

Ownership of Subsurface Pore Space

This Act specifies that the owner of a surface estate owns the pore space in all strata below the surface. Pore space is the subsurface space which can be used to store carbon dioxide or other substances. The Act specifies that a conveyance of the surface ownership conveys the pore space unless that ownership interest is severed. Pore space ownership may be conveyed in the same manner as conveyances of mineral interests in real property. The Act also provides specific requirements for pore space ownership transfers.

Submitted as:

Wyoming

Chapter 29 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Ownership of Pore
2 Space Underlying Surfaces.”

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4 Section 2. [*Legislative Intent.*] It is the intent of the [legislature] to clarify the ownership
5 of pore space underlying the surface of the lands and waters of this state. All conveyances of
6 interests in real property on and after [July 1, 2008] shall be subject to the provisions of this Act.
7 All conveyances of real property made prior to [July 1, 2008] shall be construed in accordance
8 with the provisions of this Act unless a person claiming an ownership interest contrary to the
9 provisions of this Act establishes such ownership by a preponderance of the evidence in an
10 action to establish ownership of such interest.

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12 Section 3. [*Creation; Conveyance; Acceptance and Duration.*] This Act shall not alter the
13 law of this state regarding the primacy of the mineral estate and any easement created hereunder
14 shall not limit the right of a mineral owner or his lessee to reasonable use of the surface for the
15 purpose of mineral exploration and production unless the owners and lessees of the entire
16 mineral estate and geologic sequestration right are a party to the conservation easement or
17 consent to the conservation easement.

18
19 Section 4. [*Ownership Of Pore Space Underlying Surfaces.*]

20 (a) The ownership of all pore space in all strata below the surface lands and waters of this
21 state is declared to be vested in the several owners of the surface above the strata.

22 (b) A conveyance of the surface ownership of real property shall be a conveyance of the
23 pore space in all strata below the surface of such real property unless the ownership interest in
24 such pore space previously has been severed from the surface ownership or is explicitly excluded
25 in the conveyance. The ownership of pore space in strata may be conveyed in the manner
26 provided by law for the transfer of mineral interests in real property. No agreement conveying
27 mineral or other interests underlying the surface shall act to convey ownership of any pore
28 space in the stratum unless the agreement explicitly conveys that ownership interest.

29 (c) No provision of law, including a lawfully adopted rule or regulation, requiring notice
30 to be given to a surface owner, to an owner of the mineral interest, or to both, shall be construed

31 to require notice to persons holding ownership interest in any pore space in the underlying
32 strata unless the law specifies notice to such persons is required.

33 (d) As used in this section, the term “pore space” is defined to mean subsurface space
34 which can be used as storage space for carbon dioxide or other substances.

35 (e) Nothing in this section shall be construed to change or alter the common law as of
36 [July 1, 2008], as it relates to the rights belonging to, or the dominance of, the mineral estate.

37 (f) All instruments which transfer the rights to pore space under this section shall
38 describe the scope of any right to use the surface estate. The owner of any pore space right shall
39 have no right to use the surface estate beyond that set out in a properly recorded instrument.

40 (g) Transfers of pore space rights made after [July 1, 2008] are null and void at the option
41 of the owner of the surface estate if the transfer instrument does not contain a specific description
42 of the location of the pore space being transferred. The description may include but is not limited
43 to a subsurface geologic or seismic survey or a metes and bounds description of the surface lying
44 over the transferred pore space. In the event a description of the surface is used, the transfer shall
45 be deemed to include pore space at all depths underlying the described surface area unless
46 specifically excluded. The validity of pore space rights under this subsection shall not affect the
47 respective liabilities of any party and such liabilities shall operate in the same manner as if the
48 pore space transfer were valid.

49 (h) Nothing in this section shall alter, amend, diminish or invalidate rights to the use of
50 subsurface pore space that were acquired by contract or lease prior to [July 1, 2008].

51

52 Section 5. [*Severability*.] [Insert severability clause.]

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54 Section 6. [*Repealer*.] [Insert repealer clause.]

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56 Section 7. [*Effective Date*.] [Insert effective date.]