



Montana Legislative Services Division

Legislative Environmental Policy Office

To: HB790 Subcommittee
From: Joe Kolman
March 3, 2006
Regarding: **Federal and state split estate regulations in Wyoming**

Subcommittee members,

You may recall that you have heard conflicting testimony about whether the new split estate law in Wyoming takes precedence over federal regulations. It does not appear that a concrete answer has been reached.

At the center of the debate is the bonding. This is the "bond on" provision that pertains only to surface damage. On land where the minerals are federally owned, the Bureau of Land Management requires the mineral developer meets one of the following conditions:

1. Obtain an agreement with the surface owner.
2. Written consent or waiver for access to lands from surface owner.
3. Payment for damages.
4. Post a bond of at least \$1,000.

The new Wyoming law requires that if no agreement or waiver is reached between the developer and the surface owner, the developer must post a bond of at least \$2,000 per well or post a blanket bond.

The question is whether a developer would have to post two bonds.

In June 2005, BLM Director Kathleen Clarke said in a letter that the agency believes the new law only applies to state and privately held minerals. She said the new law, if applied to federal minerals, would impose additional financial requirements on the federal mineral estate, could cause delays and poses legal problems.

However, Clarke added that the BLM wants to work with the state and pledged the BLM will review whether to change its procedures.

The Wyoming Attorney General has not issued a formal opinion on the matter, but was quoted in a newspaper story saying he believes the state's law does apply to federal minerals.

On Feb. 1, I interviewed Eric Nelson, an attorney with the Wyoming Oil and Gas Conservation Commission. He said the state stands behind its belief that the law applies to all split estates, regardless of mineral ownership. Nelson added that since Clarke's letter, the BLM has not further challenged the statute and he does not know of any existing challenges to the law based on the two bonding regulations.

Please contact me if you have questions.

Attachments: Clarke letter, Billings Gazette story

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