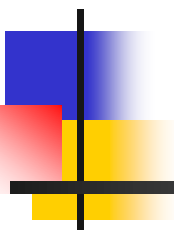


# Wyoming Split Estates Act

## Role of the WOGCC



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**State of the Dominant Estate  
University of Wyoming  
College of Law  
November 6, 2009**



# Split Estates Act: WOGCC Role

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- Wyo. Stat. Ann. 30-5-401 through 30-5-410
- Effective July 1, 2005
- 2 key areas of WOGCC Involvement
  - Certification Statements
  - Bonding Provisions



## Split Estates Act: WOGCC Role Certification Prior to APD Approval

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- W.S. 30-5-403. Operator must provide statement certifying:
  - Notice of proposed oil and gas operations was provided to the surface owner;
  - The parties attempted good faith negotiations to reach a surface use agreement (SUA)
  - The oil and gas operator has met conditions of W.S. 30-5-402(c) and specify how.



# Split Estates Act: WOGCC Role Certification Prior to APD Approval

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- Conditions of W.S. 30-5-402(c) can be satisfied by:
  - Securing the written consent or waiver of the surface owner for entry onto the land for oil and gas operations;
  - Obtaining an executed surface use agreement providing for damage compensation;
  - Securing a waiver; or
  - Posting a good and sufficient surety bond or other guaranty to the WOGCC for the use and benefit of the surface owner to secure payment of damages

# Split Estates Act: WOGCC Role APD Statistics

No. APDs 2008	No. APDs 2009	Mineral Owner	Surface Owner
2530	1107	Fed	Fee
59	39	Fed	State
1104	522	Fee	Fee
6	2	Fee	Fed
18	7	Fee	State
41	20	State	Fed
77	41	State	Fee
7	--	Tribal	Fed
2	--	Tribal	State



# Split Estates Act: WOGCC Role Form 1A

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- Form 1A (certification statement ) to be attached, when applicable, to the following forms:
  - Form 1 APD
  - Form 4 Sundry Notice
  - Form 6 Designation of Agent or Operator
  - Form 7 Notice of Change of Owner
  - Forms 14A & 14B Pits
  - Form 15 Seismic Operations



# Split Estates Act: WOGCC Role Bonding

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- W.S. 30-5-404. Surety Bond shall:
  - Be in a form prescribed by the WOGCC
  - Be in an amount no less than \$2,000/well site
  - May submit a blanket bond in an amount determined by WOGCC Supervisor



# Split Estates Act: WOGCC Role Bonding

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- WOGCC Rules – Chp. 3, Sect. 4(i)
  - Surety bond must comply with WOGCC formatting requirements
  - Operator may post a cashier's check, certificate of deposit, or letter of credit so long as it complies with Chp. 3, Sects. 5 & 6





# Split Estates Act: WOGCC Role Bonding Amount

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- WOGCC Rules – Chp. 3, Sect. 4(k)
  - In determining the amount of bond to be posted, WOGCC Supervisor shall consider the proposed plan of work and the operations submitted by the operator in its notice to the surface owner.



# Split Estates Act: WOGCC Role Bonding Amount

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- Supervisor may consider any other factors which would materially impact the bond amount needed to secure payment of damages, including, but not limited to the following:
  - loss of production and income;
  - loss of land value; and
  - loss of value of improvements caused by oil and gas operations



# Split Estates Act: WOGCC Role Bonding Notice

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- WOGCC Rules – Chp. 3, Sect. 4(j)
  - WOGCC must provide written notice to surface owner within 7 days of receipt of bond
  - Notice must contain:
    - A description of the amount and type of bond or guaranty received;
    - A copy of the statement filed by the operator with its APD; and
    - A statement that the surface owner has 30 days from receipt of notice to file an objection with the WOGCC



# Split Estates Act: WOGCC Role Bonding Objection

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- WOGCC Rules – Chp. 3, Sect. 4(I)
  - If surface owner files a written objection:
    - The matter will be set before the WOGCC at its next regularly scheduled meeting.
    - The WOGCC will consider evidence from both parties, and may consider any other relevant evidence.
    - The WOGCC must notify the parties of its decision in writing.
    - Proof of the required surety must be submitted within 30 days of the WOGCC's final order.



# Split Estates Act: WOGCC Role Bond Hearings

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- WOGCC jurisdiction under W.S. 30-5-404, 406 is limited to the adequacy and release of the bond;
- the WOGCC will not rule on whether good faith negotiations have occurred or on compensation for actual damages
- Hearing Statistics:
  - 11 objections filed 2005 – Present
  - 5 hearings conducted; orders filed
  - 5 objections withdrawn
  - 1 pending



# Split Estates Act: WOGCC Role Bonding Release

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- WOGCC Rules – Chp. 3, Sect. 7(d)
  - Operator must request bond release in writing with a certified statement of the following:
    - compensation for damages has occurred;
    - an agreement for release has been reached by all parties;
    - final resolution of the judicial appeal process for any action for damages has occurred and all damages have been paid;
    - surface owner failed to give written notice as required under W.S. 30-5-406(a); or
    - surface owner failed to bring an action for damages within the required time period.



# Split Estates Act: WOGCC Role Bonding Release

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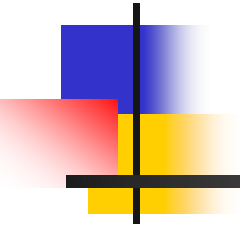
- WOGCC Rules – Chp. 3, Sect. 7(e)

On receipt of written request for release:

- WOGCC must notify the surface owner in writing and include the written request and certified statement
- Surface owner has 15 days from receipt of notice to dispute the request
- WOGCC may release the bond if:
  - Original request contains a verified statement of agreement from the surface owner
  - No dispute is received
  - Satisfied the operator has complied with all requirements
- WOGCC Supervisor may release any bond or other surety for just cause

# Wyoming Split Estates Act

## Applicability to State Lands







# Applicability of Split Estates Act to State Lands

## Definition of Surface Owner

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- “Any person holding any recorded interest in the legal or equitable title, or both, to the land surface on which oil and gas operations occur, as filed of record with the county clerk of the county in which the land is located. ***‘Surface owner’ does not include any person or governmental entity that owns all of the land surface and all of the underlying oil and gas estate***, or any person or governmental entity that owns only an easement, right-of-way, license, mortgage, lien, mineral interest or nonpossessory interest in the land surface.” (W.S. 30-5-401(a)(viii)).
- Thus, Split Estate Act does not apply when the state owns the surface and all of the oil and gas estate (unified estate).



# Applicability of Split Estates Act to State Lands

## Facts and Figures

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- In most cases, the Split Estates Act will NOT apply to O/G operations on state lands:
  - 1) State owns approximately 3.5 million surface acres and 3.9 million mineral acres;
  - 2) State owns approximately 386,000 acres of surface lands over Federal/Fee Minerals; and
  - 3) State owns approximately 750,000 acres of O/G that is below federal or fee surface.



## Applicability of Split Estates Act to State Lands: State Surface – Federal/Fee Minerals

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- OSLI will negotiate the required SUA and compensation due under the Act;
- Board Rules do **not** delegate to surface lessees the right to negotiate on behalf of OSLI/BLC a SUA covering state lands or compensation due the state as “surface owner”;
- Nevertheless, OSLI encourages the Operator to notify and work with surrounding landowners while it is negotiating with OSLI;



## Applicability of Split Estates Act to State Lands: Federal/Fee Surface – State Minerals

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- The Act applies and the Operator must notify and work with the applicable “surface owner(s)” in accordance with the Act



## Non- Applicability of Split Estates Act to State Lands – Unified Estate

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- On- and off-lease production activity requires Surface Impact Payments (SIPs):  
money paid by a user of state lands in compensation for potential negative impacts to the fee simple or leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.

BLC Rules, Chp. 4, Sect. 2(f); Chp. 5, Sect. 2(e)

# Non- Applicability of Split Estates Act to State Lands

## ON-LEASE vs. OFF-LEASE Activity

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- The State Mineral Lease provides that a mineral lessee may use “so much of the surface ... lands as is necessary” for its on-lease production activities;
- On-lease activities are those conducted solely and exclusively for production of the leased state minerals; PLUS
- Any activities performed in connection with a properly approved “Cooperative” or “Unit” Agreement (See BLC Rules, Chp. 18);



## Non- Applicability of Split Estates Act to State Lands – Unified Estate

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- SIPs paid for on-lease E&P activities are negotiated with the surface lessee and split b/t surface lessee and BLC (See BLC Rules, Chps. 4 & 5, Sects. 13)
- Surface use for off-lease activities requires BLC approval for issuance of an easement, temporary use permit, or special use lease, as appropriate.
- For easements and temporary use permits, a one-time SIP is paid to surface lessee pursuant to BLC-approved schedule. (BLC Rules, Chp. 3, Sect. 5 and Chp. 14, Sect. 5)
- For special use leases, SIPs are negotiated with surface lessees and split as noted above. (BLC Rules Chp. 5, Sect. 13)



## Non- Applicability of Split Estates Act to State Lands – Unified Estate

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- SIPs are established by negotiation b/t the surface lessee and mineral lessee in most cases; by the Director, as necessary;
- Mineral lessees may immediately enter state lands while negotiations are proceeding, upon providing OSLI with a deposit for the SIP in an amount determined by OSLI (BLC Rules Chps. 4 & 5, Sects. 13(d)(iii));
- SIPs must be “consistent with payments for impacts to adjacent lands.” (BLC Rules Chps. 4 & 5, Sects.13(b));
- SIPs are split between the BLC/surface lessees based on a progressive formula (ranges b/t 60-40 and 80-20, depending on the type of payment and payment amount).





# Contact Information

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