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Report Highlights Needed Reforms to Wyoming Split Estate Act

The Powder River Basin Resource Council released a report today that highlights needed reforms to the five-year old Wyoming Split Estate Act. The State of the Split Estate - A Landowner Perspective: Five Years after Passage of the Wyoming Split Estate Statute is based on interviews with a dozen landowners and five attorneys who have used the Split Estate Act's provisions that take effect when a surface use agreement cannot be reached between a landowner and the oil and gas company with mineral rights under the owner's land.

The Wyoming Split Estate Act was enacted in 2005 to empower surface owners faced with oil and gas development. It governs how oil and gas companies can access and develop surface land. The act requires "good faith negotiations" of a surface use agreement between a surface owner and an oil and gas company. If an agreement is not reached, a company must post a financial surety bond to ensure payment of damages. This is called the "bond-on" process. The Split Estate Act has been back in the news recently because of the oil and gas boom in southeast Wyoming.

"Surface owners like me who have to deal with oil and gas development impacts on my land hoped the Split Estate Act would be a landmark achievement," said Eric Barlow, a rancher in Campbell County. "But, like most pieces of legislation, it certainly wasn't perfect. It is time to re-evaluate how it is working to protect the interests of Wyoming landowners," Barlow said.

"Our investigation affirmed what many landowners already unfortunately know: that there are problems with the Split Estate Act that must be fixed," said Steve Adami, a rancher in Johnson County and Resource Council board member who is one of a growing number of landowners across the state that has been "bonded-on" under the Act. "The law is so biased in favor of the oil and gas company that a landowner is better off signing a bad surface use agreement than to challenge anything before the Oil and Gas Commission," Adami said.

The report concludes that, "The Split Estate Act marked a transition from the dominance of the mineral estate to an understanding that surface owners and mineral owners have a mutual obligation in order for each party to realize the rights accorded to them. Unfortunately, a myriad of obstacles has thwarted the first wave of landowners from effectively protecting their rights."

There are five primary problems with the Act that emerged consistently during the interviews:

1. Problem: The bond amount (\$2,000 per well) is too low.
2. Problem: The burden of proof at every stage of the bond-on process is weighted against the interest of the landowner.
3. Problem: The process the Act provides for landowners to defend their rights is prohibitively expensive for most landowners to pursue.
4. Problem: The notice provisions are not scheduled to adequately alert the landowner of impending developments.
5. Problem: The Wyoming Oil and Gas Conservation Commission [WOGCC] may not be the appropriate body to hear these disputes, given its statutory mandate to “serve the oil and gas industry.”

The most significant single concern is that the \$2,000 per well bond an oil and gas company is required to file with the WOGCC is too low to be a meaningful guarantee to landowners for damage compensation. The report notes that the bond amount is so low that “bonding on” can be more economically beneficial to operators than engaging in good faith negotiations with the landowner. Additionally, the low amount deters landowners from claiming damages because they must risk the expense of suing in district court to do so.

Rancher Elaine Ingalls expressed frustration with the low bond amount. “It might as well be a penny, \$50,000 might cover the disruption and our legal fees, but the current amount (\$2,000) is a joke,” she said.

Another concern is that oil and gas companies have claimed that the Split Estate Act does not apply to the development of federal minerals, which constitute the majority of split estate situations in Wyoming. Williams Production Company RMT recently claimed in Wyoming district court that the law does not apply to a federal minerals split estate situation. In contrast, the State of Wyoming has asserted that the oil and gas industry must abide by the Split Estate Act on all split estate lands, and the WOGCC requires oil and gas companies to post bonds on both federal and private mineral split estate situations. Powder River Basin Resource Council has asked the Bureau of Land Management to affirm that oil and gas companies must comply with the Split Estate Act when developing federal minerals, just as they have to comply with other state laws and regulations.

“We hope our Congressional delegation who supported the Wyoming Split Estate Act will help us get BLM to affirm that the state law applies to federal minerals,” said Steve Adami. “This is a matter of states’ rights and ensuring that Wyoming is able to regulate the development of federal mineral resources in our state.”

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