

REDLINE OF CHAIRMAN'S MARK

TITLE II—COAL

**~~Subtitle A~~—Coal Energy Research, Development and
Demonstration**

~~SEC. 201. COAL AND RELATED TECHNOLOGIES PROGRAMS.~~

~~(a) DEFINITIONS.—~~ For the purposes of this section.—

~~(1) The term “cost and performance goals” means the cost and performance goals established under subsection b of this subsection.~~

~~(2) The term “Secretary” means the Secretary of Energy.~~

~~(b) COST AND PERFORMANCE GOALS.—~~ The Secretary shall perform an assessment that identifies cost and performance goals of technologies that would permit the continued cost-competitive use of coal for electricity generation, as chemical feedstocks, and as transportation fuel. In establishing the cost and performance goals, the Secretary shall—

~~(1) consider activities and studies undertaken to date by industry in cooperation with the Department of Energy in support of such assessment;~~

~~(2) consult with interested entities, including coal producers, industries using coal, organizations to promote coal and advanced coal technologies, environmental organizations and organizations representing workers;~~

~~(3) issue a set of draft cost and performance goals for public comment, no later than 120 days after the date of enactment of this Act, and~~

~~(4) submit to Congress the final cost and performance goals, no later than 180 days after the date of enactment of this Act, after taking into consideration any public comments received.~~

~~(c) STUDY.—~~

(1) ~~No later than 1 year after the date of enactment of this Act, and once every 2 years thereafter through 2016, the Secretary, in cooperation with other appropriate federal agencies, shall conduct a study to—~~

~~(A) identify technologies that, by themselves or in combination with other technologies, may be capable of achieving the cost and performance goals;~~

~~(B) assess the costs that would be incurred by, and the period of time that would be required for, the development and demonstration of technologies that, by themselves or in combination with other technologies, contribute to the achievement of the cost and performance goals;~~

~~(C) develop recommendations for technology development programs, which the Department of Energy could carry out in cooperation with industry, to develop and demonstrate technologies that, by themselves or in combination with other technologies, achieve the cost and performance goals, and~~

~~(D) develop recommendations for additional authorities required to achieve the cost and performance goals, and review and recommend changes, if any, to those cost and performance goals if the Secretary determines that such changes are necessary as a result of ongoing research, development and demonstration of technologies.~~

~~(2) In carrying out this section, the Secretary shall give due weight to the expert advice of representatives of the entities described in section 201(b)(2).~~

~~SEC. 202. PRODUCTION AND GENERATION OF COAL-BASED POWER.~~

~~(a) IN GENERAL.—The Secretary shall carry out a technology research, development and demonstration program to facilitate production and generation of coal-based power through methods and equipment under this Title; the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.); the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); and title XVI of the Energy Policy Act of 1992 (42 U.S.C. 13381 et seq.).~~

~~(b) CONDITIONS.—The program described in subsection (a) shall be designed to achieve the cost and performance goals required by section 201(b).~~

~~SEC. 203. AUTHORIZATION OF APPROPRIATIONS.~~

(a) ~~IN GENERAL.~~—There are authorized to be appropriated to the Secretary \$200,000,000 for fiscal year 2004, \$210,000,000 for fiscal year 2005, and \$220,500,000 for fiscal year 2006, to remain available until expended, for coal and related technologies research and development programs, which shall include—

- (1) innovations for existing plants;
- (2) integrated gasification combined cycle;
- (3) advanced combustion systems;
- (4) turbines for synthesis gas derived from coal;
- (5) carbon capture and sequestration research and development;
- (6) coal-derived transportation fuels and chemicals;
- (7) solid fuels and feedstocks; and
- (8) advanced coal-related research.

(b)(1) ~~LIMIT ON USE OF FUNDS.~~—Prior to the use of funds authorized by this section, the Secretary shall transmit to the Congress a report describing the proposed use of funds and containing a plan that includes—

(A) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(B) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(C) a description of how the programs authorized in this section will be carried out so as to complement and not duplicate activities authorized under the Clean Coal Power Initiative authorized under subtitle B.

(2) Thirty days shall elapse from receipt of the report after which the Secretary may then use the authorization of appropriations provided by this section.

~~Subtitle B~~— *Subtitle A*—Clean Coal Power Initiative

1 SEC. ~~241~~ 201. AUTHORIZATION OF APPROPRIATIONS.

2 CLEAN COAL POWER INITIATIVE.— There ~~are~~*is* authorized to be appropriated to the
3 Secretary of Energy (in this subtitle, referred to as “Secretary”) to carry out the activities

1 authorized by this subtitle \$200,000,000 for each of the fiscal years 2003 through 2011, to remain
2 available until expended.

3 **SEC. ~~212~~ 202. PROJECT CRITERIA.**

4 (a) IN GENERAL.—The Secretary shall not provide funding under this title for any project that
5 does not advance efficiency, environmental performance, and cost competitiveness well beyond the
6 level of technologies that are in operation or have been demonstrated as of the date of the enactment of
7 this Act.

8 (b) TECHNICAL CRITERIA FOR GASIFICATION.—In allocating the funds made available under
9 section ~~211(a)~~ 201, the Secretary shall ensure that *at least 80 percent of the* funds are used for
10 coal-based gasification technologies, ~~coal-based projects that include the separation and capture of~~
11 ~~carbon dioxide,~~ or coal based projects that include gasification combined cycle, gasification fuel cells,
12 gasification coproduction, or hybrid gasification/combustion. The Secretary shall set technical
13 milestones specifying emissions levels that coal gasification projects must be designed to and reasonably
14 expected to achieve. The milestones shall get more restrictive through the life of the program. The
15 milestones shall be designed to achieve by 2020 coal gasification projects able to—

- 16 (1) remove 99 percent of sulfur dioxide;
17 (2) emit no more than .05 lbs of NO_x per million BTU;
18 (3) achieve substantial reductions in mercury emissions; and
19 (4) achieve a thermal efficiency of —
20 (A) 60 percent for coal of more than 9,000 Btu;
21 (B) 59 percent for coal of 7,000 to 9,000 Btu; and
22 (C) 57 percent for coal of less than 7,000 Btu.

23 (c) TECHNICAL CRITERIA FOR OTHER PROJECTS.— For projects not described in subsection
24 (b), the Secretary shall set technical milestones specifying emissions levels that the projects must be
25 designed to and reasonably expected to achieve. The milestones shall get more restrictive through the
26 life of the program. The milestones shall be designed to achieve by 2010 projects able to—

- 27 (1) remove 97 percent of sulfur dioxide;
28 (2) emit no more than .08 lbs of NO_x per million BTU;

1 (3) achieve substantial reductions in mercury emissions; and

2 (4) achieve a thermal efficiency of—

3 (A) 45 percent for coal of more than 9,000 Btu;

4 (B) 44 percent for coal of 7,000 to 9,000 Btu; and

5 (C) 42 percent for coal of less than 7,000 Btu.

6 (d) EXISTING UNITS.—In the case of projects at existing units, in lieu of the thermal efficiency
7 requirements set forth in paragraphs (b)(4) and (c)(4), the projects shall be designed to achieve an
8 overall thermal design efficiency improvement compared to the efficiency of the unit as operated, of not
9 less than—

10 (A) 7 percent for coal of more than 9,000 Btu;

11 (B) 6 percent for coal of 7,000 to 9,000 Btu; or

12 (C) 4 percent for coal of less than 7,000 Btu.

13 (e) PERMITTED USES.—*In allocating funds made available in this section, the Secretary*
14 *may allocate funds to projects that include, as part of the project, the separation and capture of*
15 *carbon dioxide.*

16 (f) CONSULTATION.—Before setting the technical milestones under subsections (b) and (c),
17 the Secretary shall consult with the Administrator of the Environmental Protection Agency and
18 interested entities, including coal producers, industries using coal, organizations to promote coal or
19 advanced coal technologies, environmental organizations, and organizations representing workers.

20 (g) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this title
21 unless the recipient has documented to the satisfaction of the Secretary that—

22 (1) the award recipient is financially viable without the receipt of additional Federal
23 funding;

24 (2) the recipient will provide sufficient information to the Secretary for the Secretary to
25 ensure that the award funds are spent efficiently and effectively; and

26 (3) a market exists for the technology being demonstrated or applied, as evidenced by
27 statements of interest in writing from potential purchasers of the technology.

28 (h) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects

1 that meet the requirements of this section and are likely to—

2 (1) achieve overall cost reductions in the utilization of coal to generate useful forms of
3 energy;

4 (2) improve the competitiveness of coal among various forms of energy; and

5 (3) demonstrate methods and equipment that are applicable to 25 percent of the
6 electricity generating facilities that use coal as the primary feedstock as of the date of the
7 enactment of this Act.

8 ~~(h)~~ (i) FEDERAL SHARE.—The Federal share of the cost of a coal or related technology project
9 funded by the Secretary shall not exceed 50 percent, ~~to be repaid over a reasonable, agreed upon,~~
10 ~~period of time.~~

11 ~~(i)~~ (j) APPLICABILITY.—No technology, or level of emission reduction, shall be treated as
12 adequately demonstrated for purposes of section 111 of the Clean Air Act, achievable for purposes of
13 section 169 of that Act, or achievable in practice for purposes of section 171 of that Act solely by
14 reason of the use of such technology, or the achievement of such emission reduction, by one or more
15 facilities receiving assistance under this title.

16 ~~SEC. 213 REPORT.~~ 203. REPORTS.

17 (a) TEN-YEAR PLAN.—By September 30, 2004, the Secretary shall transmit to Congress a
18 report, with respect to section 202(a), a 10-year plan containing—

19 (1) a detailed assessment of whether the aggregate funding levels provided under
20 section 201 are appropriate funding levels for that program;

21 (2) a detailed description of how proposals will be solicited and evaluated,
22 including a list of all activities expected to be undertaken;

23 (3) a detailed list of technical miles stones for each coal and related technology
24 that will be pursued; and

25 (4) a detailed description of how the program will avoid problems enumerated in
26 General Accounting Office reports on the Clean Coal Technology Program, including
27 problems that have resulted in unspent funds and projects that failed either financially or
28 scientifically.

1 “(B) The Secretary may establish a period of more than forty years if the Secretary determines
2 that the longer period will ensure the maximum economic recovery of a coal deposit, or the longer
3 period is in the interest of the orderly, efficient, or economic development of a coal resource.”.

4 **SEC. 223-213. PAYMENT OF ADVANCE ROYALTIES UNDER COAL LEASES.**

5 ~~(a) IN GENERAL.—Section 7(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 207(b)) is
6 amended to read as follows:—~~

7 ~~“(b)(1) Each lease shall be subjected to the conditions of diligent development and continued
8 operation of the mine or mines, except where operations under the lease are interrupted by strikes, the
9 elements, or casualties not attributable to the lessee.—~~

10 ~~“(2)(A) The Secretary of the Interior, upon determining that the public interest will be served
11 thereby, may suspend the condition of continued operation upon the payment of advance royalties.—~~

12 ~~“(B) Such advance royalties shall be computed based on the average price for coal sold in the
13 spot market from the same region during the last month of each applicable continued operation year.—~~

14 ~~“(C) The aggregate number of years during the initial and any extended term of any lease for
15 which advance royalties may be accepted in lieu of the condition of continued operation shall not
16 exceed 20.—~~

17 ~~“(3) The amount of any production royalty paid for any year shall be reduced (but not below
18 zero) by the amount of any advance royalties paid under such lease to the extent that such advance
19 royalties have not been used to reduce production royalties for a prior year.—~~

20 ~~“(4) This subsection shall be applicable to any lease or logical mining unit in existence on the
21 date of the enactment of this Act or issued or approved after such date.—~~

22 ~~“(5) Nothing in this subsection shall be construed to affect the requirement contained in the
23 second sentence of subsection (a) relating to commencement of production at the end of 10 years.”.—~~

24 ~~(b) AUTHORITY TO WAIVE, SUSPEND, OR REDUCE ADVANCE ROYALTIES.—Section 39 of the
25 Mineral Leasing Act (30 U.S.C. 209) is amended by striking the last sentence.—~~

26 *Section 7(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 207(b)) is amended by
27 striking all after “Secretary).” through to “a lease.” and inserting:*

28 *“The aggregate number of years during the period of any lease for which advance*

royalties may be accepted in lieu of the condition of continued operation shall not exceed twenty. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year.”.

~~SEC. 224~~ **SEC. 214. ELIMINATION OF DEADLINE FOR SUBMISSION OF COAL LEASE OPERATION AND RECLAMATION PLAN.**

Section 7(c) of the Mineral Leasing Act (30 U.S.C. 207(c)) is amended by striking “and not later than three years after a lease is issued,”.

~~SEC. 225. AMENDMENTS RELATING TO FINANCIAL ASSURANCES WITH RESPECT TO BONUS BIDS.~~

~~(a) PROHIBITION ON REQUIRING SURETY BONDS.—~~Section 2(a) of the Mineral Leasing Act (30 U.S.C. 201(a)) is amended by adding at the end the following:

~~“(4) The Secretary shall not require a surety bond or any other financial assurance to guarantee payment of deferred bonus bid installments with respect to any coal lease issued based upon a cash bonus bid.~~

~~“(5) Notwithstanding any other provision of law, if the lessee under a coal lease fails to pay any installment of a deferred cash bonus bid within 10 days after the Secretary provides written notice that payment of such installment is past due—~~

~~“(A) such lease shall automatically terminate;~~

~~“(B) any deferred bonus payments that have not been paid to the United States with respect to such lease shall no longer be owed to the United States; and~~

~~“(C) any bonus payments already made to the United States with respect to such lease shall not be returned to the lessee or credited in any future lease sale.”.~~

~~(b) CONFORMING AMENDMENT.—~~Section 2(a)(1) of the Mineral Leasing Act (30 U.S.C. 201(a)(1)) is amended by striking “Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States.”.

~~SEC. 226. INVENTORY REQUIREMENT.~~

~~(a) DEFINITIONS.—~~ For purposes of this section—

1 (1) the term “compliant coal” means coal that contains not less than 1.0 and not more
2 than 1.2 pounds of sulfur dioxide per million Btu; and

3 (2) the term “supercompliant coal” means coal that contains less than 1.0 pounds of
4 sulfur dioxide per million Btu.

5 ~~(b) REVIEW OF ASSESSMENTS.—The Secretary of the Interior, in consultation with the~~
6 ~~Secretary of Agriculture and the Secretary of Energy, shall review coal assessments and other available~~
7 ~~data to identify—~~

8 (1) public lands with coal resources;

9 (2) the extent and nature of any restrictions or impediments to the development of coal
10 resources on public lands identified under paragraph (1); and

11 (3) with respect to areas of such lands for which sufficient data exists, resources of
12 compliant coal and supercompliant coal.

13 ~~(c) COMPLETION AND UPDATING OF THE INVENTORY.—The Secretary shall complete the~~
14 ~~inventory under subsection (a) not later than 2 years after the date of the enactment of this Act, and~~
15 ~~update the inventory as the availability of data and developments in technology warrant.~~

16 ~~(d) REPORT.—The Secretary shall submit to the Speaker of the House of Representatives and~~
17 ~~the President of the Senate and make publicly available, by not later than 2 years after the enactment of~~
18 ~~this Act, a report containing the inventory under this section and each update of such inventory.~~

19 ~~SEC. 227. APPLICATION OF AMENDMENTS.~~

20 ~~The amendments made by this Act apply with respect to any coal lease issued before, on, or~~
21 ~~after the date of the enactment of this Act.~~

22 ~~SEC. 215. APPLICATION OF AMENDMENTS.~~

23 *The amendments made by this Act apply with respect to any coal lease issued on or after*
24 *the date of enactment of this Act, and, with respect to any coal lease issued before the date of*
25 *enactment of this Act, upon the date of readjustment of the lease as provided for by section 7(a)*
26 *of the Mineral Leasing Act, or upon request by the lessee, prior to such date.*

27 **Subtitle D C—Powder River Basin Shared Mineral Estates**

28 ~~SEC. 231. SHORT TITLE.~~

1 This Act may be cited as the “Powder River Basin Resource Development Act”.

2 ~~SEC. 232. DEFINITIONS.~~

3 In this Act:

4 (1) The term “coalbed methane” has the meaning given that term in section 1339(p)(2)
5 of the Energy Policy Act of 1992 (42 U.S.C. 13368(p)(2)).

6 (2) The term “common area” means an area in the Basin in which all or a portion of a
7 Federal coal lease (including any area of State or private coal within a logical mining unit with
8 the Federal coal lease) overlaps all or a portion of an oil and gas lease or right to develop.

9 (3) The terms “Federal coal lease” and “Federal oil and gas lease” mean a lease in the
10 Basin issued pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Mineral
11 Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.).

12 (4) The term “Federal coal lessee” means the holder of a Federal coal lease.

13 (5) The term “non-Federal oil and gas lease or right to develop” means a lease for or
14 right to develop oil and gas in the Basin provided by a State or private owner of the resources.

15 (6) The term “oil and gas developer” means the holder of an oil and gas lease or right to
16 develop.

17 (7) The term “oil and gas lease or right to develop” means a Federal oil and gas lease in
18 the Basin or non-Federal oil and gas lease or right to develop in the Basin.

19 (8) The term “owners of any interest in the oil and gas lease or right to develop” means
20 persons who own the working interest, lease interest, operating interest, mineral interest, royalty
21 interest, or any other interest in the oil and gas lease or right to develop, and any other persons
22 who might receive compensation for unavoidable fixed expenses under an order concerning the
23 oil and gas lease or right to develop issued pursuant to section 239(d).

24 (9) The term “Powder River Basin” or “Basin” means the area in the State of Wyoming
25 designated as the “Dispute Resolution Area” on maps entitled “Powder River Basin, Dispute
26 Resolution Area”, dated September 10, 2001, and on file in the Wyoming State Office of the
27 Bureau of Land Management.

28 (10) The term “Secretary” means the Secretary of the Interior.

1 ~~SEC. 233. PARTIES ENCOURAGED TO ENTER INTO WRITTEN AGREEMENT.~~

2 In any common area, the Federal coal lessee and oil and gas developer, subject to applicable
3 Federal and State laws, regulations, and lease terms, are encouraged to enter into a written agreement
4 that details operations and assigns or assesses costs or compensation for the concurrent or sequential
5 development of those resources.

6 ~~SEC. 234. NEGOTIATIONS CONCERNING DEVELOPMENT PRIORITY FOR CERTAIN OPERATIONS IN THE~~
7 ~~BASIN.~~

8 (a) ~~OBLIGATION TO PROVIDE WRITTEN NOTICE OF CONFLICT.~~—Whenever a Federal coal
9 lessee or an oil and gas developer determines that its Federal coal lease (or a logical mining unit
10 including the Federal coal lease) or its oil and gas lease or right to develop is located in a common area,
11 and, pursuant to a mining plan approved by, or submitted for the approval of, the Secretary, mining
12 operations or facilities in support of mining for coal on the Federal coal lease or the logical mining unit
13 will be located within the common area, the Federal coal lessee or the oil and gas developer shall
14 deliver written notice of the determination to the other party and the Secretary no later than 240 days
15 before the date on which the mining operations or construction of the mine support facilities is projected
16 by the approved or proposed mining plan to commence in the common area.

17 (b) ~~OBLIGATION TO NEGOTIATE.~~—Promptly after providing the notice referred to in subsection
18 (a), the party that provided the notice shall seek to negotiate a written agreement with the other party
19 that resolves any conflict between the development of gas or oil and development of coal in the
20 common area.

21 ~~SEC. 235. PETITION FOR RELIEF.~~

22 (a) ~~SUBMISSION OF PETITION.~~—If notice is submitted timely pursuant to section 234(a) and the
23 Federal coal lessee and the oil and gas developer seek to engage in negotiations, but fail to reach
24 agreement, pursuant to section 234(b), the Federal coal lessee or the oil and gas developer may file a
25 petition for relief in the United States district court for the district of Wyoming and serve the other party
26 on any date which is not less than 180 days before the date on which the mining operations or
27 construction of the mine support facilities is projected by the approved or proposed mining plan to
28 commence in the common area. The Secretary, by regulation, shall establish the requirements for the
29 information to be submitted with the petition.

1 ~~(b) JOINDER OF PARTIES.—All owners of any interest in the oil and gas lease or right to~~
 2 ~~develop and in the Federal coal lease or logical mining unit, including the Secretary, identified by the~~
 3 ~~petitioner, the Secretary, or themselves shall be joined in the proceedings established pursuant to this~~
 4 ~~Act. Failure to timely join a party shall not extend deadlines imposed by this Act, but the court shall~~
 5 ~~take all necessary steps to insure that no party is prejudiced by late joinder.~~

6 ~~(c) PARTIES' RESPONSE TO PETITION.—The non-Federal respondent or respondents may~~
 7 ~~provide to the Secretary a response to the petition within 30 days after the date of filing of the petition~~
 8 ~~for relief pursuant to subsection (a). The Secretary may require the petitioner and the non-Federal~~
 9 ~~respondent or respondents to submit such documents or provide such testimony, or both, as the~~
 10 ~~Secretary deems appropriate within 60 days of such date of filing.~~

11 **SEC. 236. SECRETARY'S RESPONSE TO PETITION.**

12 ~~(a) IN GENERAL.—Within 90 days after the date of filing of the petition for relief pursuant to~~
 13 ~~section 235(a), the Secretary shall take the actions required by this section.~~

14 ~~(b) INITIAL DETERMINATIONS.—The Secretary shall determine, with petitioner having the~~
 15 ~~burden of proof—~~

16 ~~(1) whether a common area exists; and~~

17 ~~(2) whether the approved or proposed mining plan provides for mining operations to~~
 18 ~~occur, or mine support facilities to be constructed, in any portion of the common area.~~

19 ~~(c) LEASE SUSPENSION.—If the Secretary makes affirmative determinations pursuant to~~
 20 ~~paragraphs (1) and (2) of subsection (b), the Secretary shall suspend all or any portion of any Federal~~
 21 ~~oil and gas lease, including the application of such a lease to any geographical area or zone or reservoir,~~
 22 ~~to accommodate development of the coal resource in the common area during the period beginning on~~
 23 ~~a date no later than the commencement date referred to in section 235(a) and ending on the effective~~
 24 ~~date of an order issued pursuant to section 239(d).~~

25 ~~(d) SECRETARIAL REPORT.—The Secretary shall—~~

26 ~~(1) not delegate the making of determinations pursuant to this section;~~

27 ~~(2) report the determinations made pursuant to this section and any suspension made~~
 28 ~~pursuant to subsection (c), including the administrative record therefor, to the court in which the~~

1 petition for relief is filed pursuant to section 235(a); and

2 (3) provide the petitioner and respondents with copies of the report and record.

3 **SEC. 237. COURT'S INITIAL RESPONSE TO PETITION.**

4 (a) ~~RECEIPT OF SECRETARIAL REPORT.~~—The court in which the petition is filed pursuant to
5 section 235(a) shall have exclusive jurisdiction to receive and review the report of the Secretary
6 required by section 236(d), and the determinations made and any action taken by the Secretary
7 pursuant to section 236.

8 (b) ~~PARTIES' OBJECTIONS TO REPORT.~~—

9 (1) The petitioner and respondents shall have 30 days after the date on which the report
10 of the Secretary is filed with the court pursuant to section 236(d) in which to file with the court
11 any objection to any determination of the Secretary required by section 236.

12 (2) If any objection is filed pursuant to paragraph (1), the court shall, within 60 days
13 after receipt of the report of the Secretary pursuant to section 236(d), make the determination
14 that is the subject of the objection on the basis of the administrative record filed with the report
15 and in accordance with the applicable requirements of section 236.

16 (3) If no objection is filed pursuant to paragraph (1), the determinations of the
17 Secretary required by section 236 shall be final and approved by the court in the order issued
18 pursuant to subsection (c) or subsection (d).

19 (c) ~~COURT ORDER.~~—Within 90 days after the date of receipt of the report of the Secretary
20 pursuant to section 236(d), the court, except as provided in subsection (d), shall issue an order, to
21 expire on the effective date of an order issued pursuant to section 239(d), that—

22 (1) suspends all or any part of any non-Federal oil and gas lease or right to develop,
23 including the application of such a lease or right to any geographical area or reservoir, in the
24 common area in accordance with the determination of the Secretary pursuant to section 236 or
25 in accordance with the determination of the court pursuant to subsection (b)(2) of this section;
26 and

27 (2) if required by a determination of the court pursuant to subsection (b)(2), terminates
28 a Federal oil and gas lease suspension imposed by the Secretary pursuant to section 236, or

1 imposes a suspension of a Federal oil and gas lease, or both, in accordance with the
2 determination; and

3 (3) fixes the date upon which the Federal coal lessee may commence mining operations
4 or construction of mine support facilities in the common area, which may be no later than the
5 commencement date referred to in section 235(a):

6 (d) ~~TERMINATION OF PROCEEDING.~~—If the Secretary makes a negative determination pursuant
7 to section 236(b), or if the court makes a negative determination pursuant to an objection under
8 subsection (b)(2) of this section to affirmative determinations of the Secretary under section 236(b), the
9 court shall issue an order terminating the proceeding under this Act.

10 ~~SEC. 238. EXPERTS' APPOINTMENT AND REPORT; COURT REVIEW AND HEARING.~~

11 (a) ~~APPOINTMENT PROCEDURE.~~—Within 30 days after the date of issuance of an order
12 pursuant to section 237(c), to assist the court in making the determinations pursuant to section 239—

13 (1) the Federal coal lessee and the oil and gas developer shall each appoint a person
14 who is an expert in appraising the value of, and right to develop, gas or oil; and

15 (2)(A) persons appointed under paragraph (1) shall agree upon and appoint a third
16 person with such expertise; or

17 (B) if no agreement is reached on a third person by the end of such period, the court
18 shall appoint such person:

19 (b) ~~COMPENSATION.~~—The Federal coal lessee and the oil and gas developer shall each be
20 responsible for payment of one-half of the compensation for and costs of the experts in the performance
21 of their duties under this Act.

22 (c) ~~INFORMATION AND DATA.~~—

23 (1) ~~The Federal coal lessee, the oil and gas developer, and the Secretary—~~

24 (A) shall each submit to the experts, within 30 days after the date of completion
25 of their appointment pursuant to subsection (a), all information and data in the
26 possession of such party that is pertinent to the determinations to be made pursuant to
27 section 239; and

28 (B) shall each submit to the experts thereafter any additional pertinent

1 information and data in the possession of such party that the experts request, in writing,
2 from such party.

3 (2) Except as provided in paragraph (3), the court shall ensure that any information and
4 data submitted to the experts pursuant to paragraph (1) shall have the protection against
5 disclosure that is applicable to them by law and the Federal rules of civil procedure and
6 evidence.

7 (3) All information and data submitted to the experts pursuant to paragraph (1) shall be
8 available for review by all parties unless otherwise ordered by the court.

9 ~~(d) SUBMISSION OF BRIEFS AND HEARING.—~~

10 ~~(1) Within 45 days after the date of completion of appointment of the experts pursuant~~
11 ~~to subsection (a), all parties may submit to the court briefs concerning the determinations to be~~
12 ~~made pursuant to section 239.~~

13 ~~(2) Within 60 days after the date of completion of appointment of the experts pursuant~~
14 ~~to subsection (a), the experts may, or if requested by the petitioner or a respondent shall,~~
15 ~~receive testimony from all parties concerning the determinations to be made pursuant to section~~
16 ~~239.~~

17 ~~(e) EXPERTS' REPORT.—~~ Within 120 days after the date of completion of appointment of the
18 experts pursuant to subsection (a), the experts shall submit to the court a written report providing in
19 detail their recommendations on the determinations to be made pursuant to section 239.

20 ~~(f) REVIEW OF EXPERTS' REPORT.—~~ The court shall make the determinations required by
21 section 239 after reviewing the report of the experts submitted pursuant to subsection (e) and after
22 holding a hearing in which the parties to the proceeding shall have the opportunity to examine the
23 experts and provide to the court evidence or arguments to support or contravene the recommendations
24 of the report.

25 ~~SEC. 239. COURT'S FINAL RESPONSE TO PETITION: VALUATION CONCERNING ECONOMICALLY~~
26 ~~RECOVERABLE OIL OR GAS RESOURCES LOST OR DELAYED, SUSPENSION OR TERMINATION, AND~~
27 ~~PAYMENT ORDER.~~

28 ~~(a) IN GENERAL.—~~ Within 210 days after the date of issuance of an order pursuant to section

1 ~~237(c), the court shall take the actions required by this section.~~

2 ~~(b) SUSPENSION OR TERMINATION DETERMINATION.—~~

3 ~~(1) The court shall determine that, as a result of the order or any action of the~~
 4 ~~Secretary, all or any part of the oil and gas lease or right to develop, or the application of such~~
 5 ~~lease or right to any geographical area or zone or reservoir, should be—~~

6 ~~(A) suspended during any remaining period in which mining operations or~~
 7 ~~support facilities exist in the common area; or~~

8 ~~(B) terminated.~~

9 ~~(2) Any determination to suspend pursuant to paragraph (1) shall, wherever possible or~~
 10 ~~appropriate, limit the suspension or phase the suspension to permit the optimum development of~~
 11 ~~the oil or gas prior to the time at which the mining operations would reach the location within~~
 12 ~~the common area that is subject to the suspension or particular phase of the suspension.~~

13 ~~(3) Any determination to terminate pursuant to paragraph (1) shall be made only if the~~
 14 ~~court finds that—~~

15 ~~(A) the economically recoverable oil and gas resources subject to~~
 16 ~~compensation pursuant to subsection (c) would be entirely lost or rendered~~
 17 ~~impracticable to produce as a consequence of the mining operations in the common~~
 18 ~~area; and~~

19 ~~(B) such resources constitute all of the economically recoverable resources~~
 20 ~~subject to the oil and gas lease or right to develop.~~

21 ~~(c) COMPENSATION DETERMINATION.—~~

22 ~~(1) If the court makes a determination to suspend pursuant to subsection (b), the court~~
 23 ~~shall determine the following:~~

24 ~~(A) The amount of any net income that will not be realized due to delay in~~
 25 ~~development of economically recoverable resources of oil or gas, other than coalbed~~
 26 ~~methane, from the common area, whether or not such development has commenced.~~

27 ~~(B) The amount of any net income that will not be realized, whether or not~~
 28 ~~development of coalbed methane has commenced, due to—~~

1 ~~(i) delay in development of economically recoverable resources of~~
2 ~~coalbed methane in the common area;~~

3 ~~(ii) the loss of any economically recoverable resources of coalbed~~
4 ~~methane from the coal to be extracted by the mining operations in the common~~
5 ~~area; and~~

6 ~~(iii) the loss of any economically recoverable resources of coalbed~~
7 ~~methane underlying any area that is subject to the oil and gas lease and right to~~
8 ~~develop associated with the common area and that extends outward from each~~
9 ~~exposed coal face of the mining operations for a distance from which drainage~~
10 ~~of such resources is established to the satisfaction of the court.~~

11 ~~(C) Any of the following damages that will be incurred by the owners of any~~
12 ~~interest in the oil and gas lease or right to develop as a consequence of the suspension:~~

13 ~~(i) Any unavoidable fixed expenses of shutting in production from,~~
14 ~~maintenance of, and testing of an existing well.~~

15 ~~(ii) Any unavoidable fixed expenses necessary to achieve~~
16 ~~postsuspension recovery of all or certain economically recoverable resources of~~
17 ~~oil or gas in the common area (including expenses of relaying pipeline and all~~
18 ~~other expenses reasonably related to reestablishing any existing oil or gas~~
19 ~~production), except that if the court determines that such unavoidable fixed~~
20 ~~expenses will exceed the net income to be derived from the resources, the court~~
21 ~~shall determine the amount of such net income and lost royalties on oil or gas~~
22 ~~not produced.~~

23 ~~(iii) Expenses associated with stranded costs of drilling equipment and~~
24 ~~facilities.~~

25 ~~(iv) Any lost royalties on oil or gas not produced by the oil and gas~~
26 ~~developer.~~

27 ~~(v) Any lost income associated with temporarily shutting in production~~
28 ~~from wells outside of the common area as needed for reconnection to a~~

1 gathering system or pipeline to market.

2 ~~(2) The determinations made pursuant to paragraph (1) shall not include any~~
 3 ~~decrease in net income or damages resulting from loss of any oil or gas resources that~~
 4 ~~occurred before the date of the determinations and is caused by mining within or~~
 5 ~~outside of the common area on the Federal coal lease or logical mining unit that is the~~
 6 ~~subject of the common area determination made pursuant to section 236(b)(1) or~~
 7 ~~section 237(b)(2):~~

8 ~~(3) If the court makes a determination to terminate pursuant to subsection (b),~~
 9 ~~the court shall determine the amount of any net income that will not be realized and any~~
 10 ~~damages due to the loss of, or impracticability to produce, the economically~~
 11 ~~recoverable resources of oil or gas subject to the oil and gas lease or right to develop in~~
 12 ~~the same manner as provided in paragraph (1):~~

13 ~~(4) In determining the amount of net income that will not be realized pursuant to~~
 14 ~~paragraph (1) or paragraph (3) and the sum of money to be awarded pursuant to~~
 15 ~~subsection (d), the court shall ensure to the best of its ability that the Federal coal lessee~~
 16 ~~is not required to pay for the same gas or oil lost, delayed in development, or rendered~~
 17 ~~impracticable to develop to more than one oil and gas developer or the owners of any~~
 18 ~~interest in more than one oil and gas lease or right to develop.~~

19 ~~(d) COURT ORDER.—The court shall issue an order that —~~

20 ~~(1) suspends all or any part of, suspends in phases parts of, or terminates the oil~~
 21 ~~and gas lease or right to develop, including any applicable payment or production obligations, in~~
 22 ~~accordance with the determination made pursuant to subsection (b); and~~

23 ~~(2) awards to the oil and gas developer and all other owners of any interest in the oil~~
 24 ~~and gas lease or right to develop, as their interests may appear, a sum of money from the~~
 25 ~~Federal coal lessee equal to the net income amount and damages determined pursuant~~
 26 ~~subsection (c):~~

27 **SEC. 240. DISBURSEMENT OF PAYMENTS TO OIL AND GAS DEVELOPERS.**

28 ~~(a) PAYMENT ALTERNATIVES.—At the election of the oil and gas developer, the sum of money~~

1 awarded by the court pursuant to section 239(d)(2) shall be—

2 (1) paid in full within 60 days after the date of issuance of the order pursuant to section
3 239(d); or

4 (2) divided into the number of tons of recoverable coal in the common area and paid in
5 per ton increments as the coal is mined, in accordance with subsections (b) and (c).

6 (b) PAYMENT SCHEDULE.—The Federal coal lessee shall make the payments required by
7 subsection (a)(2) on a quarterly basis in advance based on the Federal coal lessee's estimate of the
8 number of tons of coal to be mined in the common area during the following quarter, and shall add or
9 subtract an amount to or from the advance payment for the next quarter to reflect the coal mined from
10 the common area that is actually sold or transferred.

11 (c) FINAL PAYMENT.—If the mining necessary to make full payment of the sum of money
12 awarded by the court in accordance with subsection (a)(2) does not occur within the 5-year period
13 beginning on the date of issuance of the court order pursuant to section 239(d), the unpaid balance shall
14 be paid within 60 days after the expiration of such period.

15 **SEC. 241. TERMINATION OF OIL AND GAS LEASE SUSPENSION.**

16 ——— (a) NOTIFICATION OF COURT.— If the court issues an order to suspend all or any part of the oil
17 and gas lease or right to develop pursuant to section 239(d)—

18 ——— (1) the Federal coal lessee shall notify the court and the oil and gas developer when the
19 portion of the common area subject to the order issued pursuant to section 239(d) is no longer
20 required for mining operations or support facilities; and

21 ——— (2) within 120 days after the date of receipt by the court of the notification pursuant to
22 paragraph (1), or within 60 days prior to the date on which the period established by the court
23 in the order issued pursuant to section 239(d) concludes, the oil and gas developer may petition
24 the court for an order that terminates the suspension and fixes the date and terms on which the
25 oil and gas developer may resume operations within the portion of the common area subject to
26 the order issued pursuant to section 239(d).

27 ——— (b) COURT ORDER TO TERMINATE SUSPENSION OF LEASE OR RIGHT TO DEVELOP.— The court
28 shall issue the order sought under subsection (a)(2) within 30 days after the date of receipt of the

1 petition pursuant to subsection (a)(2):

2 ~~————(c) TERMINATION OF LEASE OR RIGHT TO DEVELOP————~~

3 ~~————(1) If the oil and gas developer determines that, as a consequence of the order of the~~
 4 ~~court issued pursuant to section 237(c) and an order to suspend all or any part of the oil and~~
 5 ~~gas lease or right to develop pursuant to section 239(d), the conditions described in section~~
 6 ~~239(b)(3) exist, the oil and gas developer may petition the court to terminate the oil and gas~~
 7 ~~lease or right to develop.~~

8 ~~————(2) The petition referred to in paragraph (1) may be filed any time after issuance of the~~
 9 ~~order of the court pursuant to section 239(d), but not later than 120 days after the date of~~
 10 ~~receipt by the court of the notification pursuant to subsection (a)(1).~~

11 ~~————(3) Upon receipt of a petition pursuant to paragraph (1), the court shall make a~~
 12 ~~determination whether to issue an order to terminate the oil and gas lease or right to develop~~
 13 ~~and award an additional amount from the Federal coal lessee to the oil and gas developer and~~
 14 ~~all other owners of any interest in the oil and gas lease or right to develop, as their interests may~~
 15 ~~appear, in accordance with the procedures and deadlines established in section 235(a) and~~
 16 ~~sections 238 through 240.~~

17 **SEC. 242. SUPPLEMENTAL PETITION FOR RELIEF.**

18 ~~(a) PETITION SUBMITTAL.——~~

19 ~~(1) If, at any time after the issuance of an order pursuant to section 239(d), the mining~~
 20 ~~plan that is the basis of the order is altered in a manner that may warrant suspension of an~~
 21 ~~additional part or all of, or termination of, the oil and gas lease or right to develop, or an~~
 22 ~~increase in the sum of money that was awarded under the order, or both, either the Federal~~
 23 ~~coal lessee or the oil and gas developer may, if necessary after compliance with the~~
 24 ~~requirements of section 234, file a supplemental petition for relief with the court to amend the~~
 25 ~~order.~~

26 ~~(2) The requirements of section 235(a) and sections 236 through 240 shall apply to the~~
 27 ~~supplemental petition submitted pursuant to paragraph (1).~~

28 ~~(b) COURT ORDER.——~~

1 (1) Upon completion of the process required by subsection (a)(2), the court shall make
2 a determination whether to—

3 (A) suspend an additional part or all of, or terminate, the oil and gas lease or
4 right to develop as described in section 239; and

5 (B) award an additional sum of money calculated in accordance with section
6 239.

7 (2) The court shall issue any order resulting from the determinations made pursuant to
8 paragraph (1) within 90 days after the date of filing of the supplemental petition for relief.

9 **SEC. 243. APPEAL OF COURT ORDERS.**

10 (a) ~~NON-APPEALABLE ORDERS.~~—Any order issued pursuant to section 237(e), section
11 237(d), section 239(d)(1), or section 242(b)(1)(A)] is final and may not be appealed.

12 (b) ~~APPEALABLE ORDERS.~~—Any order issued pursuant to section 239(d)(2), section 241(b),
13 section 241(c)(3), or section 242(b)(1)(B) may be appealed, but the appeal, and any disposition
14 thereof, may not affect any order referred to in subsection (a).

15 **SEC. 244. SUSPENSION TERMS.**

16 (a) ~~FEDERAL LEASE SUSPENSION TERMS.~~—If all or any part of any Federal oil and gas lease is
17 suspended in whole or in part by the Secretary or the court under this Act—

18 (1) the lessee shall not be required to pay any rental for the lease for the period of the
19 suspension; and

20 (2)(A) if the lease is in the primary term, the term of the lease shall be extended by the
21 length of the period of the suspension plus one year; or

22 (B) the lease shall not terminate due to lack of production for the period of the
23 suspension plus one year.

24 (b) ~~NON-FEDERAL LEASE SUSPENSION TERMS.~~—If any non-Federal oil and gas lease or right
25 to develop is suspended in whole or in part by the court under this Act, the court shall establish terms
26 for the suspension comparable to the terms set forth in subsection (a).

27 **SEC. 245. LIABILITY LIMITATION.**

28 Except as provided in a written agreement reached pursuant to section 234(b), or reached on

1 or after September 1, 1999, and before the date of enactment of this Act and approved by the Bureau
 2 of Land Management, or as provided by an order of the court pursuant to this Act, neither the Federal
 3 coal lessee subject to the agreement or order nor the United States shall be liable to the oil and gas
 4 developer of, or any owner of an interest in, any oil and gas lease or right to develop subject to the
 5 agreement or order for any decrease in or depletion of, or any impairment of the ability to recover, any
 6 gas or oil subject to the oil and gas lease or right to develop that may result from the development of
 7 any coal on the Federal coal leasehold or within a logical mining unit that includes the Federal coal
 8 lease.

9 **SEC. 246. CREDIT AGAINST ROYALTIES.**

10 (a) ~~IN GENERAL.~~ — If a Federal coal lessee is required by a written agreement reached pursuant
 11 to section 234(b), or reached on or after September 1, 1999, and before the date of the enactment of
 12 this Act and approved by the Bureau of Land Management, or by a court order issued pursuant to
 13 section 239(d), section 241(c)(3), or section 242(b)(2)(B), to pay an amount for loss of economically
 14 recoverable Federal coalbed methane resources due to mining operations or for suspension of all or
 15 part of, or termination of, a Federal oil and gas lease for coalbed methane located within the lands
 16 designated as ‘Dispute Resolution Area’ on the maps referred to in section 232(9), any amount so paid
 17 after the date of enactment of this Act shall be credited against any royalties on production otherwise
 18 due from the Federal coal lessee or any affiliate thereof under section 7(a) of the Mineral Leasing Act
 19 (30 U.S.C. 207(a)) for any lease of Federal coal issued under that Act, or under the Mineral Leasing
 20 Act for Acquired Lands (30 U.S.C. 351 et seq.) for any lease of Federal coal that is subject to that
 21 Act.

22 (b) ~~TREATMENT OF ROYALTIES TO THE STATE.~~ — The Secretary shall pay to the State of
 23 Wyoming 50 percent of the amount of any credit against royalties provided under subsection (a) —

24 (1) in the same manner as if the credit against royalties had been paid in money as
 25 royalties and distributed under section 35(a) of the Mineral Leasing Act (30 U.S.C. 193(a));
 26 and

27 (2) from amounts received as royalties, rentals, or bonuses derived from leases issued
 28 under this Act that otherwise would be deposited as miscellaneous receipts under section 35(a)

1 of the Mineral Leasing Act (30 U.S.C. 193(a)).

2 ~~SEC. 247. DENIAL OF USE AS PRECEDENT.~~

3 Nothing in this Act shall be applicable to any lease under the Mineral Leasing Act or the
4 Mineral Leasing Act for Acquired Lands for any mineral, or shall be applicable to, or supersede any
5 statutory or common law otherwise applicable in, any proceeding in any Federal or State court
6 involving development of any mineral outside of any common area and within or outside of the Powder
7 River Basin.

8 ~~SEC. 248. REGULATIONS.~~

9 The Secretary shall promulgate any regulations necessary to implement this Act by not later
10 than 120 days after the date of enactment of this Act.

11 ~~SEC. 221. RESOLUTION OF FEDERAL RESOURCE DEVELOPMENT CONFLICTS IN THE POWDER~~
12 ~~RIVER BASIN.~~

13 *The Secretary of the Interior shall—*

14 *(1) undertake a review of existing authorities to resolve conflicts between the*
15 *development of Federal coal and the development of Federal and non-Federal coalbed*
16 *methane in the Powder River Basin in Wyoming and Montana; and*

17 *(2) not later than 6 months after the of enactment of this Act, report to the*
18 *Congress on alternatives to resolve these conflicts and identification of a preferred*
19 *alternative with specific legislative language, if any, required to implement the preferred*
20 *alternative.*