

# Split Estate: an Ongoing Conflict

# Outline

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- Introduction of split estate lands
- Reasons for conflict
- Method of analysis
- Policy additions as a result of analysis



# Outline (Cont'd)

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- Result of policy additions
- Conclusions/Recommendations
- Questions

# Split Estates

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- Definition: property where the owner of the surface rights and the mineral rights are not one in the same.
- Over one million acres in Wyoming are owned by two separate, private owners.
- Mineral interests generally leased to oil and gas companies.



## Split Estates (Cont'd)

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- A private property owner would retain possession of sub-surface property rights when property was sold.
- Possession of sub-surface rights would entitle owner to future profits if oil and/or gas were discovered.

# Reasons for Conflict

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- State of Wyoming deems sub-surface rights superior to surface rights.
- Permanent Mineral Trust Fund has a market value of \$3,563,727,499 or 36.5% of all funds available to the Wyoming Treasury.



## Reasons for Conflict (Cont'd)

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- Wastewater from coal bed methane causes problems from high salinity and high sodium content.

# Reasons for Conflict (Cont'd)

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- Legislation before July, 2005 and the interpretations of this legislation.
  - Mineral owner can utilize surface property for oil and gas operations.
  - Coronado Oil Co v. Grieves



# Reasons for Conflict (Cont'd)

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- Utilization of surface property for mineral extraction.
  - Law stated: “to ingress and egress at all times for the purpose of mining, drilling, exploring, operating, and developing said lands for oil, gas, and other minerals, and storing, handling, transporting, and marketing the same therefrom with the rights to remove from said land all Grantee’s property and improvements.”

## Reasons for Conflict (Cont'd)

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- If a confrontation arose from the activities previously stated, oil and gas companies could still perform their operations.
- Consent was not a requirement for access to the surface property.
- Mineral rights owners take their interests subject to the rights of the surface owner.



# Reasons for Conflict (Cont'd)

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## Coronado Oil Co v. Grieves:

- “we think it plain and beyond any doubt that the intended purpose of the cited constitutional provision and statutes was to facilitate the development of our state’s resources.”
- “It is only reasonable that the owner of valuable resources should not be shut in and deprived of the opportunity to exploit them for what is in a significant part a compelling public purpose.”

# Reasons for Conflict (Cont'd)

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- Legislation post July, 2005 and the problems encountered.
  - Issues of proper bonding for reclamation arise.
  - “Good Faith” negotiations.
  - Entrance requirements and proper notice.



## Reasons for Conflict (Cont'd)

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The Split Estate Act (Senate File 60) was enacted in July of 2005 to attempt to grant the surface owner more compensation and authority over activities occurring on their property.

# Reasons for Conflict (Cont'd)

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- There are four key requirements for oil and gas development under this act:
  1. **Notice** – minimum of 30 days notice
  2. **Planning** – “good faith negotiations”
  3. **Compensations** – Damages must be paid for loss of production and income, loss of land value, and loss of value improvements”
  4. **Mediation** – Must engage in dispute resolution and bonding requirement



# Reasons for Conflict (Cont'd)

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- Bonding aids in the reclamation and compensation of land owners.
  - At least \$2000 per well
  - Wyoming Oil and Gas Commission (Commission) receives bond amount and then sends it on to the land owner.
  - Surface owner can protest the amount at which time the Commission will review.
  - Surface owner has two years after discovery of damage to file a claim.

# Reasons for Conflict (Cont'd)

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- **Steve Adami v. Kennedy Oil Company**
  - Rancher in Buffalo, Wyoming
  - Oil company didn't participate in "good faith" negotiations
  - Bond posted wasn't adequate for amount of damage and cleanup for containment ponds.
  - First test of the Split Estate Act



# Reasons for Conflict (Cont'd)

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- For Entry:
  1. §30-5-402 (c, d, e, and g) state notice must be given.
  2. §30-5-402 (c and f) state that good faith negotiations must be attempted in getting written consent, a written waiver, and an SUA.  
(IF fail to obtain any of these, Bonding must occur in accordance with §30-5-404)
  3. §30-5-403 states one must apply to drill
  4. §30-5-402 (c) states that upon completion of bonding (if necessary) and getting a permit to drill, entry may occur.

## Reasons for Conflict (Cont'd)

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- The Split Estate Act still allows for entrance onto surface property for purposes reasonable and necessary for oil and gas operations.
- If a dispute occurs, oil and gas companies can still conduct operations.



# Reasons for Conflict (Cont'd)



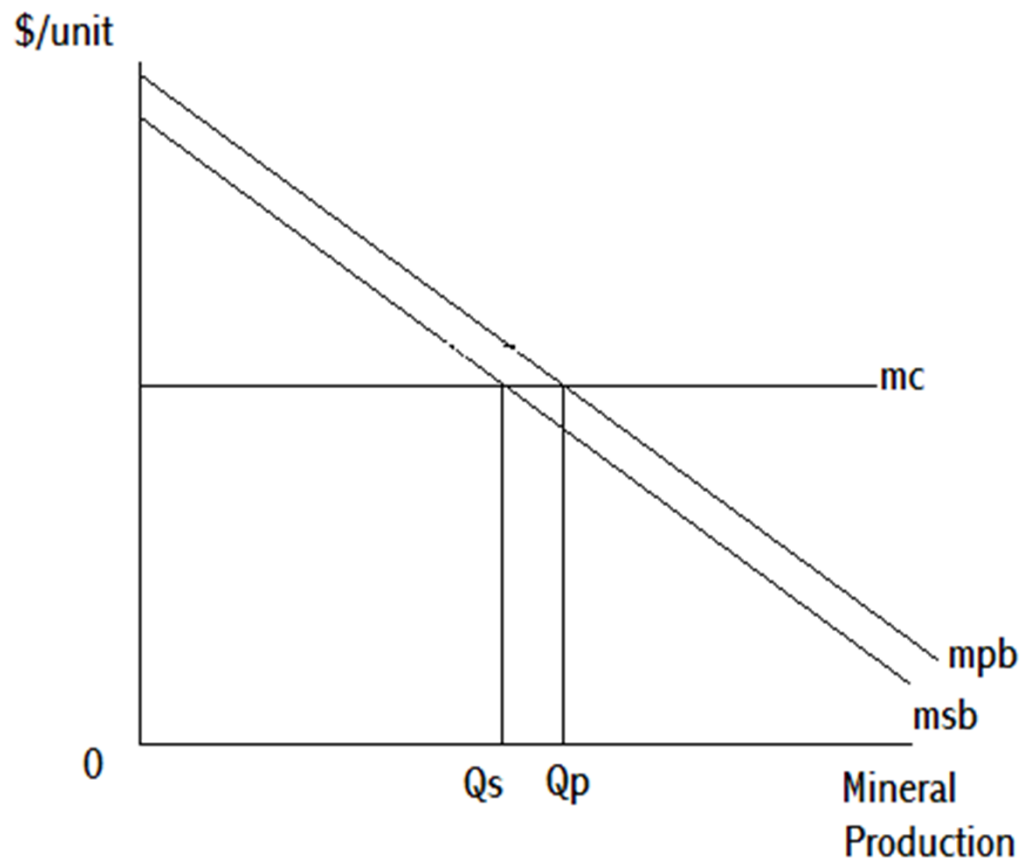
# Method of Analysis

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- This issue must be looked at as a market failure.
  - Negative externalities are created from oil and gas operations.
  - This creates inefficiencies.



# Method of Analysis



# Policy Additions as a Result of Analysis

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- Increase bonding requirements to at least \$4000 per well.
- Better management of wastewater extracted during CBM drilling.
- Enforce usage of new technologies.



# Policy Additions as a Result of Analysis (Cont'd)

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- Increasing bonding requirements to \$4000 a well will better compensate for damages caused by oil and gas operations.
- More time will be allotted to both surface and oil and gas companies for planning.
- Fines will be assessed for violators.
- Overseen by the Wyoming Oil and Gas Conservation Commission

## Policy Additions as a Result of Analysis (Cont'd)

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- Wastewater will be tested by the National Environmental Protection Agency (NEPA) to test for hazardous elements.
- If found to be toxic, water will have to be pumped back through injection wells.
- Violators will be subject to fines.



# Policy Additions as a Result of Analysis (Cont'd)

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- Enforce usage of new technologies
- The Wyoming Oil and Gas Conservation Commission will evaluate oil and gas companies every five years.
- Upon evaluation, the ability to utilize new technologies will be discovered.
- Those not in compliance will be subject to fines.

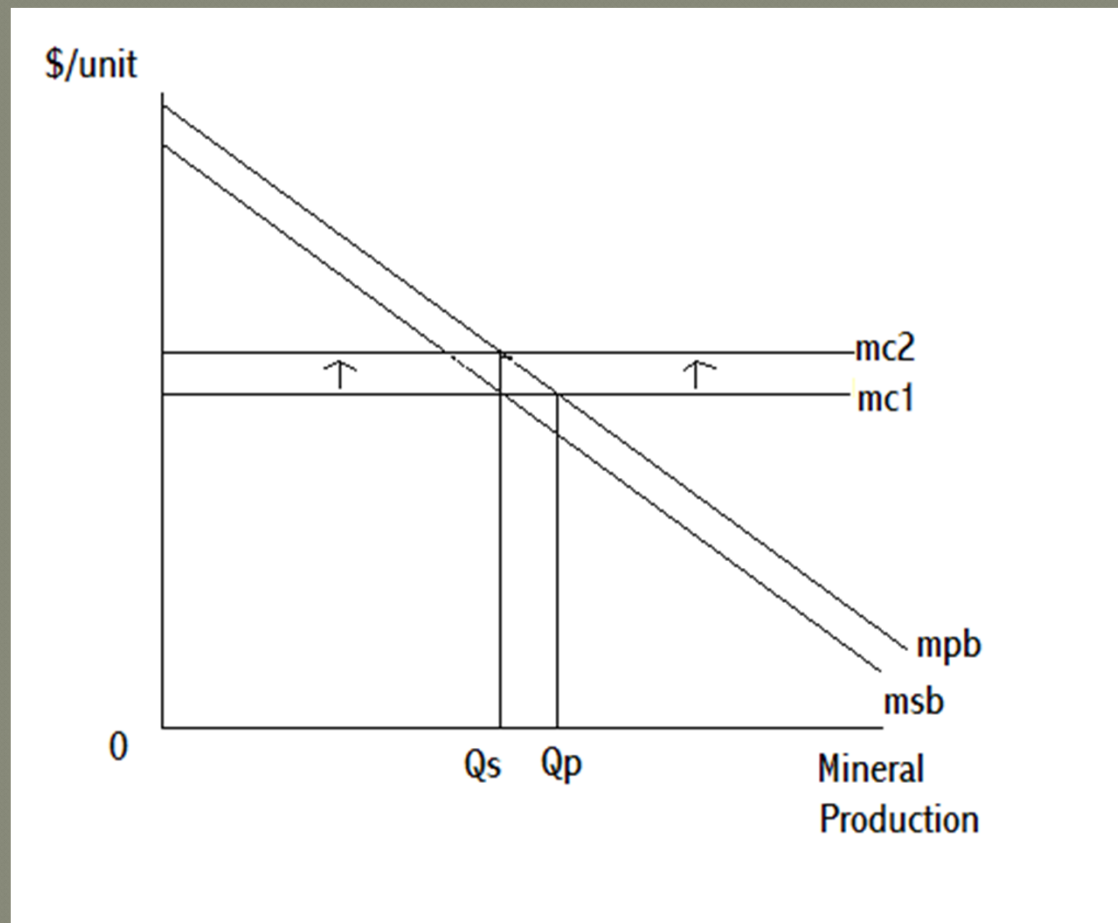
# Result of Policy Additions

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- An increase the cost of oil and gas operations to eliminate negative externalities created by these operations.
- Eliminates conflict as less time is spent in litigation and surface owners spend less time trying to stop or hinder oil and gas operations.



# Result of Policy Additions (Con'd)



# Conclusions/Recommendations

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- Split Estate properties have created much controversy in Wyoming.
- New legislation has aided land owners.
- Proposed policy additions would eliminate market inefficiencies created by leniencies in current law allowing oil and gas companies the ability to produce at a level above the social optimum.



# Conclusions/Recommendations

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- Potential problems in analysis:
  - Didn't take into account feasibility of proposed policy additions.
  - There is potential to increase marginal costs greater than marginal benefits causing oil and gas operations to shut down or greatly diminish.

# Questions?

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