No. 112, Original

In The Supreme Court
Of The United States

October Term, 1987

STATE OF WYOMING,
Plaintiff,
vs.
STATE OF OKLAHOMA,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT AND SUPPORTING BRIEF

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April, 1988

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MOTION FOR LEAVE TO FILE COMPLAINT

Pursuant to Rule 9.3 of the Rules of the Supreme Court of the United States, plaintiff State of Wyoming respectfully asks leave of the Court to file the Complaint which is submitted herewith, for the reasons stated therein and in the attached supporting brief.

Joseph B. Meyer
Attorney General for Wyoming
Counsel for Plaintiff

April, 1988

STATEMENT IN SUPPORT OF MOTION

This is an action by the State of Wyoming against the State of Oklahoma under the authority of article III, §2. cl. 2, of the Constitution of the United States. The purpose of the action is to invalidate an Oklahoma law requiring utilities operating coal-fired generating plants to burn a mixture containing a minimum of ten percent Oklahoma-mined coal, OKLA. STAT. tit. 45, §939 (Supp. 1986), which became effective January 1, 1987. (See Appendix A-1). The original jurisdiction of this Court is invoked because the parties are states and because full and complete relief is possible only in this Court.

Wyoming contends that the Oklahoma law is an unconstitutional restriction of access to Oklahoma markets by sellers of coal mined in Wyoming. Some of these sellers have been directly affected because they have exclusive coal requirement contracts with Oklahoma entities operating coal-fired generating plants. All the citizens of Wyoming are directly affected because Oklahoma purchasers pay severance taxes on the coal mined and produced in Wyoming. Citizens of Wyoming in certain localities are also affected because coal mining is one of Wyoming's principal industries, on which other economic activity is dependent.

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STATE OF WYOMING,
Plaintiff,
vs.
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Defendant.

COMPLAINT

The State of Wyoming, by its Attorney General, brings this suit in equity against defendant State of Oklahoma and for its cause of action states:

I.

Plaintiff is a sovereign state of the United States.

II.

Defendant is a sovereign state of the United States.

III.

The jurisdiction of this Court is invoked under article III, §2, cl. 2, of the Constitution of the United States.

IV.

Wyoming is a leading state in the production and sale of subbituminous coal. Producers of Wyoming coal ship it by rail to a number of other states, including Oklahoma. Oklahoma utilities purchased over ten million tons of Wyoming coal in 1986.

V.

As one of its essential sovereign functions, Wyoming imposes severance taxes on the production and sale of Wyoming coal. The taxes are calculated on a per ton basis of coal sold by Wyoming producers. Wyoming producers sell a large portion of Wyoming coal in interstate commerce. The severance tax receipts from these sales are a significant revenue source for plaintiff.

VI.

Plaintiff derives significant severance tax revenues from the sale of Wyoming coal to Oklahoma coal-fired plants. The severance tax payable by Oklahoma utilities to Wyoming exceeded $9,000,000 in 1982.

VII.

Defendant has enacted a law requiring Oklahoma utilities operating coal-fired generating plants to burn a mixture containing a minimum of ten percent Oklahoma coal. This law was codified under the Oklahoma statutes as Section 939 of Title 45 and became effective January 1, 1987 (the "Act").

VIII.

Before the Act was passed, over ninety-nine percent of the coal burned in Oklahoma coal plants was from Wyoming. The Act, therefore, requires Oklahoma utilities to reduce their use of Wyoming coal by nearly ten percent. It makes no distinction other than the source of coal in ordering this reduction. Since the effective date of the Act, Oklahoma coal-fired plants have increased their purchases of Oklahoma coal and decreased their purchases of Wyoming coal.

Defendant's admitted purpose in barring Wyoming coal was to promote economic development of Oklahoma coal and to reduce payment of Wyoming severance taxes by Oklahoma utilities.

IX.

Local governments within Wyoming are also directly affected by the Act because severance taxes ultimately fund a variety of local governmental projects. Reduction in severance taxes injures the local governments. Thus, Wyoming has standing as *parens patriae* to bring this action on behalf of its citizens.

X.

On its face, and regardless of application, the Act violates the Commerce Clause of the U.S. Constitution in that it creates a direct barrier to the interstate movement of coal from Wyoming. Because the Act has no effect other than to discriminate against interstate coal, there are no factual issues to be determined before resolution of the Commerce Clause issue.

XI.

Oklahoma's actions have caused and will continue to cause irreparable injury to the State of Wyoming, for which there is no adequate remedy at law.

WHEREFORE, plaintiff prays:

A. That the Court grant plaintiff's motion for leave to file its complaint and assume original jurisdiction of the this case;

B. That the Court enter a decree declaring OKLA. STAT. tit. 45, §939 (Supp. 1986) to be in violation of the Constitution of the United States;

C. That the Court enter a decree permanently enjoining and restraining defendant from enforcing or attempting to enforce OKLA. STAT. tit. 45, §939 (Supp. 1986).

D. That the court enjoin enforcement of OKLA. STAT. tit. 45, § 939 (Supp. 1986) during the pendency of the proceeding; and

E. That the Court grant suc' other relief it may deem proper.

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VERIFICATION

Personally appeared before me, Joseph B. Meyer, who, being duly sworn, deposes and says that he is the Attorney General of Wyoming; that he has read the foregoing Complaint and knows the contents thereof; that the same are true of his own knowledge, except as to these matters and things stated therein upon information and belief, and that as to these matters and things, he believes them to be true.

Arloa L. Larson
Notary Public

My commission expires:

April 8, 1988

No. , Original

In The Supreme Court
Of The United States

October Term, 1987

STATE OF WYOMING,
Plaintiff,
vs.
STATE OF OKLAHOMA,
Defendant.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

QUESTIONS PRESENTED

I. Whether this Court should assume exclusive jurisdiction of this controversy between the sovereign states of Wyoming and Oklahoma.

II. Whether the Oklahoma statute which on its face restricts the movement of coal in interstate commerce is invalid under the Commerce Clause of the United States Constitution.

JURISDICTION

Plaintiff State of Wyoming seeks to invoke the original and exclusive jurisdiction of the Court pursuant to article III, §2, cl. 2 of the United States Constitution, which grants the Court original jurisdiction in an action between states. Both Wyoming and Oklahoma are sovereign states of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution,
article III, §2, cl. 2:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction.

United States Constitution
article I, §8, cl. 3:

The Congress shall have Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Judiciary Act,
28 U.S.C. § 1251(a) (1982):

The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

STATEMENT OF THE CASE

Plaintiff has initiated this action to set aside, on constitutional grounds, an Oklahoma statute which interferes with the interstate sale of coal produced in Wyoming.

On March 26, 1986, the Oklahoma Legislature approved S.B. No. 458, which is codified as OKLA. STAT.

tit. 45, § 939 (Supp. 1986) (the "Act"). The Act mandates the use of Oklahoma coal:

> [a]ll entities providing electric power for sale to the consumer in Oklahoma and generating said power from coal-fired plants located in Oklahoma shall burn a mixture of coal that contains a minimum of ten percent (10%) Oklahoma mined coal, as calculated on a BTU ("British Thermal Unit") basis. OKLA. STAT. tit. 45, § 939 (Supp. 1986)

The Act attempts to assure that costs to consumers will be kept under check:

> The cost to the entity shall not increase the cost to the consumer or exceed the energy cost of existing long-term contracts for out-of-state coal preference including preference given Oklahoma vendors as provided in Section 85.32 of Title 74 of the Oklahoma Statutes. OKLA. STAT. tit. 45, § 939.1 (Supp. 1986)

The Act prevents Oklahoma utilities with coal-fired electrical generating plants from generating more than 90% of their energy production from out-of-state coal.[1] The Act's single test for determining the acceptability of coal to be burned by Oklahoma coal plants is whether it is mined within the borders of Oklahoma.

[1] The Oklahoma utilities with one or more coal-fired electrical generating plants are the Grand River Dam Authority with a coal plant in Pryor, Oklahoma; Oklahoma Gas & Electric Company with coal plants in Muskogee and Ponca City; Public Service Company of Oklahoma with a coal plant in Oologah; and Western Farmers Electric Cooperative with a coal plant in Hugo.

The Act creates a cost exception to its 90% rule by exempting the use of Oklahoma coal if its cost to consumers or its energy cost to Oklahoma coal plants exceeds the cost of "existing long-term contracts for out-of-state coal" by five percent.[2] Thus, out-of-state long term contracts are expressly impaired unless they result in costs lower than the cost of Oklahoma coal.

Wyoming contains nearly one-fourth of the nation's recoverable coal resources[3] and ranks second in coal production.[4] It has the country's largest in-place coal resources, nearly one trillion tons.[5] The state is the major producer of subbituminous coal, mainly from the Powder River Basin geological formation.[6] Powder River Basin coal has a relatively low sulfur content.[7] It is primarily sold to utility plants outside Wyoming.

Coal producers in Wyoming depend heavily on interstate commerce for distribution of their product. In 1983, about 83% of the coal mined in Wyoming went to power plants in at least 14 other states. Overall, 84% of the coal mined in Wyoming in 1983 was shipped out-of-state.[8]

[2] OKLA. STAT. tit. 74, § 85.32 (1980). See Appendix, A-1.
[3] 1985 *Keystone Coal Industry Manual* 610. This accounts for the nation's reserves that are under less than 6000 feet of overburden.
[4] Wyoming Department of Labor and Statistics, *Wyoming Coal Mining: A Wage and Employment Survey* 3 (1986).
[5] *Id.* at 635.
[6] *1985 Keystone Coal Industry Manual* 618 (1985). The Powder River Basin is a 12,000 square mile coal-bearing area which includes all of Campbell County and parts of a number of other counties in the state. The Powder River Basin is in the northeastern part of the state and is one of ten coal-bearing formations in the state.
[7] *Id.*, Table 1, at 613.
[8] *Id.* at 618.

As of 1983, Wyoming coal was used in twenty-three states. Oklahoma was the fourth largest consumer of Wyoming coal during 1983, using nearly 12% of the Wyoming coal sold in interstate commerce.[9] Figures from more recent years show the same pattern. Eighty-four percent of the state's coal production was shipped out of Wyoming in 1985.[10] During 1986, Wyoming producers shipped 11.8 million tons of Wyoming coal to Oklahoma, with 99% of that amount being used by Oklahoma coal-fired generating plants.[11]

Wyoming imposes severance taxes on the mining and production of its coal. WYO. STAT. §§ 39-6-301 to 39-6-307 (1977). (See Appendix A, 3-10.) These severance taxes are a major source of revenue to plaintiff and ameliorate the negative impacts of mining within the state.[12] Because the severance taxes are calculated as a percentage of the sales price[13], the amount of severance

[9] Institute for Policy Research, University of Wyoming, 3 *Wyoming Quarterly Update*, No. 4, at 7 (Summer, 1984).

[10] *Id.* at 4.

[11] Energy Information Administration, DOE/EIA-0125(86/4Q), *Coal Distribution, January-December, 1986* (1987).

[12] The Wyoming Mines Product Taxes (the "severance tax") is designed to allocate revenues to a variety of state needs, including assistance to political subdivisions which are "directly or indirectly impacted by the production of minerals." WYO. STAT. §39-6-305 (1977). There are a number of individual excise taxes on extraction of minerals, with the revenues from surface coal mining to be deposited (a) 2½% in Wyoming mineral trust fund, (b) 2% in general fund, (c) 1½% in Wyoming water development account or the general fund, (d) 1% to the highway fund, and (e) 1½% payable to the department of revenue and taxation to be deposited in the capital facilities revenue account. WYO. STAT. §39-6-302 (1977) See Appendix, A-3 through A-10 for the text of these statutes which govern the collection and distribution of Wyoming severance taxes.

[13] Valuation is based on the "fair cash market value of the product at the mine or mining claim where produced after the mining or production process is completed." WYO. STAT. § 39-2-202(a) (1977).
If the coal is sold at the mine, "the fair cash market value shall be deemed to be the price established by bona fide arms-length sale." WYO. STAT. § 39-2-202(c) (1977).

tax collected depends directly on successful sale of Wyoming coal by Wyoming producers.

Coal and Wyoming have grown together. The history of coal production in Wyoming reflects the state's social and economic history. The production and sale of coal has profoundly affected Wyoming's economic well-being, especially during the last decade. For example, from 1976 to 1986, the assessed valuation on coal multiplied tenfold from $125 million to $1.3 billion.[14] This dramatic leap concomitantly increased tax revenues used to fund governmental services.

Oklahoma also has coal. However, the total production in Oklahoma is 245 million short tons in 110 years, as compared to the production of 112 million tons of Wyoming coal in only one year.[15] The average daily production per miner (short tons) of Oklahoma coal was 16.08, compared to 93.86 for Wyoming coal.[16] A major reason for this difference is that Oklahoma coal seams are extremely thin compared to Wyoming coal seams.[17]

The disparity of coal production between Wyoming and Oklahoma disturbed Oklahoma lawmakers. In 1985,

[14] Mineral Division of Economic Development and Stabilization Board, State of Wyoming, *1986 Wyoming Mineral Yearbook* (1986).

[15] *1985 Keystone Coal Industry Manual* 545 (1985).

[16] Energy Information Administration, *Coal Production 1983*, DOE/EIA-0118(83) 48, and Table 33 (1984).

[17] *1985 Keystone Coal Industry Manual*, 1-7′ thickness in Oklahoma, (at 548); up to 200′ thick in Wyoming (at 620). Some of the Oklahoma seams are measured in inches rather than feet. Also, Oklahoma coal tends to be located in seams that dip sharply. See, *The Daily Oklahoman* (Oklahoma City, Oklahoma), August 23, 1985, at 29, which acknowledges that "the state's coal industry has languished as a result of the greater polluting properties of Oklahoma coal due to its sulfur content and because Oklahoma coal is generally found in relatively thin seams that are expensive to mine."

they approved a resolution entitled "Mines and Minerals-Coal-Domestically Produced Coal" (the "Resolution").[18] The Resolution requested Oklahoma utilities to buy Oklahoma coal for blending with Wyoming coal to (a) reduce payments to Wyoming producers, (b) lower Wyoming severance tax payments and (c) stimulate the local economy.

The Resolution requested cooperation from Oklahoma coal plants. Press reports indicate that Oklahoma coal plants tried to accede to the Legislature's request.[19] However, coal industry representatives in Oklahoma were still dissatisfied.[20] In March 1986, Oklahoma law-

[18] OKLA. S. Res. No. 21. Adopted by the Senate June 11, 1985. Adopted by the House of Representatives June 15, 1985. Filed with the Secretary of State June 13, 1985; see Appendix, A-11 to A-12.

[19] U.P.I. Release dated February 11, 1986 -- Oklahoma Gas & Electric Co. announced its order of 20,000 tons of Oklahoma coal and its plans to purchase an additional 50,000 tons in following month.
Electric Utility Week, Aug. 5, 1985, at 16:

> "If the first round of experiments is successful, another 20,000 tons of Oklahoma coal with a higher sulfur content will be tried. The experiments are similar to those being conducted by Public Service Oklahoma at its Northeastern Station near Oologah. Both utilities are conducting the tests primarily to see if they can help the state's economy by purchasing fuel from Oklahoma's beleaguered coal industry.
>
> "We know it would help the economy of Oklahoma if we could use state-produced coal," said George Gibbons, OG&E vice president of production.

11 *Coal Week*, No. 33, at 3 "OK Utilities Looking in Back Yard to Supplement Western Coal Purchases," August 19, 1985. This article outlines the efforts of Oklahoma Gas & Electric Co., Public Service Company of Oklahoma, and Western Farmers Electric Cooperative to purchase Oklahoma coal in response to the Resolution. *See also, Electric Utility Week*, November 25, 1985, at 16 regarding efforts of these utilities.

[20] *News Capitol & Democrat*, (McAlester, Oklahoma), December 11, 1985, "Oklahoma coal mines disagree with State Sen. Gene Stipe's contention that legislation isn't necessary to force Oklahoma utilities to burn a 10% mix of state coal with Wyoming coal." A similar report appeared in the *Daily Oklahoman* on December 1, 1985 "Is Coal Boom Needed for County?" While the Oklahoma coal plants cooperated on purchasing Oklahoma coal, they expressed a general opposition to fixed percentages. "Debate Simmers on

makers promulgated the Act mandating the use of Oklahoma coal. As indicated by the earlier-enacted Resolution, the defendant engaged in its legislative efforts to "direct distribution," "promote economic development" and reduce payments of severance tax to plaintiff by reducing the import of Wyoming coal.

Oklahoma's utilities have announced their intention to reduce purchases of Wyoming coal due to the Act.[21] In fact, Oklahoma coal plants have increased their purchases of Oklahoma coal from 252,000 tons for all of 1986 to 337,000 tons for the first six months of 1987. Assuming that the rate continued for the rest of 1987, Oklahoma purchases would have increased at 267% because of the act.

For the same period, Wyoming coal sold to Oklahoma experienced its first decrease since 1982. In the first six months of 1987, Oklahoma coal plants purchased 5,345,000 tons of Wyoming coal. Assuming the same rate

Burning Oklahoma Coal; Bill Aims at 10% Minimum Supply," *Electric Utility Week*, January 27, 1986:

> Efforts by state lawmakers to force Oklahoma's four major generating utilities to use at least 10% Oklahoma coal at their 10 coal-fired plants in the state have created a sometimes bitter political conflict. Proponents of the requirement say it would mean more jobs and tax dollars in the economically depressed state, while opponents argue that it could raise power bills and actually stifle growth.

The article recites the united opposition of the Oklahoma utilities which referred to the proposed legislation as "ill-advised."

[21] *Daily Journal*, (Venita, Oklahoma), January 3, 1986; *Daily Oklahoman*, (Oklahoma City, Oklahoma), February 7, 1986. 13 *Coal Week*, No. 2, January 12, 1987, at 4. "Oklahoma utilities, complying with the 'Buy Oklahoma' law passed last year, ushered in 1987 with expanded shipments of Oklahoma coal." Article outlines the efforts of P.S.O. and G.R.D.A. but notes the environmental difficulties at G.R.D.A. due to malfunction of scrubber. 13 *Coal Week*, No. 8, February 23, 1987, at 4, notes that the scrubber was fixed and that G.R.D.A. is purchasing some Oklahoma coal from Amax, which also supplies Wyoming coal.

of purchases continued for the remainder of 1987, the total volume would be a 9% decrease for 1986. Wyoming has thus lost 9% of the severance taxes it would otherwise have collected from Oklahoma.

Other states may be following Oklahoma's lead. According to an industry source, a new Kansas coal commission may create a "buy Kansas" law. The Kansas coal would displace Wyoming coal.[22] Missouri may also be considering similar legislation. This trend among major purchasers of Wyoming coal could further damage Wyoming's revenues and industries.

SUMMARY OF ARGUMENT

This action puts in issue the constitutionality of an act of the State of Oklahoma which erects a barrier to Wyoming coal at the state line of Oklahoma, and is an exercise of economic protectionism which serves no legitimate local purpose. As such, the Act is a manifest violation of the Commerce Clause. This case is appropriate for original and exclusive jurisdiction because (a) plaintiff and defendant are sovereign states, (b) plaintiff is directly and substantially injured by the Act, (c) the case presents an important federal question, and (d) plaintiff has no alternative forum for resolution of the threat the Act presents to its sovereign interest. Plaintiff has standing to challenge the Act as *parens patriae* of its citizens.

[22] 13 *Coal Week*, No. 9, at 3, "Kansas Coal Study Funded: Buy Kansas' Law Forthcoming," (March 2, 1987).

ARGUMENT

I. A JUSTICIABLE CONTROVERSY EXISTS; THEREFORE, THE COURT SHOULD ASSUME ORIGINAL AND EXCLUSIVE JURISDICTION.

A. *The State of Wyoming is the proper party to initiate this action, because it is directly injured by the Act due to reductions in severance tax collections.*

In the Resolution, Oklahoma declared its intention to reduce severance taxes paid to plaintiff by Oklahoma utilities. Plaintiff is the intended victim of the Act[23] and will, by defendant's calculation, lose at least nine million dollars a year in severance tax revenues because of the Act.[24] As the party suffering the direct injury, plaintiff is the proper party to initiate this action.

The Constitution grants exclusive jurisdiction to the Supreme Court in disputes between two states. U.S. CONST., art. III, § 2, cl. 2. When such a case involves challenge to a statute, this Court insists that the plaintiff state sustain direct injury by the challenged action or statute. *Maryland v. Louisiana*, 451 U.S. 725, 735 (1981):

[23] "Oklahoma's Gain, Wyoming's Loss," *Coal Age*, (June 1986) at 33.

"This means another 2,000 jobs in the state," said Bill Skeith, executive director of the Oklahoma Coal Producers Committee. He estimated the increased revenue to operators and to related industries would range from $35 million to $50 million annually.

***

"The gain for Oklahoma mining companies will be a loss for Wyoming producers that now supply the utilities. Oklahoma coal, mostly mined in eastern sections of the state, averages about 13,000 Btu, compared with Wyoming's average of 8,500 to 9,000 Btu," Skeith said.

[24] Appendix, A-11 to A-12.

> In order to constitute a proper "controversy" under our original jurisdiction, "it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for redress. . ." Quoting *Massachusetts v. Missouri*, 308 U.S. 1, 15 (1939).[25]

In *Maryland v. Louisiana*, the Court found that the plaintiff states were directly injured by a Louisiana statute which created a "first use" tax. The plaintiff states purchased some of the natural gas subjected to the tax. These states paid additional money for the gas required to run their governmental facilities and consequently sustained a direct injury.

Similar to the *Maryland* plaintiffs, plaintiff Wyoming will receive less tax money as a direct result of the Act, thereby sustaining a direct economic injury. Further, plaintiff Wyoming has in no way contributed to this economic injury. There is no action which Wyoming could now take to avoid injury, other than initiating this action. Defendant intended that plaintiff sustain the injury. Defendant promulgated the Act partly in reaction to plaintiff's severance tax[26], some of which had been in place for a number of years before the Act and which had been the subject of controversy in the Oklahoma legislature.

[25] See also, *New York v. Illinois*, 274 U.S. 488, 490 (1927); *Texas v. Florida*, 306 U.S. 398, 405 (1939).

[26] Note particularly the following language of the Resolution:

> "Whereas, a 1982 Ozark Council Report states that $9 million of the ratepayers dollars was paid as severance tax to the State of Wyoming; . . . ."

Okla. S. Res. No. 21, at Appendix, A-11 to A-12.

B. *This controversy is appropriate for determination by the Court because (1) it presents an important federal question, and (2) plaintiff lacks an alternative forum for resolution.*

Plaintiff meets the tests for demonstrating original jurisdiction as set forth in *Maryland v. Louisiana*, 451 U.S. 725 (1981):

> In *City of Milwaukee*, we noted what is "appropriate" involves not only "the seriousness and dignity of the claim", but also the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated and where appropriate relief may be had. 451 U.S. at 740.

The Court has consistently stated that it will exercise original jurisdiction in instances where an issue of appropriate "seriousness and dignity" is presented.[27] Indeed, the Court has recognized the seriousness and dignity of the Commerce Clause question in original jurisdiction cases. In *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923), the plaintiff state challenged a statute enacted by the defendant state which tried to keep natural gas within the defendant's borders. The defendant claimed that the issues did not meet the level of importance required in the original jurisdiction case. The Supreme Court disagreed:

> The question is an important one; for what one state may do others may, and there are ten states from which natural gas is exported for consumption in other states. Besides, what may be done with one natural product may be done

[27] *Maryland v. Louisiana*, 454 U.S. at 764; *see also*, *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923).

> with others, and there are several states in which the earth yields products of great value which are carried into other states and there used. 262 U.S. at 596.

The controversy presented herein falls squarely within the "important" question test discussed by the Court in *Pennsylvania v. West Virginia*. Wyoming coal is a natural product of great value which is primarily carried into other states for use. Plaintiff receives significant revenues from this interstate movement. The Act directly blocks that movement in interstate commerce. If Oklahoma can block ten percent of Oklahoma-bound foreign coal from its borders today, it can exclude one hundred percent foreign coal at some future time. If Oklahoma can restrict Wyoming coal, so can other states whose producers have been unable to compete with Wyoming coal.

This controversy is also appropriate for consideration because the plaintiff has no alternative forum for resolution of this issue. Wyoming is the only party which can sue to prevent the loss of revenue to the state's coffers and the injury to its economy. For this reason alone, the state has no other forum in which to address its grievance.

Further, Wyoming has no identity of interest with any private party which could pursue a separate action relating to other effects of the Act. Although Wyoming's coal industry will be negatively affected by the Act, the interests of the state and the industry are not identical. Some of the coal companies which mine in Wyoming appear to have coal reserves in other states.[28] Even if these companies are able to offset some of the losses from

[28] See fn. 21.

Wyoming operations with gains from operations in other states, the plaintiff cannot offset the loss to its treasury and to its economy in a similar fashion.

As of the date of the Complaint, plaintiff is unaware of any challenge to the Act by Wyoming coal producers. It is Wyoming and its citizens who suffer most directly from the Act; the state must act to protect these interests.

Plaintiff is suing to protect a vital sovereign interest. When Wyoming coal is blocked from movement in interstate commerce, Wyoming's injury is direct and substantial. If Wyoming is denied access to this Court and is required to place its sovereign interest at risk while hoping that a private party challenges the Act, it will continue to sustain a direct injury. Thus, plaintiff meets the test for demonstrating original jurisdiction.

C. *Plaintiff has standing to challenge the Act as parens patriae of its citizens who are injured by the Act.*

The coal industry is of paramount importance to Wyoming citizens and local governments. By law, severance taxes are deposited in a variety of accounts, including the water development fund and the highway fund. The taxes are also used for assistance to local governmental units for construction of public projects.[29] The doctrine of *parens patriae* is appropriate in this case. In bringing this action, the state is protecting the sovereign interest granted by the Constitution and is also protecting its citizens who cannot individually sue for the loss of tax revenues and the benefit of maintaining energy-related industries. If coal companies are injured by the Act, they can choose to relocate, or develop coal reserves in

[29] Appendix, A-7 to A-10.

Oklahoma. However, the citizens of Wyoming and the businesses which depend on the coal industry will be left with the economic burden of the loss of this industry. Wyoming schools will suffer; Wyoming people will suffer.

The Court has ruled that a state in plaintiff's circumstances is entitled to act on its citizens' behalf:

> Georgia as a representative of the public is complaining of a wrong, which, if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected. Georgia's interest is not remote; it is immediate. If we denied Georgia as parens patriae the right to invoke the original jurisdiction of the Court in a matter of this gravity, we would whittle the concept of justiciability down to the stature of minor or conventional controversies. There is no warrant for such a restriction. *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 451 (1945).

The numerous local governmental entities in Wyoming which benefit from Wyoming severance tax payments properly look to plaintiff as *parens patriae* to protect their interest. In *Maryland v. Louisiana*, the majority recognized the plaintiffs' " interest in protecting their citizens from substantial economic injury presented by imposition of the First-Use Tax." 451 U.S. at 739. In this case, plaintiff is protecting a vital sovereign interest with respect to its tax revenues and the development of its major resources, as well as protecting local governmental interests within Wyoming. Thus, plaintiff has standing to challenge the Act as *parens patriae* to its citizens who are injured by the Act.

II. THE ACT VIOLATES THE "COMMERCE CLAUSE" OF THE UNITED STATES CONSTITUTION.

A. *On its face, the Act constitutes a direct and prohibited interference with interstate commerce.*

The Commerce Clause prohibits interference by the states in the movement of goods in interstate commerce. *Hughes v. Oklahoma*, 441 U.S. 322 (1979), *H.P. Hood and Sons v. DuMond*, 336 U.S. 525 (1949); *Edwards v. California*, 314 U.S. 160 (1941); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935); *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923); and *West v. Kansas Natural Gas Company*, 221 U.S. 229 (1910). These principles are fundamental to the integrity of this nation:

> By the Constitution, art. 1, §8, cl. 3, the power to regulate interstate commerce is expressly committed to Congress and therefore impliedly forbidden to the states. The purpose in this is to protect commercial intercourse from invidious restraints, to prevent interference through conflicting or hostile state laws, and to insure uniformity in regulation. It means that in the matter of interstate commerce we are a single Nation - one and the same people. All the states have assented to it, all are alike bound by it, and all are equally protected by it. Even their power to lay and collect taxes, comprehensive and

> necessary as that power is, cannot be exerted in a way which involves a discrimination against such commerce.
>
> ***
>
> Natural gas is a lawful article of commerce, and its transmission from one state to another for sale and consumption in the latter is interstate commerce. A state law, whether of the state where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs, or burdens such transmission, is a regulation of interstate commerce — a prohibited interference. *Pennsylvania v. West Virginia,* 262 U.S. at 596.

The Act burdens and obstructs interstate commerce by impeding the flow of Wyoming coal at Oklahoma's borders. It is similar to the statute rejected by the Supreme Court in *Pennsylvania v. West Virginia,* in which West Virginia attempted to retain natural gas within its own borders. West Virginia insisted that the regulation was necessary to protect consumers within the state who might otherwise suffer shortages if the gas were allowed to move freely into interstate commerce. The Court rejected West Virginia's attempt to subordinate interstate commerce to local needs:

> In other words, it is in effect an attempt to regulate the interstate business to the advantage of the local consumers. But this she may not do. A direction to one of her railroads, when short of facilities for moving coal, to haul intrastate coal to the exclusion of interstate coal,

> would not be different in kind or force. 262 U.S. at 597-98.

Oklahoma's Act is a mandate to its utilities to purchase "intrastate coal to the exclusion of interstate coal". As such, it is constitutionally invalid.

Oklahoma has been involved in similar efforts to isolate itself from interstate competition. In *West v. Kansas Natural Gas Co.*, 221 U.S. 229 (1910), the Court rejected Oklahoma's attempt to block the exit of natural gas from its borders and into interstate commerce:

> No state by the exercise of, or by the refusal to exercise, any or all of its powers, may prevent or unreasonably burden interstate commerce within its borders in any sound article thereof. 221 U.S. at 261.

The sole purpose and effect of the Act is to displace foreign coal with Oklahoma coal. An Oklahoma utility looks only to the source of its coal to determine whether it complies with the Act. The Act is otherwise indifferent to characteristics such as sulfur and heat content or method of delivery. The Act has no effect other than discrimination against interstate coal.

In *Philadelphia v. New Jersey*, 437 U.S. 617 (1978), the Court invalidated a state statute which discriminated only as to source. In that case, New Jersey had enacted a statute prohibiting importation of waste from outside its borders. The statute was directed to privately-operated waste disposal sites in New Jersey. New Jersey was concerned that the continued importation of waste from other states would create insufficient space for waste originating in

New Jersey. The Court found the source-related discrimination to be constitutionally invalid:

> But whatever New Jersey's ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently. Both on its face and in its plain effect, ch. 363 violates this principle of nondiscrimination. 437 U.S. at 626-27.

The Act provides no reason, other than origin, to distinguish coal purchased by Oklahoma utilities. Thus, it violates the constitutional principles set forth in *Philadelphia v. New Jersey.*

B. *The Act is a per se violation of the Commerce Clause because it constitutes economic protectionism.*

Wyoming coal has travelled freely in interstate commerce and into Oklahoma for many years. During this time very little Oklahoma coal was used within its own borders. As stated in the Resolution, Wyoming coal effectively competed with Oklahoma coal despite the time and expense required for Wyoming coal to reach Oklahoma coal plants. The Act is a response to the success of Wyoming coal and an attempt to protect the Oklahoma economy. In the Resolution, defendant stated that the purpose of blending ten percent Oklahoma coal would be to:

> assure at least a portion of the ratepayer dollars remaining in Oklahoma and enhancing the

economy of the State of Oklahoma.[30]

Thus, the Resolution expresses defendant's intent to protect its economic interests to the disadvantage of Wyoming coal. The Act which followed accomplished that purpose.

In a compelling decision which is precisely on point, *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935), the Court condemned New York's attempt to prevent economic competition from out-of-state milk as a contravention of the Commerce Clause:

> New York has no power to project its legislation into Vermont by regulating the price to be paid in that state for milk acquired there. So much is not disputed. New York is equally without power to prohibit the introduction within her territory of milk of wholesale quality acquired in Vermont, whether at high prices or at low ones. This again is not disputed. 294 U.S. at 521.

The Court expanded on the danger that economic protectionism presents to the viability of the Nation:

> If New York, in order to promote the economic welfare of her farmers, may guard them against competition with the cheaper prices of Vermont, the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation.

[30] Appendix, A-11 to A-12.

* * *

> Economic welfare is always related to health, for there can be no health if men are starving. Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the poor relief lists or perish altogether. To give entrance to that excuse would be to invite a speedy end of our national solidarity. The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division. 294 U.S. at 522-523.

If New York cannot protect its farmers by guarding them against competition from Vermont's farmers, then Oklahoma cannot protect its coal producers against competition from Wyoming coal producers. In *Philadelphia v. New Jersey*, the Court again rejected economic protectionism:

> The opinions of the Court through the years have reflected an alertness to the evils of "economic isolation" and protectionism, while at the same time recognizing that incidental burdens on interstate commerce may be unavoidable when a State legislates to safeguard the health and safety of its people. Thus, where simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has

> been erected. (Citations omitted.) The clearest example of such legislation is a law that overtly blocks the flow of interstate commerce at a State's borders. 437 U.S. at 623-624.

On its face, the Act establishes economic protectionism of the Oklahoma coal industry. Further, the law overtly blocks a significant amount of Wyoming coal, and is thus invalid per se under the Commerce Clause.

The Court best summarized the situation presented by this dispute in *Maine v. Taylor*, 477 U.S. 131 (1986):

> Shielding in-state industries from out-of-state competition is almost never a legitimate local purpose, and state laws that amount to "simple economic protectionism" consequently have been subject to a "virtually per se rule of invalidity." 477 U.S. at ______, 91 LEd 2d 127.

Plaintiff understands that defendant faces difficult economic choices as a result of the severe drop in the price of oil and gas in recent years. Plaintiff recognizes that defendant and its citizens are anxious to develop a local coal industry to generate tax revenues and provide jobs for its inhabitants. Surely these are appropriate goals for the defendant to pursue. However, the method chosen by defendant is subject to the "per se rule of invalidity" recognized in the *Maine* decision.

Oklahoma is attempting to "even" its coal disadvantage by resorting to discrimination against Wyoming.[31] Plaintiff respectfully urges that the long-

[31] The defendant's disadvantage with respect to coal was alluded to by the Oklahoma Attorney General in *West v. Kansas Natural Gas Company*, 221 U.S. at 246.

established precendents supporting a vital Commerce Clause be applied in this case.

C.*Defendant has the burden of proof to demonstrate that the Act serves a legitimate local purpose.*

When a statute erects a direct barrier to interstate commerce, the burden of proof in a dispute shifts to the state which enacted the legislation:

> [O]nce a state law is shown to discriminate against interstate commerce "either on its face or in practical effect," the burden falls on the State to demonstrate both that the statute "serves a legitimate local purpose," and that this purpose could not be served as well by available nondiscriminatory means. *Maine v. Taylor,* 477 U.S. at ______, 91 LEd 2d 121.

The Act erects a barrier to at least one million tons of Wyoming coal per year. That barrier is a direct constraint on coal moving in interstate commerce. Thus, the burden shifts to defendant to establish a legitimate local purpose for this constraint.

D. *The Act does not protect a legitimate local purpose.*

Plaintiff has demonstrated that the Act, on its face, creates a direct burden on interstate commerce. It falls on defendant to prove two important facts: (1) that the Act serves a legitimate local purpose, and (2) that there is no other way of achieving this purpose.

In *Philadelphia v. New Jersey,* the Court acknowledged that some health protective measures may justify state regulation of interstate commerce. 437 U.S. at 628-29. Although the Court did not accept New Jersey's argument concerning its restriction on the importation of waste, it did reference quarantine laws banning the importation of diseased livestock as an example of a health protective measure which would justify state regulation of interstate commerce.

In this instance, however, there is no dispute that the Act necessarily increases sulfur emissions in Oklahoma. Oklahoma coal has a higher sulfur content than Wyoming coal being burned by Oklahoma utilities and cannot be burned alone without exceeding applicable environmental standards.[32] Thus, there is no health or safety reason to use Oklahoma coal.

Further, even if a health or safety reason for the Act could be demonstrated, defendant would still have to demonstrate a basis for erecting a barrier to Wyoming coal. The recent case of *Maine v. Taylor* outlines the Constitutional requirements for review of legitimate local purpose in a "direct barrier" case. The law in question prohibited importation of bait fish into Maine. The constitutional challenge was made by an individual defendant charged with a violation of the Lacey Act for importing bait fish into Maine. The Court held that Maine had the burden of proof, since the Act created a direct

[32] Most Oklahoma coal-fired plants were constructed during the 1970's without scrubbers and thus relied on the low sulfur content of Powder River Basin coal to achieve the emissions standard of 1.2 pounds sulfur dioxide per million Btu. Oklahoma Regulation 3.4(c)(1)(B)(i)(c) (Control of Emission of Sulfur Compounds); 40 C.F.R. sec. 60.43. (Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced after August 17, 1971). In 1977, the Clean Air Act was amended to clarify that the "standard of performance" for a new fossil-fuel-fired stationary source would include a requirement to utilize the "best available technology" to reduce pollutant emissions relating to a fuel source whether or not the

barrier to interstate commerce. Maine successfully proved that its sports fish population might be harmed by the introduction of the bait fish. Maine's experts expressed concern about the introduction of parasites into native species and indicated that the state had no available means to check for such parasites at its borders. Since the fact-finding court had accepted the possibility of injury, the Court upheld the statute and indicated that Maine would not be required to withstand substantial injury before it could condemn the importation. Maine succeeded because it demonstrated that it had no choice but to erect a barrier at its borders.

This Court has consistently required a stringent demonstration of a legitimate local purpose before validating a state enactment which discriminates against interstate commerce. For instance, in *Edwards v. California,* 314 U.S. 160 (1941), California had a clear local purpose when it enacted a statute which prevented the transportation of indigents across its borders from other states. California was extremely concerned about the economic and social disruption being created by a large influx of job and benefit seekers. This Court noted the concern, but rejected California's reasons.

From a Commerce Clause perspective, the Oklahoma Act is similar to the legislation in *Edwards.* There,

applicable emission standard could be achieved by relying of fuel content alone. 42 U.S.C.A. 7411, Public Law 95-95, sec. 109(c)(1)(a). Due to the dates of commencement of construction under this statute, most Oklahoma plants escaped this requirement. Thus, they continue to rely on fuel content to comply with the applicable emissions standards.

According to the 1985 *Keystone Coal Industry Manual,* Oklahoma utility and industrial coal has a weighted average sulfur content of 3.2%, at 548. On the other hand, the *Manual* notes that due to "contract demands, sulfur contents of mined Wyoming coals seldom exceed 1% and average only 0.5%" at 614. Based on chemical content, Oklahoma coals are in non-compliance; that is, they will produce emissions with a sulfur dioxide content in excess of 1.2 pounds per million Btu in a plant without a scrubber.

California'sstatute was an effort to protect the state's economy and to prevent potential health and morals problems. Here, the Act is designed to protect the state's economy and to protect and stimulate its coal industry.

Analyzing the California statute to determine whether it violated the Commerce Clause, this Court stated in *Edwards*:

> We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon "the wisdom, need, or appropriateness" of the legislative efforts of the States to solve such difficulties. (Citation omitted).
>
> But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders.
>
> * * *
>
> It is difficult to conceive of a statute more squarely in conflict with this theory than the section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden on interstate commerce is intended and immediate; it is the plain and sole function of the statute. 314 U.S. at 173-174.

The economic slowdown currently facing Oklahoma and its coal industry is common to many states, most especially those states which rely upon the energy-producing industries for a large percentage of their revenues. And, as further stated by this Court in *Edwards,*

> [I]t is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world. 341 U.S. at 173-174.

Defendant has no legitimate local purpose to justify the Act. It has needlessly obstructed commerce with the sole objective of eliminating competition from Wyoming coal. Nor has the defendant pursued less discriminatory alternatives available to achieve its desired purposes. Thus, the Act cannot stand.

CONCLUSION

Plaintiff has raised a serious question whether the Act is an unconstitutional discrimination against and burden upon interstate commerce. Plaintiff is the direct and intended victim of the Act and has raised the question to protect its sovereign interests. Because this case presents an important federal question for which plaintiff has no alternative forum, and because other states have threatened to enact similar legislation, plaintiff respectfully submits that leave be granted to file the proposed Complaint.

Respectfully submitted,

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APPENDIX

OKLA STAT. tit. 45, §939 (Supp. 1986)

Coal-fired electric generating plants - Burning Oklahoma Coal.

All entities providing electric power for sale to the consumer in Oklahoma and generating power from coal-fired plants located in Oklahoma shall burn a mixture of coal that contains a minimum of ten percent (10%) Oklahoma mined coal, as calculated on a BTU (British Thermal Unit) basis.

OKLA. STAT. tit. 45, §939.1 (Supp. 1986)

Cost increases to consumers and impairment of certain contracts prohibited.

The cost to the entity shall not increase the cost to the consumer or exceed the energy cost of existing longterm contracts for out-of-state coal preference including preference given Oklahoma vendors as provided in Section 85.32 of Title 74 of the Oklahoma Statutes.

OKLA. STAT. tit. 74, §85.32 (1980)

State school districts, counties and municipalities—Purchases—Preference to state-produced goods

A. The state and any school district, county or municipality and every person acting as purchasing agent for the state or any school district, county, municipality or tax exempt industrial trust shall prefer, in all purchases, supplies, materials and provisions produced, manufactured or grown in this state; provided, that such preference shall not be for articles of inferior quality to those offered from outside the state, but a differential of not to exceed five percent (5%) may be allowed in the cost of Oklahoma materials, supplies and provisions of equal quality.

ARTICLE 3. MINE PRODUCTS TAXES

WYO. STAT. §39-6-302 (Supp. 1985)

Excise taxes on extraction of minerals.

(a) Except as otherwise provided in subsection (h) of this section, there is levied an excise tax of two percent (2%) of the value of the gross product extracted upon the privilege of severing or extracting uranium, trona, coal, except underground coal, petroleum, natural gas, oil shale or any other fossil fuel in the state. An excise tax of one and one-half percent (1½%) shall be levied on underground coal. The proceeds from this tax shall be deposited into the permanent Wyoming mineral trust fund.

(b) Except as otherwise provided in subsection (h) of this section, in addition to the excise tax imposed by subsection (a) of this section there is levied an excise tax of two percent (2%) of the value of the gross product extracted upon the privilege of severing or extracting any valuable deposit in the state except stripper production and underground coal. An excise tax of one and one-fourth percent (1¼%) shall be levied on underground coal. The proceeds from this tax shall be deposited into the general fund.

(c) In addition to the other excise taxes provided by this section there is levied upon the privilege of extracting coal except underground coal an excise tax of one and one-half percent (1½%) of the value of the gross product extracted. The proceeds from this tax shall be deposited in the Wyoming water development account or the general fund pursuant to W.S. 39-6-305.

(d) In addition to the other excise taxes provided by this section there is levied an excise tax on the privilege of extracting coal of one percent (1%) of the value of the gross product extracted. The proceeds from this tax shall be transferred to the highway fund.

(e) In addition to the other excise taxes provided by this section, there is levied an excise tax on the privilege of extracting coal except underground coal of one-half of one percent (½%) of the value of the gross product extracted. The proceeds from the tax shall be deposited into the permanent Wyoming mineral trust fund.

(f) In addition to the other excise taxes provided for in this section, there is hereby levied upon the privilege of extracting trona, coal and uranium an excise tax of one and one-half percent (1½%) of the value of the gross product extracted. The proceeds from the tax are payable to the department of revenue and taxation and shall be deposited in the capital facilities revenue account within the earmarked revenue fund. The tax levied in this subsection shall expire on January 1 next following the year in which the taxes collected pursuant to this subsection total two hundred fifty million dollars ($250,000,000.00).

* * * *

(m) Notwithstanding subsections (a) through (j) of this section, when the application of taxes under this section results in a tax on a ton of coal in excess of eighty cents ($.80), the coal is exempt from the tax which exceeds eighty cents ($.80) per ton. This exemption shall be applicable to:

(i) New agreements entered into between March 31, 1987 and March 31, 1989 if:

(A) The application of the taxes in this section results in a tax on a ton of coal in excess of eighty cents ($.80) at the time the agreement is entered and the coal is first produced under the agreement.

(B) Production and delivery of coal actually commences pursuant to the agreement between March 31, 1987 and March 31, 1989;

(C) The coal is transported and consumed outside the borders of the state of Wyoming; and

(D) The new contract or agreement is not the result of the purchaser breaching a contract with another Wyoming producer; or

(ii) A contract or agreement which existed on January 1, 1987, or a modification to that contract or agreement occurring between March 31, 1987, and March 31, 1989, between a Wyoming coal producer and a purchaser for consumption in an electrical generating facility located in Wyoming to the extent that the producer's annual production and deliveries under the contract exceeds the average annual tonnage of coal delivered during calendar years 1985 and 1986. The exemption applies to the amount of additional coal produced in calendar year 1987 or 1988 and thereafter, so long as the additional coal is produced and delivered annually. If the annual deliveries after calendar year 1988 fall below the average of the 1985 and 1986 production, the exemption will no longer apply even if subsequent production exceeds the average of the 1985 and 1986 production.

(n) If the cumulative taxes levied against coal in this section do not exceed eighty cents ($.80) per ton, the tax proceeds shall be distributed in the manner provided in this section. If the cumulative taxes in this section exceed eighty cents ($.80) per ton, so that the eighty cent ($.80) per ton limit imposed by subsection (m) of this section becomes operative, an amount equal to one and one-half percent (1.5%) of the value of the gross product of coal extracted shall be deducted from the total tax proceeds for deposit in the permanent mineral trust fund and the remaining proceeds shall be distributed on a pro rata basis for the purposes specified in this section and any other applicable law.

(o) The limitation on excise taxation provided for in subsection (m) of this section shall be applicable to a contract or agreement for the duration of its term or any extension thereof executed prior to March 31, 1989. If a producer and purchaser of coal under a contract or agreement existing on March 1, 1987, mutually rescind that contract or agreement and execute a new contract or agreement under substantially similar terms or amend an existing contract to diminish the total revenue which would have accrued under that contract, the coal sold under the new or amended contract shall be taxed under the provisions of this section without regard to the eighty cent ($.80) per ton limitation imposed by subsection (m) of this section.

* * * *

WYO. STAT. §39-6-305 (Supp. 1985)

General disposition of revenue collected.

(a) All quarterly payments received pursuant to W.S. 39-6-304(a)(i) and (ii) shall be transferred to an account of the trust and agency fund. The monies in this account shall be invested or deposited in accordance with W.S. 9-4-701 through 9-4-831, and any interest earned shall be credited to the general fund. On or before September 15 of each year, the revenue received under W.S. 39-6-304(a)(i) and (ii) shall be distributed in accordance with subsections (b), (c), (d), (g), (h), (j) and (k) of this section and W.S. 39-6-306(a). All other revenue received under this article shall be transferred to the state treasurer.

(b) The state treasurer shall transfer revenue collected under W.S. 39-6-302(a) to the permanent mineral trust fund except for the years beginning July 1, 1986 and July 1, 1987:

(i) One-fourth (¼) of the proceeds from all minerals except underground coal shall be deposited in an account within the trust and agency fund to be administered by the worker's compensation division as hereafter provided:

(A) Pooled interest earned on revenue within the account shall be credited to the state general fund as determined;

(B) For the fiscal year commencing July 1, 1986, whenever the total unencumbered revenues within the general fund, reserve fund and reinsurance accounts provided by W.S. 27-12-701 and 27-12-805 are less than six million five hundred thousand dollars ($6,500,000.00) the state treasurer may expend sufficient revenues from the account to pay employee claims under the Wyoming Worker's

Compensation Act;

(C) For the fiscal years commencing July 1, 1987 through June 30, 1991, whenever the unencumbered revenues within the worker's compensation account are less than six million five hundred thousand dollars ($6,500,000.00) the state treasurer may expend sufficient revenues from the account to pay employee claims under the Wyoming Worker's Compensation Act;

(D) Effective July 1, 1991, any revenues remaining in the account shall be credited to the Wyoming permanent mineral trust fund.

(ii) The balance shall be deposited in the permanent mineral trust fund.

(c) The state treasurer shall transfer revenue collected under W.S. 39-6-302(b) to the general fund.

(d) The state treasurer shall transfer revenue collected under W.S. 39-6-303 to an account within the earmarked revenue fund which may be cited as the political subdivision capital assistance account. Any unexpended balance in the account may be invested by the state treasurer and interest earned shall be credited to the account.

(e) The monies in the account under subsection (d) of this section shall be administered by the Wyoming farm loan board and disbursed by the board for use in areas which are directly or indirectly impacted by the production of minerals, to assist in financing public water, sewer, jail, highway, road or street projects. Not less than fifty percent (50%) of the revenue to the account shall be used to finance state highway, county road or city street projects. The Wyoming farm loan board may make grants from current revenues to any county, city, town, sewer district, water district or other political subdivision of the state, or the state highway department, with respect to the use of the revenues under W.S. 39-6-303 subject to the following conditions. Any recipient of revenues under this subsection, may, with the approval of the Wyoming farm loan board annually reapply for and receive an additional grant under this subsection for the payment of any obligation to the state or other obligee. For new projects to be commenced after March 1, 1980, grants shall only be used to finance not more than fifty percent (50%) of the cost of any portion of a project and projects for street, curb, gutter or storm drainage improvements provided the farm loan board may make grants in excess of fifty percent (50%) of the cost of a project if the board finds that the applicant either levied at least seven (7) mills in the case of a city or town for operating expenses including special district levies chargeable against the general city or town levy during the current fiscal year or levied at least eleven (11) mills in the case of a county for operating expenses during the current fiscal year or the city, town or county is imposing the optional tax permitted by W.S. 39-6-412 at the time of the application and is utilizing all other local revenue sources reasonably and legally available to finance the project, and:

* * * *

(g) The state treasurer shall transfer revenue collected under W.S. 39-6-302(c) to the Wyoming water development account within the earmarked revenue fund. Any expenditures for any water development project shall be authorized by the legislature in a separate bill.

(h) The state treasurer shall transfer revenue collected under W.S. 39-6-302(d) to the highway fund.

(j) The state treasurer shall transfer revenue collected under W.S. 39-6-302(e) to the permanent Wyoming mineral trust fund.

(k) The state treasurer shall transfer revenue collected under W.S. 39-6-302(g) to the trust and agency fund to be distributed as follows:

(i) Three-eighths (3/8) to incorporated cities and towns, each city or town to receive an amount in the proportion which the population of the city or town bears to the population of all cities and towns in Wyoming, population to be determined by resort to the latest federal census as periodically updated by the bureau of census;

(ii) One-eighth (1/8) to counties, each county to receive an amount in the proportion which the population bears to total state population, population to be determined by resort to the latest federal census as periodically updated by the bureau of census;

(iii) One-third (1/3) to the state highway fund;

(iv) One-twelfth (1/12) to the permanent mineral trust fund; and

(v) One-twelfth (1/12) to the Wyoming water development account to be distributed pursuant to W.S. 39-6-305(g) for the improvement of water projects completed and in use prior to 1970 and for other water projects if specifically appropriated for that purpose by the legislature.

OKLA. S. RES. NO. 21, 40th leg.

A concurrent resolution requesting Oklahoma Utility Companies using coal-fired generating plants to consider plans to blend ten percent Oklahoma coal with their present use of Wyoming coal; effecting a result of keeping a portion of ratepayer dollars in Oklahoma and promoting economic development; and directing distribution.

WHEREAS, Oklahoma has 380 million tons of surface minable coal of which 120 million tons are of low-sulfur containing less than one percent sulfur according to an estimate by the U.S. Bureau of Mines; and

* * *

WHEREAS, the use of Oklahoma coal would save significant freight charges on out-of-state coal from the State of Wyoming; and

WHEREAS, the savings on such freight charges could offset any possible costs associated with plant adjustments; and

WHEREAS, the coal-fired electric plants being used by Oklahoma utilities are exclusively using Wyoming coal; and

WHEREAS, the Oklahoma ratepayers are paying $300 million annually for Wyoming coal; and

WHEREAS, a 1982 Ozark Council Report states that $9 million of the ratepayers dollars was paid as severance tax to the State of Wyoming; and

WHEREAS, the Oklahoma Legislature realizes that Oklahoma coal production does not meet the gross needs of the Oklahoma utility companies at this time.

NOW, THEREFORE, be it resolved by the Senate of the 1st Session of the 40th Oklahoma Legislature, the House of Representatives concurring therein:

THAT Oklahoma utilities using coal-fired generating plants seriously consider using a blend of at least ten percent Oklahoma coal with Wyoming coal and continue to meet quality standards.

THAT the result of such a blend would assure at least a portion of the ratepayer dollars remaining in Oklahoma and enhancing the economy of the State of Oklahoma.

* * *