

# Split Estate<sup>1</sup>

## Preface

Let's assume that we are living in a frame that is behaving sustainably: Borrowing / Returning with complete accountability. How would this particular concept of Split Estate be reframed?

Let's attempt to reframe this "Split Estate" concept from its anthropocentric perspective to a new eco-centric perspective – a worldview where life no longer revolves around our personal ego but around the collective benefit of the planet.

To live sustainably, we can (and must) become planetarians and acknowledge that we are an integral part of the interdependent web of life called the ecosystem.

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In split estate situations, the surface rights and subsurface rights (such as the rights to develop minerals) for a piece of land are owned by different parties.

**'Surface rights'** would refer to the **"Surface Responsibilities and Rights"** that the human borrower of the surface has assumed in return for its sustainable human use. All other living species that were occupying the portion of the surface of the planet had already learned how to live sustainably. Now it is the responsibility of the newcomer, homo sapien, to join the web of life and assume a mutually beneficially role. The pre-existing species (kind and number) of course depend on the bio-region or biome we are considering.

We can assume that this surface is already being occupied by existing life forms – plant/animal, micro and macro – organisms. The Universe Story, particularly the chapter describing the evolution of life on Earth shows us that Nature appears to not only tolerate but encourages diversity. As a result all conceivable niches had become filled with some form of life – from single cell bacteria and Achaea to the vast number of more complex eukaryote species before homo sapiens arrived on the scene.

The Universe Story indicates that animal (amphibian) life emerged from the oceans around 360 million years ago. Homo sapiens emerged from eastern Africa as a species less than 200,000 years ago. So unquestionably many other forms of life occupied the surface before humans showed up.

To our credit, we humans have acquired enough consciousness and self-awareness and capability to realize that it is to our collective benefit to establish a mutually agreed upon social order (boundaries) within which each individual is allowed (and encouraged) to exercise their "free will."

The concept of "ownership" is replaced by the responsibility of harvester of sunlight falling onto the surface, caretaker of all Life on the surface, temporary user during one lifetime. Children of the caretaker of course have first rights to use this same surface after the death of the parent-owner.

"taxes" are based on the non-use of the surface. There is a certain amount of sunlight that can be harvested by this particular surface based on its location on the planet and the present niche it is serving. This could range from a square foot of surface in the Mohave desert to a square foot in the Amazon rain forest. One looks at the natural sustainable pre-human utilization and asks how can the presence of a human be of mutual benefit to the

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<sup>1</sup> Applies to land use. There may be a similar concept for use of the ocean/seas.

natural niche? If the answer is “you can pick up the trash left behind by another human from another generation then do that. If the answer is you may carefully harvest a few mature trees that are dying to use their wood for human creations, then do that respectfully doing no harm to the beings already present. Opening the canopy to allow a bit more sunlight to enter may be a good thing. Using the wood to create something more is a good thing, assuming there is already ample food for the micro-organisms already present in the forest soil, assuming the harvesting of the tree does not eliminate a niche for some other species. Keeping the carbon sequestered and above ground as wood structure may be a good thing.

Passing the rights to non-off spring must go through the commons so it is available for anyone to assume. New ownership is not purely based on who has the money but who is the best of the options to take on this surface and harvest sunlight – the goal is no longer to make money or personal wealth – but what is the best for the ecosystem – who will be look out for other life that uses (or can use) this surface as their niche. Mutual benefit is the underlying principle. Who has the best ability and plan and expertise to be of most benefit to the planet and the evolution of consciousness? Today the property is sold (auctioned off) to the highest bidder - not necessarily the best surface owner. Today we use a credit rating – tomorrow we should assembly a surface use rating – a minimum rating is required. The worse rating goes to those who hoard. It is possible to be responsible for large quantities of the surface – certainly.

Is the surface intended to be a source of profit? Sure – **for the planet** first, for all Life next, for humans next, for country next, for family next, for self last. If the planet, all life, all humans, country, family benefit then by definition the individual human has already realized a profit- but some reasonable personal gain is certainly appropriate to feed one’s reptilian instincts – have fun – go buy an electric jet ski that can be 100% recycled – exchange your old bicycle for a new one that can be 100% recycled, etc.

**‘subsurface rights’** (such as the rights to develop minerals) would refer to subsurface responsibilities

Recall that directly below the surface, within the layer of so called top soil, there is a host of critical life forms – mini and micro-organisms ( bacteria, fungi, archea, etc. ) that are required for a plant to take root and thrive. Apparently the mycelium help breakdown chunks of rock into basic mineral atoms that are then transported to the root system of the plant to be used in the various building processes of the plant cell. (e.g. phosphorus, potassium, potash, etc. ). We see this demonstrated above ground with lichen.

In these situations, mineral rights are considered the dominant estate, meaning they take precedence over other rights associated with the property, including those associated with owning the surface. However, the mineral owner must show due regard for the interests of the surface estate owner and occupy only those portions of the surface that are reasonably necessary to develop the mineral estate.

The BLM’s split estate policy only applies to situations where the surface rights are in private ownership and the rights to development of the mineral resources are publicly held and managed by the Federal government.

For more information about how the surface and subsurface estates became separated and how the BLM manages split estate, please view the following slide show:

**Split Estate: Private Surface/Public Minerals—What Does it Mean to You?** [PDF](#) | [PowerPoint](#)

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## Split Estate and Land Management Policy

The BLM manages the public lands, including the Federal mineral estate, to enhance the quality of life for present and future generations of Americans, under a mandate of multiple use as described in the [Federal Land Policy and Management Act](#). The [Mineral Leasing Act](#) guides the land use planning, leasing, bonding, operations and reclamation associated with all development of Federal oil and natural gas resources.

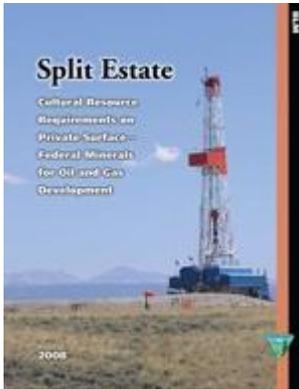
## Split Estate

Various laws granted land patents to private individuals but reserved the mineral rights to the Federal Government. The BLM must comply with the provisions of the laws under which the surface was patented. However, many of those laws do not identify the rights of the surface owner in split estate mineral development situations. To better define the rights of the private surface owner, the BLM revised the Onshore Oil and Gas Order Number 1 and issued the Oil and Gas Gold Book in 2007.

For more information about the rights, responsibilities, and opportunities afforded the BLM, oil and gas lessee/operator, and the surface owner, please view the following brochure. The brochure may also be available in your local BLM office.

Split Estate Brochure: **Rights, Responsibilities, and Opportunities** [PDF](#) | [Word](#)

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### Split Estate – Cultural Resource Requirements

The BLM often receives an Application for Permit to Drill (APD) for oil and natural gas development on split estate lands. Before the BLM approves the application, the BLM must determine if the development is going to affect cultural resources located on the surface. Professional archaeologists typically conduct a cultural resource survey by walking on the private surface and looking for cultural artifacts. Depending on what the survey finds, the proposed location of the well or other facilities may be modified to avoid damaging important cultural resources belonging to the surface owner.

For more information about what the BLM's must do to comply with the National Historic Preservation Act and the rights, responsibilities, and opportunities afforded the BLM, the oil and gas lessee/operator, and the private surface owner, please view the Split Estate brochure: *Cultural Resource Requirements on Private Surface – Federal Minerals for Oil and Gas*

*Development* below. The brochure may also be available in your local BLM office.

Split Estate Brochure: **Cultural Resource Requirements on Private Surface – Federal Minerals for Oil and Gas Development** [PDF](#)

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## Onshore Oil and Gas Order No. 1 – Split Estate Requirements

Onshore Oil and Gas Order Number 1 lays out the requirements necessary for the approval of any proposed oil and gas development on those leases. When it was modified in 2007, Onshore Order No. 1 gave private surface owners additional rights.

For more information about the rights, responsibilities, and opportunities afforded the BLM, the oil and gas lessee/operator, and the surface owner under Onshore Oil and Gas Order No. 1, please click on the following link:

[www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/Onshore\\_Order\\_no1.htm](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/Onshore_Order_no1.htm)

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## BLM Sends Report on Split Estate Issues to Congress

In the Energy Policy Act of 2005, Congress ordered a report reviewing current policies and practices that the BLM uses in managing oil and natural gas resources in split estate situations. Congress directed the BLM to consult with affected property owners, representatives of the oil and gas industry, and other interested parties while completing the review to consider how best to facilitate reasonable access for Federal oil and gas activities and minimize impacts to privately owned surface. The BLM transmitted this report to Congress in December of 2006.

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## Reference Links

**Energy Policy Act, Section 1835 - Split Estate**

[PDF](#) | [Word](#)

**Gold Book text on Split Estate (2007)**

[PDF](#) | [Word](#)

**IM 2003-131 Split Estate**

[PDF](#) | [Word](#)

**IM 2007-021 Split Estate Leasing and Planning**

[PDF](#) | [Word](#)

Last updated: 10-20-2009