make payments to States for coal royalties that would have been paid, were it not for the royalty credits created by

the legislation. This would require the Secretary to disburse funds received from other leases to replace the royalties not collected on these leases. The Department believes it is reasonable to ask the States, which benefit from the production of the more valuable Federal coal resource through other tax collections as well as through coal royalties, to share in the financial implications associated with conflict resolution. The Department is interested in working with the Committee to address our concerns with this provision of the bill.

Conclusion

The Department is firmly committed to optimizing timely, environmentally-sound development of coal, CBM, and conventional oil and gas in the Powder River Basin. If amended to address the concerns raised above, HR 2952, coupled with the aggressive use of administrative measures, can promote timely and equitable production of these valuable resources. In so doing, it will contribute positively in our efforts to strengthen our Nation's domestic energy security.

Thank you for the opportunity to testify before you today. I welcome any questions the Subcommittee may have.