

Testimony submitted to the:

**HOUSE COMMITTEE ON NATURAL RESOURCES
Subcommittee on Energy and Mineral Resources
and**

Subcommittee on National Parks, Forests and Public Lands

**“Land–use Issues Associates with Onshore Oil and Gas Leasing
Development”**

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Submitted by:

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Chairman Costa, Chairman Grijalva and members of the subcommittees, on behalf of myself and the Powder River Basin Resource Council I would like to thank you for the opportunity to speak to you today. My name is Steve Adami. I am a rancher and CPA in Buffalo, Wyoming, and a lifelong resident of Wyoming. I am here to address problems with the development of oil and gas minerals when a split estate exists between what has been the dominant mineral estate and the subservient surface estate.

The idea that the mineral estate is dominant over the surface or land is the cause of many conflicts. An example of this attitude of dominance over the land and the landowner was testified to in a recent court case in our area when the landowner, Mary Brannaman, testified that an oil and gas company representative told her, “Mary, it’s just like you and I are married. I can do whatever I want, whenever I want, and however I want.”

For me, the split estate relationship felt more like that between a slave and a slave owner, but the result was the same: the developer felt free to do whatever he wanted, whenever and however he wanted to do it. This situation, which surface owners are encountering more and more throughout the Rocky Mountain West, is leading to the passage of split estate laws in Wyoming, New Mexico and possibly this year, in Colorado.

Because of the oil and gas industry’s political influence in Wyoming, the split estate law that was passed did not provide adequate protection for the surface estate. Our ranch in Johnson County was the first test of Wyoming’s Split Estate Law. Since our ranch’s initial test, the CBM industry has found Wyoming’s Split Estate Law a safe haven for inexpensive access to their mineral estate and continued domination over the surface owner. Furthermore, the BLM refuses to recognize Wyoming’s law, despite its weaknesses and shortcomings (see attachment.)

State and federal split estate law are based around “good faith negotiations”, but in our experience, no good faith negotiations were required, regardless of state and federal law. The company that leased the federal minerals beneath our ranch did not want to negotiate and found the BLM an accommodating and cooperative partner in their effort to “bond on.” BLM’s message to landowners in

our area is this: "You'd better take whatever the operator is offering, because if they 'bond on' you will get nothing." This is not good faith negotiating.

In our case, what the operator offered was a one size fits all, non-negotiable surface use agreement. When we asked for some changes in the language ensuring proper reclamation, restrictions on water disposal, and \$1.37 per day more money than was offered for the use and damage of our land, what we received was nothing. The initial offer was withdrawn and the operator "bonded on".

The BLM and CBM operator sat down and made decisions on how my land was to be developed. Although I was invited to the meetings between the operator and the BLM, my attendance was simply symbolic. As the owner of the surface, my input was given only a token consideration—and it was completely ignored if it conflicted with the operator's wishes. The ultimate Plan of Development that was approved did not minimize damages, did not compensate me for those damages, and did not ensure there would be enough money set aside to reclaim my land when the developer is finished.

The "bond" BLM required for industry to come onto my ranch was \$2,176. This money was not and will not be paid to me or any other landowner who is forced into this position. The landowner must sue the BLM for damages and the legal fees would be several multiples of the bond. Two thousand dollars is not adequate compensation for my losses or cover the damages caused by drilling 11 wells, bulldozing miles of roads, installing miles of "utility corridors", and constructing five off-channel water disposal pits of approximately 3 acres each. An engineer I retained estimated reclamation costs to be in excess of 3 to 4 million dollars, particularly given the overall lack of development control built into the Plan of Development (POD) approved by the BLM's Buffalo Field Office. The BLM's response to my protests that they allowed industry to post a \$2,176 bond against a reasonable reclamation estimate of three million dollars or more, was that they were only required to collect a bond for loss of grazing value.

The developer had D6 Caterpillars working on our ranch within 48 hours after the approval of their POD and drilling permits by the Buffalo Field Office. I appealed the BLM approval of the POD and drilling permits to the Interior Board of Land Appeals. There are no protections afforded to the surface estate or any additional bond required of the mineral developer during the time of appeal.

I tried every step of the way to get protection for our land and water. I lost that battle, and our ranch looks nothing like it did under our stewardship. What was once open pristine ranch land is covered with roads, pits, pads, and constant traffic. Our ranch became an industrial park for the production of CBM gas. Our private deeded ranch land was sacrificed by BLM for the development of federal minerals.

We no longer own the ranch I've been talking about today. For a variety of reasons, we were bought out by one of the CBM companies in the area. The decision to sell was a very difficult one for our family to make, but in the end was the only logical solution for us. We were able to leave most of these troubles behind, but the fight took a tremendous toll emotionally, physically, and financially for my family and me. The abuses continue today for my friends and neighbors, because nothing has changed in the way industry and the Bureau of Land Management conduct business. You cannot mandate "good faith negotiations". What is needed is a leveling of the playing field between the dominant mineral estate and the subservient surface estate.

Problems are easy to identify. The hard part is to find solutions, particularly when the solutions may require an industry with enormous political and

economic influence to make concessions in the way it does business. However, there are solutions to many of the problems that will not unduly slow down or add unreasonable costs to development. This is not about slowing development or making it more expensive, it is about fairness to landowners and making sure that development is done in a manner that protects the surface resource.

The Stock Raising Homestead Act of 1916 declares that the surface estate is entitled to reimbursement for damages to crops (not including native grassland) and tangible improvements. That 91-year-old law still rules what protections compensation surface owners receive today when oil and gas is leased (though surface owners were given greater protections when coal and hard rock minerals are being developed, thanks to laws passed in 1977 and 1993.) It is time to revisit the true value of the surface estate and to provide protections for those who own the surface over federal oil and gas. The so-called dominant estate lends itself too easily to the actions of a slave owner or an abusive spouse, and the federal government should not be a party to it.

A new federal Split Estate Law would clearly have jurisdiction over federal minerals and provide protection for the landowner where the local and state governments are unable to provide such protection.

Mr. Chairmen, I urge you to pass Representative Udall's HR 1180 that would require:

- Notification to the surface owner and opportunities to comment and participate at key points in the leasing, permitting, development and reclamation processes.
- Reasonable use of the site.
- Accommodation of the surface owner.
- Reclamation of the site so that the land is capable of supporting the same uses it was capable of supporting prior to development.
- Compensation for damages.

And I urge you to go further:

- A federal law should require adequate compensation for the use of the land and the mineral development impacts. Requiring a fixed production percentage, which would be non-severable, to the surface estate would entitle the surface owner to some reasonable compensation for the use of their estate.
- A stay on development during an appeal to the ILBA would both provide protection against improper development and discourage companies from using the "bonding on" method of gaining access to their mineral estate except in a case of last resort.
- The best way to defuse the controversies surrounding this industry are to reconnect the minerals with the surface estate, perhaps by requiring that minerals not leased or produced over a number of years, 15 for example, revert back to the surface owner.

It is time to pass legislation to rein in the "dominant" position of the mineral estate which has cultivated the arrogance of the operators who are running roughshod over surface owners and address the inequity that exists between the land and the oil and gas beneath it. We addressed this issue during the boom in

coal mining in the 1970s and it is time to require it of the oil and gas industry. In the 30 years since the passage of our federal coal law, the Surface Mining Control and Reclamation Act, which requires surface owner consent before federal coal is leased, the coal industry has evolved into a prosperous and relatively non-controversial industry. We believe the oil and gas industry can succeed and thrive from a similar approach.

Thank you.