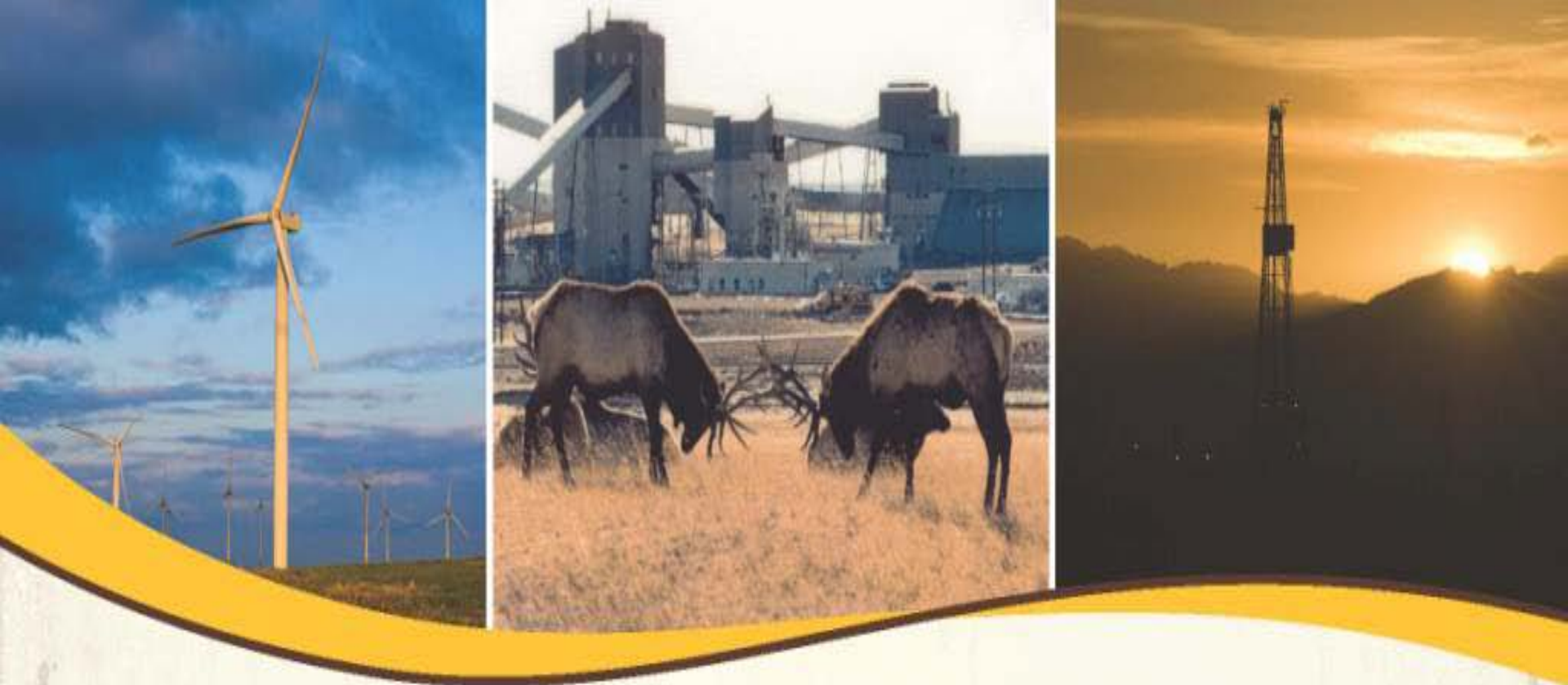




State of the Dominant Estate



Comparative Law of Severed Estates

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Overview



Creation of Severed Estate

- Constitutional or Statutory Appropriation of Minerals to the State
 - *jus publicum*: held in trust for nation with right to manage in public interest. (Wyo. Const. Art.1 Sec. 31)
 - *jus privatum*: outright ownership and ability to freely convey title.
- Private Ownership
 - Title to land includes all minerals
 - Severance accomplished grant , reservation or lease

Dominance of Severed Estate

- “ “The Government or its Nominee shall:
... acquire surface rights and easements as are required for the construction and operation of the said facilities by the Contractor.” *Art. 9 Indian Production Sharing Contract*
- “Granting of a permit under this Part does not confer on the permit holder a right of access to any lands.”
Sec. 47 Crown Minerals Act (New Zealand)
- “This is an imperative rule of mineral law; a mineral owner’s estate would be worthless without the right to reach the minerals.” *Moser v. U.S. Steel Corp.* (Texas 1984).

Dominant Estate: Sudan-style



Rights & Duties of the Dominant Estate

- Access
 - State Assistance
 - Customary rather than legal title
- Societal Obligations
 - Community infrastructure
 - Revenue sharing with central government
 - Preference for nationals and local businesses
- Environmental Compliance
 - General obligation to comply with laws & regulations
 - Permits & Consents are specific to contract
 - International Development Bank Assessment Guidelines

The United States



U.S. Common Law

- Full Possession and Enjoyment - *Turner v. Reynolds* (Pa. 1854)
- Dominant but must accommodate existing uses if alternatives are practical - *Getty Oil v. Jones* (Tx. 1971), *Flying Diamond Corp. v. Rust* (Utah 1976), *Hunt Oil v. Kerbaugh* (N. Dak. 1979)
- Mutually Dominant & Servient - *The Town of Morcroft v. Lang* (Wyo. 1989) *Gerrity Oil & Gas Corp v. Magness* (Colo. 1997)

Severed Estate Legislation

- 16 States have adopted Surface Access & Compensation laws
 - Wyoming: 2005 “reasonably accommodate existing surface uses” W.S. 30-5-402(a)
 - Colorado : 2007 “minimize intrusion” C.R.S. 34-60-127
- 2 States require real estate development to consider access to minerals
 - Colorado :C.R.S. 24-65.5-101 et seq. Joint use agreements & “drilling windows”
 - Texas :N.R.C. 92.001 et seq. Railroad Commission to approve subdivision plats

Federal Severed Estate

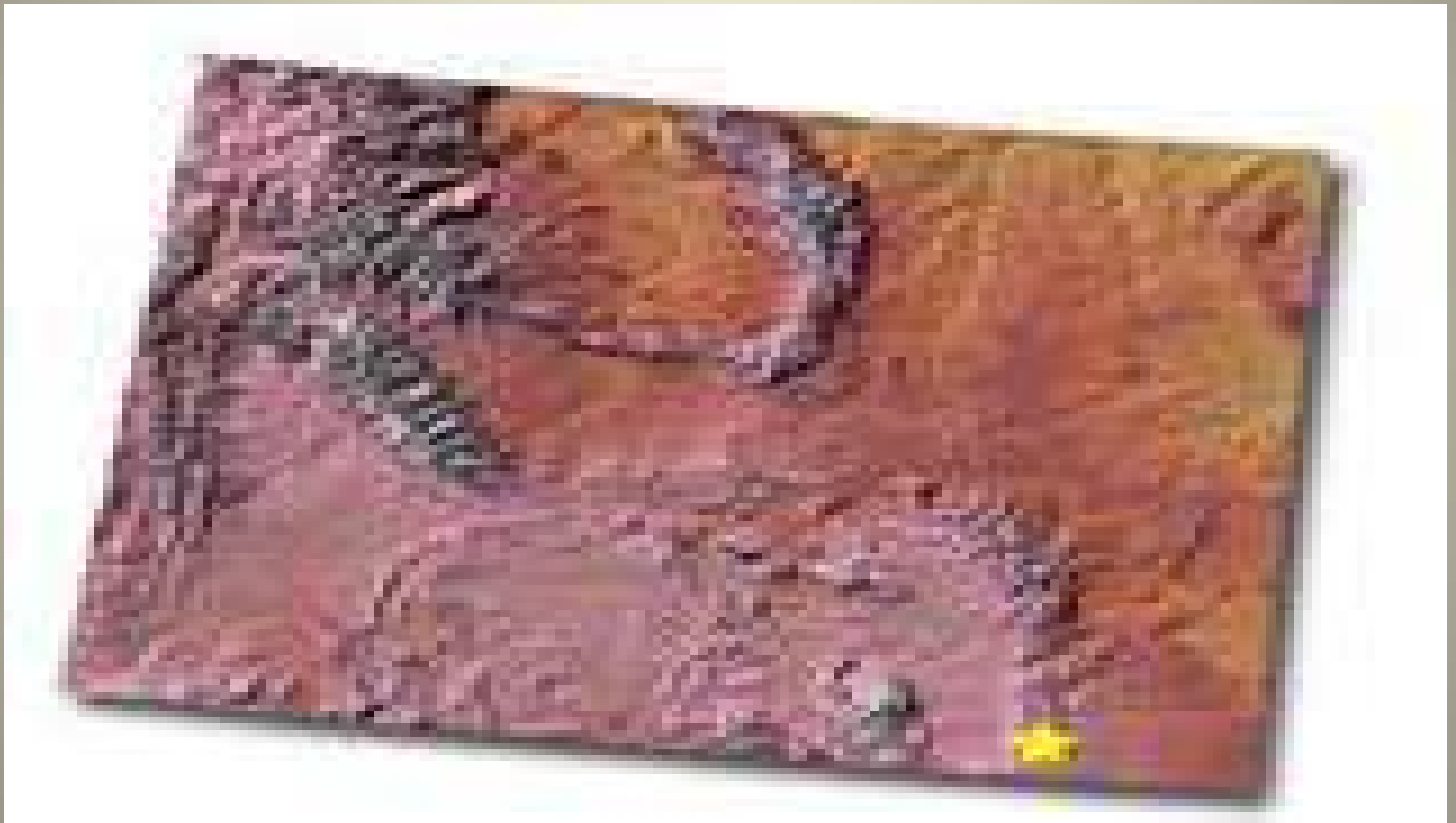
- Case Law

- Federal lessee has an appurtenant right to use the surface so far as may be necessary. *Kinney-Coastal Oil Co. v. Kieffer* (USSC 1928) Justice Van Devanter
- States can impose more stringent environmental conditions on federal lessee so long as not impermissible land use regulations. *California Coastal Comm. v. Granite Rock Co.* (USSC 1987) Justice O'Connor

- Legislation & Regulation

- Stock Raising Homestead Act 1916
- Mineral Leasing Act 1920
- Surface Mining Control and Reclamation Act of 1977 (prior to leasing)
- Energy Policy Act 2005 Sec. 1835 Report to Congress
- BLM Goldbook

Wyoming



Case Law

- Mineral lessees only liable to compensate for damages caused to agricultural improvements or crops of the owner of the surface estate. *Holbrook v. Continental Oil Co.* (1955)
- Lessee's right of access is "primary and fundamental" *Mingo Oil Producers v. Kamp* (1989)
- Development of natural resources is for the common good. *Wyoming Resources Corp. v. T-Chair Land Co.* (2002)

Conventional Energy

- Solid Minerals W.S. 35-11-416
 - DEQ Permit to Mine
 - Bond for Damages and Disruption
- Oil & Gas W.S.30-5-401 et seq.
 - Notice and good faith negotiation
 - Reasonable accommodation of existing uses
 - Strict liability for losses (production, income, value)
 - Operations confined to Development Plans
 - Certification WOGCC Form 1A APD
 - 2 year statute of limitation

Unconventional Energy

- Pore-Space (Geologic Sequestration)
 - W.S. 34-1-152 mineral estate is dominant with rights under common law as of July 1, 2008
 - W.S. 30-5-501 mineral owner right to drill through geologic sequestration site when in accordance with WOGCC rules
 - Federal law in formative stages S. 1733 Clean Energy Jobs and American Power Act Sec. 121-125
- Wind (Wind-Energy Lease)
 - Existing Uses: Lease is subject to all Existing uses including “mineral leases”
 - Stipulations for reasonable accommodation in future mineral leases , 500 foot set-back from turbines

Rights & Duties of the Dominant Estate in Wyoming

Access : Exercise of right with due regard

- Strict liability loss of value & income W.S. 30-5-405(a)(i)
- Reasonableness is a question of fact *Sanford v. Arjay Oil Co.* (Wyo. 1984)

Societal Obligations:

- Revenue Sharing W.S. 39-14-801
- Siting Act Exemption W.S. 35-12-(c) (iv) & (v)

Environmental Compliance:

- Site Restoration W.S. 30-5-101et seq. WOGCC Chpt. 3; Operational Rules; Chpt. 4 Environmental Rules
- Produced Water W.S. 41-30-930 permit to appropriate, W.S. 35-11-301 WDEQ Chapter 2 Appendix H, WOGCC Chapter 3 Environmental Rules

Maintaining Perspective

- \$20 Billion of \$29 Billion of State Assessed Valuation is Minerals
- Oil and Gas is 43% of Gross State Production (7% for Colorado)
- 2008 Natural Gas contributed \$1.5 billion of state revenue
- 2007 Coal contributed \$852 million to state and local government