

ENROLLED ACT NO. 18, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING  
2008 BUDGET SESSION

AN ACT relating to property; specifying ownership of pore space in strata underlying surfaces; specifying applicability of act; specifying legislative intent; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 34-1-152 is created to read:

**34-1-152. Ownership of pore space underlying surfaces.**

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

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

(c) No provision of law, including a lawfully adopted rule or regulation, requiring notice to be given to a surface owner, to an owner of the mineral interest, or to both, shall be construed to require notice to persons holding ownership interest in any pore space in the

ORIGINAL HOUSE  
BILL NO. 0089

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underlying strata unless the law specifies notice to such persons is required.

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

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

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

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

(h) Nothing in this section shall alter, amend, diminish or invalidate rights to the use of subsurface pore

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space that were acquired by contract or lease prior to July 1, 2008.

**Section 2.** W.S. 34-1-202(e) is amended to read:

**34-1-202. Creation; conveyance; acceptance and duration.**

(e) This act shall not alter the law of Wyoming regarding the primacy of the mineral estate and any easement created hereunder shall not limit the right of a mineral owner or his lessee to reasonable use of the surface for the purpose of mineral exploration and production unless the owners and lessees of the entire mineral estate and geologic sequestration right are a party to the conservation easement or consent to the conservation easement.

**Section 3.** It is the intent of the legislature to clarify the ownership of pore space underlying the surface of the lands and waters of this state. All conveyances of interests in real property on and after July 1, 2008 shall be subject to the provisions of this act. All conveyances of real property made prior to July 1, 2008 shall be construed in accordance with the provisions of this act unless a person claiming an ownership interest contrary to the provisions of this act establishes such ownership by a preponderance of the evidence in an action to establish ownership of such interest.

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**Section 4.** This act is effective July 1, 2008.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk