



# STATE OF THE DOMINANT ESTATE THE SURFACE OWNERS' PERSPECTIVE

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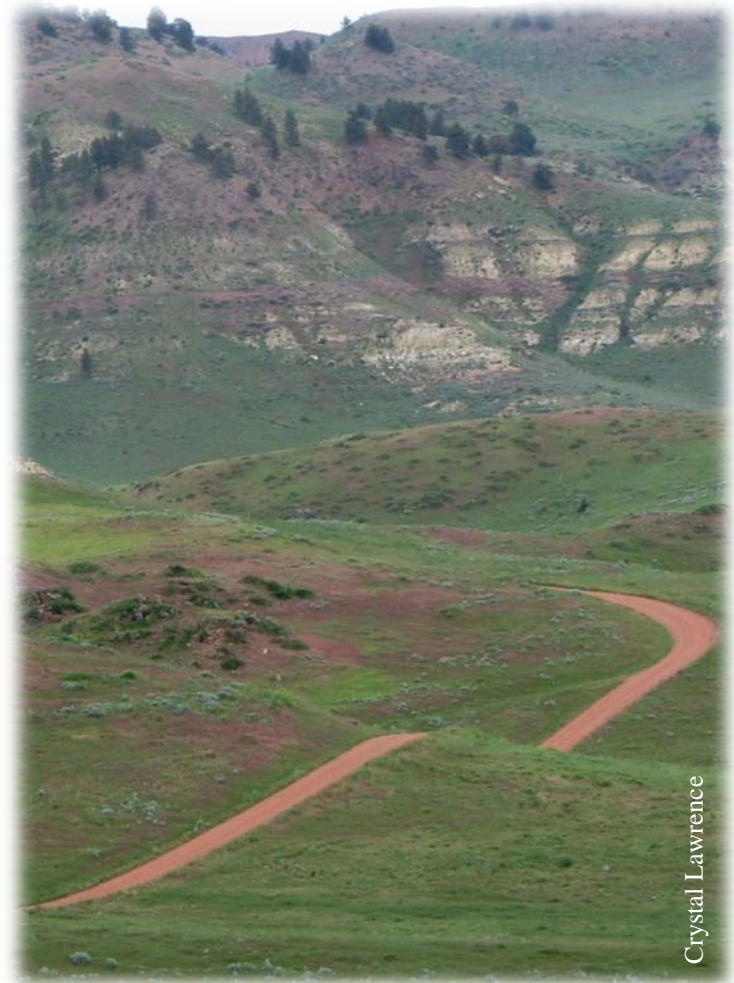


# Black v. Webster

What the law says:

Dominant Estate - an estate that benefits from an easement [a right of entry]. *Black's Law Dictionary, Ninth Edition*

“the right to use so much of the surface as may be reasonably necessary to enjoy the mineral estate.” *Harris v. Currie*, 176 S.W.2<sup>nd</sup>, 302, 305 (Texas, 1943)



off the mark .com by Mark Parisi



What the landowner hears:

“Dominant” –  
commanding,  
controlling, or  
prevailing over others.

*Merriam-Webster's  
Collegiate Dictionary,  
Eleventh Edition*

# What Surface Owners achieved in the 2005 Legislation (Senate File 60) and It's Importance

## NOTICE

- Non-surface disturbing activities - 5 days
- “Oil and gas operations” - not more than 180 days nor less than 30 days
- Must disclose plan of work
- Must offer to discuss and negotiate any proposed changes

## IMPORTANCE

- Move livestock; harvest crops; evaluate and plan for effects



## What surface owners achieved, cont.

### GOOD FAITH NEGOTIATIONS

- An obligation imposed on both parties
- Addresses resource protection; reclamation; damages
- Must disclose plan of work
- Encourages dispute resolution processes

### IMPORTANCE

- Proactive approach by both parties; anticipates potential conflicts



### ALTERNATIVES

- Waiver
- Surety bond or equivalent guarantee

### IMPORTANCE

- Waiver is recognition that this is a private negotiation
- Bond further incentivizes good faith negotiation



## What surface owners achieved, cont.



### BONDING

- OGCC Authority
- \$2,000 minimum
- Surface owners rights to object

### IMPORTANCE

- This is Additional Bonding



## What surface owners achieved, cont.

### SURFACE DAMAGE & DISRUPTION PAYMENTS

- Loss of Production and Income
- Loss of Land Value
- Loss of Value of Improvements
- Timeline on right to bring action for damages

### IMPORTANCE

- Dominant estate should not impose a financial burden on the surface owner







## What surface owners achieved, cont.

### DEFINING “LOSS OF LAND VALUE”

- Long-term productivity
- Alternative uses
- Aesthetic values

### TOPICS FOR POTENTIAL FUTURE ACTION

- Notice of leasing
- Recording of severed mineral interests
- Minimum Reclamation Standards
- Applicability to federal mineral interests





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# The Wyoming Split Estate Initiative *2002*

## A VOLUNTRARY APPROACH

“The WYSEI recognizes that Surface Use Agreements are a private contract between the landowner and the operator and the alternatives and recommendations presented by this Initiative are for voluntary consideration by the direct parties. No new mandates or requirements for the Surface Use Agreements are being considered through this effort.”



## OBJECTIVE # 1

“ Improve communication between landowners and operators while encouraging the support of regulators. Continued dialog between the parties throughout each phase of the project will provide education and understanding. A clear understanding of each other’s perspectives and rights is a critical aspect in fostering respect as a cornerstone to resolving or avoiding conflict.”

## RECOMMENDED BEST MANAGEMENT PRACTICES

The parties (operator and landowner) must build a working relationship early in the process - the earlier the better.

A decorative background image at the bottom of the slide showing a landscape with a blue sky, white clouds, and a body of water.

**OBJECTIVE # 2: [Consult with resource professionals]**

**OBJECTIVE # 3: [Employment of an Advisory Team]**

**OBJECTIVE # 4: [Alternative dispute resolution]**



## OBJECTIVE # 5: Recommendations

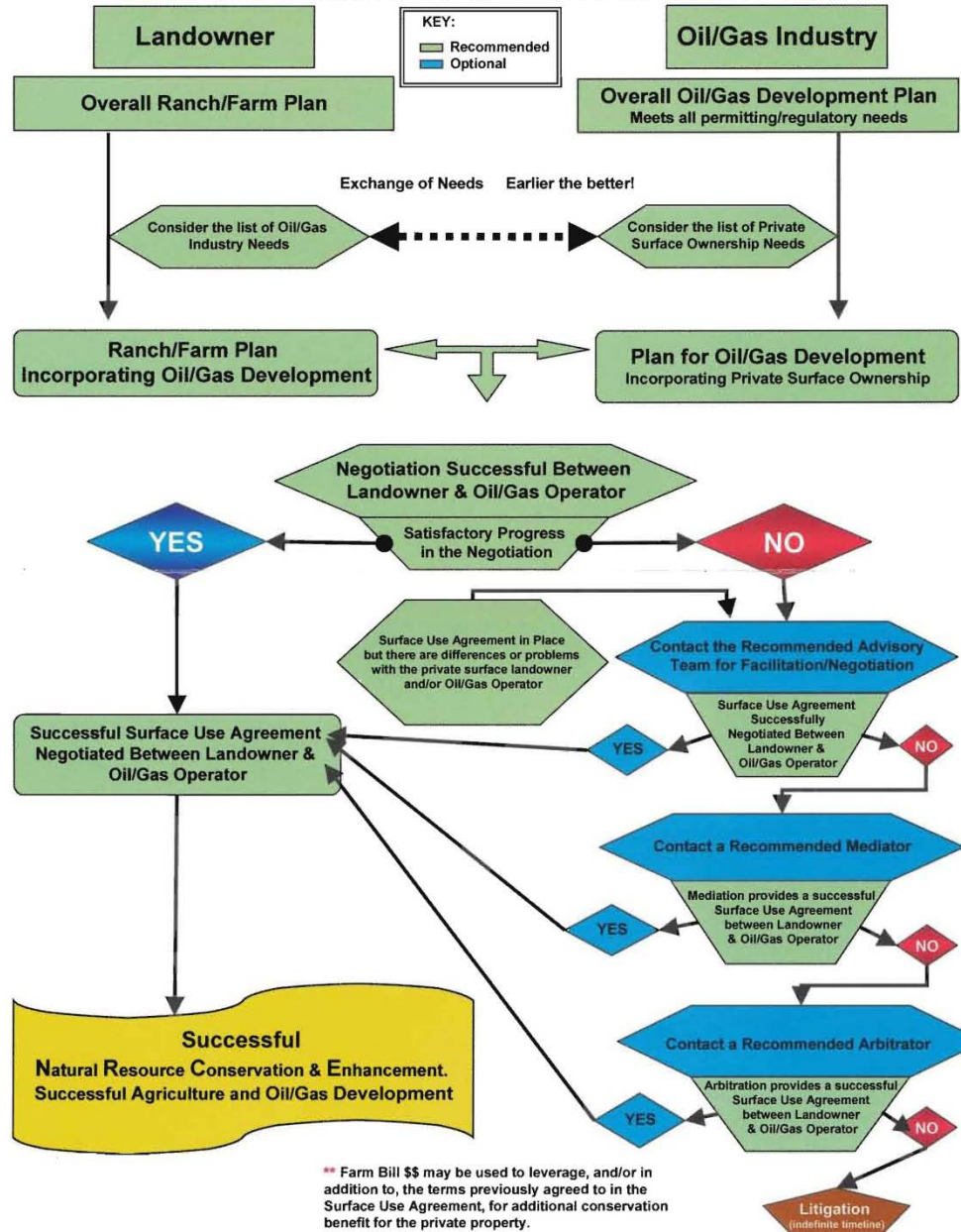
- Encourage agencies to provide flexibility when implementing laws, regulations or policy decisions
- Identify and develop statutes and regulations which can improve relationships between landowners and oil and gas operators





# Wyoming Split Estate Initiative

Goal: "To assist in minimizing or preventing conflict between landowners and oil & gas operators."



\*\* Farm Bill \$\$ may be used to leverage, and/or in addition to, the terms previously agreed to in the Surface Use Agreement, for additional conservation benefit for the private property.

**Has Wyoming succeeded in striking the most appropriate balance between these two estates?**

