

Appendix G: Split Estate Lands

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G. Split Estate Lands

The BLM manages 700 million acres of subsurface mineral estate nationwide, including approximately 58 million acres where the surface is privately owned. In Montana, an estimated 11.7 million acres of the private land is split estate, meaning the surface land rights are privately owned and the subsurface mineral rights are federally owned. Within the Billings Field Office planning area, approximately 1,839,782 acres are federally owned minerals managed by the Billings Field Office. The majority of this split estate land was patented under the Stock Raising Homestead Act (SHRA) of December 29, 1916, as amended, (43 USC §299).

Split estate is a largely a legacy of the Stock Raising Homestead Act passed by Congress and signed into law by President Woodrow Wilson in 1916. This law allowed a settler to claim 640 acres of non-irrigable land that had been designated by the Secretary of the Interior as “stock raising” land. At a time when mineral exploration was beginning to escalate, the federal government opted to maintain the mineral rights to the land claimed under that 1916 law.

The actual language found on a SRHA patent for this mineral reservation is: “Excepting and reserving, however, to the United States all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitation of the Act of December 29, 1916 (39 Stat., 862).

The term “other minerals” includes (but is not limited to): leasable minerals (oil, gas, geothermal, phosphate, sodium, and potassium), locatable minerals (gold, silver, copper, gypsum, and bentonite), and mineral materials (including sand, gravel, scoria, pumice, and stone). In 1982, the Supreme Court affirmed the SRHA mineral reservation definition and further defined it to include substances that:

1. are mineral in character,
2. are inorganic,
3. can be taken from the soil,
4. can be used for commercial purposes,
5. were not intended to be included in the surface estate,
6. have a separate value,
7. are not necessarily metalliferous, and
8. may not necessarily have a definite chemical composition.

The BLM has the authority to condition and regulate federally authorized leases, specifically oil and gas, on split estate lands and the policy and guidance used to accomplish this.

The BLM is mandated by the Federal Land Policy and Management Act (FLPMA) of 1976, Section 202, to develop, maintain, and revise land use plans on public lands, where appropriate, using and observing the principles of multiple use and sustained yield. Section 103(e) of the FLPMA defines public lands as any lands and interest in lands owned by the United States. The mineral estate is an interest owned by the United States. The BLM has an obligation to address this interest in their planning documents (43 CFR 1610.0-7(b)).

Through the years, two areas of concern have consistently arisen from this split estate land issue: Does the BLM have the statutory authority to regulate how private surface owners use their property, and does the BLM have the authority to condition and regulate a federal mineral development, such as federal oil and gas leases. These two concerns have been addressed in the resolution of two resource management plan (RMP) protests in 1988 on split estate lands (North Dakota RMP and Little Snake RMP) and two Washington Solicitor's Opinions (April 1 and 4, 1988). The conclusion states:

In summary, while the BLM does not have the legal authority in split estate situations to regulate how a surface owner manages his or her property, the agency does have the statutory authority to take reasonable measures to avoid or minimize adverse environmental impacts that may result from federally authorized mineral lease activity.

An example of the authority the BLM does have, is summarized in the January 7, 1992, Interior Board of Land Appeals (IBLA) Decision (122 IBLA 36, Glen Morgan, January 7, 1992), which states that "The operator of an oil and gas lease is responsible for reclamation of land leased for oil and gas purposes, even after the expiration of the lease and even where the surface estate is privately owned. Such reclamation includes the restoration of any area within the lease boundaries disturbed by lease operations to the condition in which it was found prior to the surface –disturbing activities." Another key point presented in this IBLA decision referenced the reservation of mineral reserves under Section 9 of the SRHA. This section states that the United States reserves the "right to prospect for, mine, and remove the [reserved minerals]," which encompasses "all purposes reasonable incident to the mining or removal of the coal or other minerals" (43 USC § 299, 1988). As long interpreted by the United States Department of the Interior (DOI), such purposes include reclamation of the surface of the impacted land after mining is complete and the minerals are removed.

For more information see the following link:

http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices/split_estate.html