Split Estate
Private Surface / Public Minerals
What Does it Mean to You?
2006
Overview of Presentation

• Why Were the Surface and Mineral Estates, Split?
• Energy Policy Act of 2005, Section 1835 and a Report to Congress – Our Task
• How BLM Manages Split Estate
• How To Reduce the Impact of Energy Development on Private Surface
Where Is Oil and Gas Found in the Western United States?

Green and Red areas on the map show Oil and Gas production areas.
This Presentation

Private
Federal

State
Federal

Federal
Federal

Private
State

Private
Federal

Federal
State

Private
How did the surface estate become separated from the mineral estate?

Private Surface
Public Minerals
After the Revolutionary War, the Continental Congress began the process of selling lands in order to help repay the war debt.
Eventually a cry went out for “FREE LAND” that could be obtained through sweat equity. The Country also saw the need for a way to encourage settlement of the West.
Over time, Congress responded with 3 main Homestead Acts to encourage settlement of the West. In 1862 the Original Homestead Act was passed. It provided a gift of 160 acres if you lived on the land for 5 yrs; cultivated it; and constructed at least a 12'X14' building on it. You also received the minerals!
37 years later in 1909 Congress passed The Enlarged Homestead Act. Since the prime river bottoms had largely been claimed under the previous act, homesteaders began looking for land they could dryland farm. Since this land was generally less productive than river bottom acreage, homesteaders were given 320 acres under this act.
As early as 1910 Congress recognized that some Federal lands had surface that was valuable for agriculture and subsurface that was desired for mineral extraction, so......
The Government began selling the surface, and either retaining the minerals, or selling them to someone else.
During the early homesteading days the Fed govt didn't retain the minerals, or it retained only the coal (i.e., the Homestead Act or the Enlarged Homestead Act). However, concern grew that strategic minerals needed to fuel the economy were being locked up by a relatively few people. So in 1914 Congress began retaining most of the mineral estate under acts like the Stockraising Homestead Act of 1916.
1916

640 Acres

Stock Raising Homestead Act

For Ranching Purposes

In 1916 The Stock Raising Homestead Act was passed. It provided settlers 640 acres of prairie for ranching purposes. Under this act, the minerals were reserved to the Fed Govt.
Bureau of Land Management (BLM) Administers Surface and Minerals for the Federal Government

261 Million Surface Acres

700 Million Mineral Acres

58 Million Acres
NonFederal Surface
Federal Minerals
The Energy Policy Act was signed by the President in August of 2005. The focus of the Act is securing reliable, affordable supplies of energy for American homes and businesses.
In consultation with private surface owners, industry and interested parties, the Secretary shall review current policies and practices of management of Federal subsurface oil and gas activities and their effects on private surface ownership.
Affected Party Consultation

- Meeting with Local BLM Managers
- Listening Sessions
  - Public Comments to a Panel
- E-mail Comments:
  - Were Due April 1: splitestate@blm.gov
- Report to Congress
- Further Information:
  - Website: www.blm.gov/bmp
BLM Conducted Split Estate Listening Sessions & Accepted E-mail Comments

New Mexico
Colorado
Wyoming
Montana
Washington, D.C.

9 listening sessions were held at 5 locations across the West and Washington DC

splitestate@blm.gov
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<th>State/Date</th>
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<th>Participants</th>
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In addition to the National listening sessions, our doors are always open at the State Office, District Office, and Field Office level to discuss local problems and find local solutions.
BLM produces a brochure that helps explain the Rights, Responsibilities, and Opportunities of the BLM, Operator, and Surface Owner. Contact your local BLM office to obtain a copy.
How Does the BLM Manage Oil and Gas Development in Split Estate Situations?

• **Land Use Planning**
  - The BLM Resource Management Plan is the Foundation for Oil and Gas Decisions on Split Estate.
    - Open or Closed to Leasing
    - Lease stipulations
  - BLM routinely updates its land use plans.
  - BLM strongly encourages public involvement during the Resource Management Plan process.
  - State and Local Governments may be Cooperating Agencies.
How Does the BLM Manage Oil and Gas Development in Split Estate Situations?

- **Lease Sales**
  - BLM provides a minimum of a 45-day public notification prior to leasing.
  - BLM is looking at ways to better notify the public prior to leasing.
How Does the BLM Manage Oil and Gas Development in Split Estate Situations?

• **The Onsite Meeting**
  – The surface owner is invited to attend and identify development preferences.
BLM Requires that the Operator engage the Surface Owner in negotiations for the purpose of obtaining a surface use agreement:

1. Surface owner agreement for access, or
2. Waiver from surface owner for access, or
3. Agreement regarding compensation
Current BLM Policy

• Surface Use/Access Agreement
  – BLM requires the lessee/operator to make a good faith effort to obtain an agreement with the surface owner.
  – Failing that, the operator can “bond-on”
  – Bonding-on is a very rare occurrence.
Current BLM Policy

► There are 2 Types of Bonds

- **3104 “Performance” Bond** – Required
  - Ensures Performance During Drilling, Production, Plugging and Abandonment, Reclamation

- Minimum Bond Amounts:
  - $10,000 Per Lease
  - $25,000 Statewide
  - $150,000 Nationwide
Current BLM Policy

2nd Type of Bond –

- **Surface Owner Protection Bond** (aka: Damages Bond or 3814 Bond)
  - If the lessee/operator and surface owner fail to reach a Surface Use Agreement
  - **Coverage** (Depends on statute under which the land was patented.)
    - For example, under the Stock Raising Homestead Act: Reasonable & foreseeable damages to **Crops (including grazing lands)** and **Tangible Improvements**
  - Minimum Bond = $1,000
Damages Bond

Bond is filed with BLM, with a copy to the surface owner

- Surface owner has 30 days to object
- BLM reviews objections and:
  - Rejects bond: **Operator** has 30 days to appeal to the Interior Board of Land Appeals (IBLA)
  - Accepts bond: **Surface owner** has 30 days to appeal to the Interior Board of Land Appeals
Inspection and Enforcement

• BLM conducts inspections based on a priority ranking system.
• If a surface owner detects noncompliance, they should contact the BLM. (2nd set of eyes)
• BLM will investigate and take appropriate enforcement action.
Current BLM Policy

• The surface owner is invited to attend the reclamation inspection & identify concerns to BLM.

• BLM will consult with the surface owner prior to approving final reclamation.
How to Reduce the Impact of Energy Development on Private Lands

Environmental

Best Management Practices (BMPs)

• Minimize Road Traffic
• Minimize Noise
• Maintain Scenic Quality
• Protect Property Values
Use **Best Management Practices** To:

Reduce the Impact Of Energy Development

- Minimize Footprint
- A Choice of Color
- Interim Reclamation

FOR MORE INFORMATION, VISIT: www.blm.gov/bmp
A Temporary Use, not a Permanent Use of the Land
For More Information:

www.blm.gov/bmp  BMPs

www.blm.gov/bmp  Split Estate

www.blm.gov/bmp  Oil and Gas Gold Book