

Regional Carbon Management Workshop

Land Access Considerations

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Jesse J. Richardson, Jr.
West Virginia University
College of Law
jesse.Richardson@mail.wvu.edu



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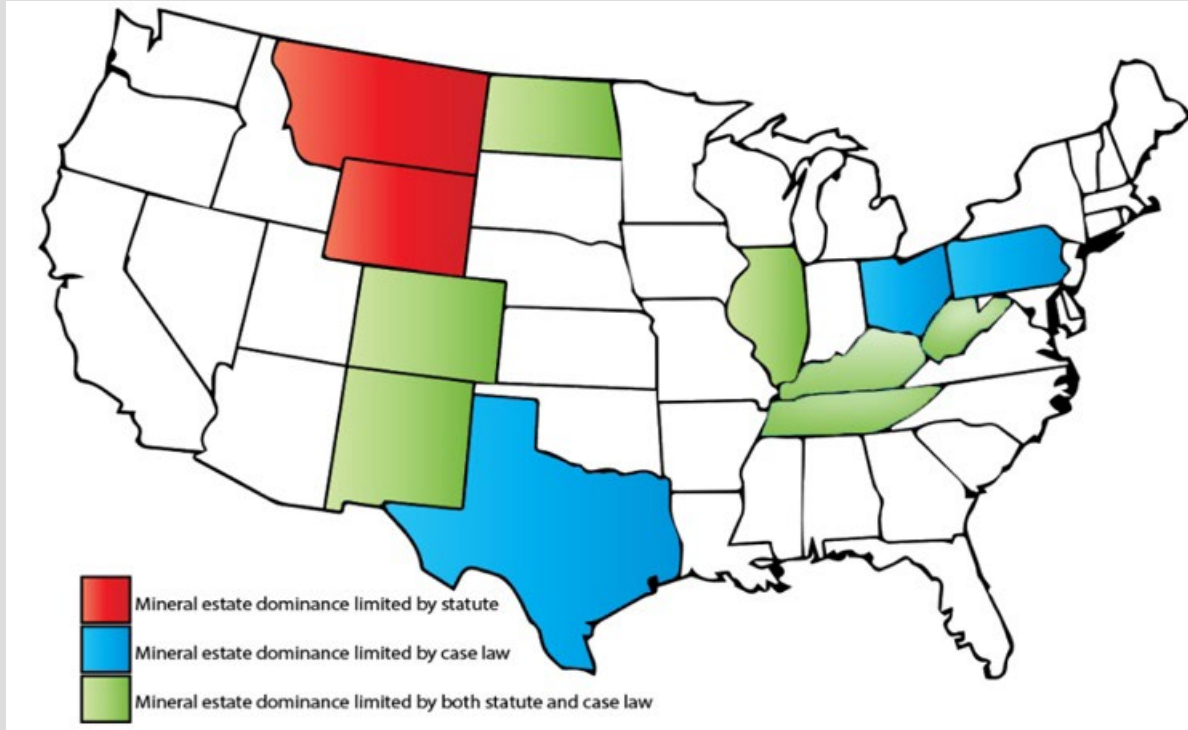
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Federal Land and Regulatory Federalism

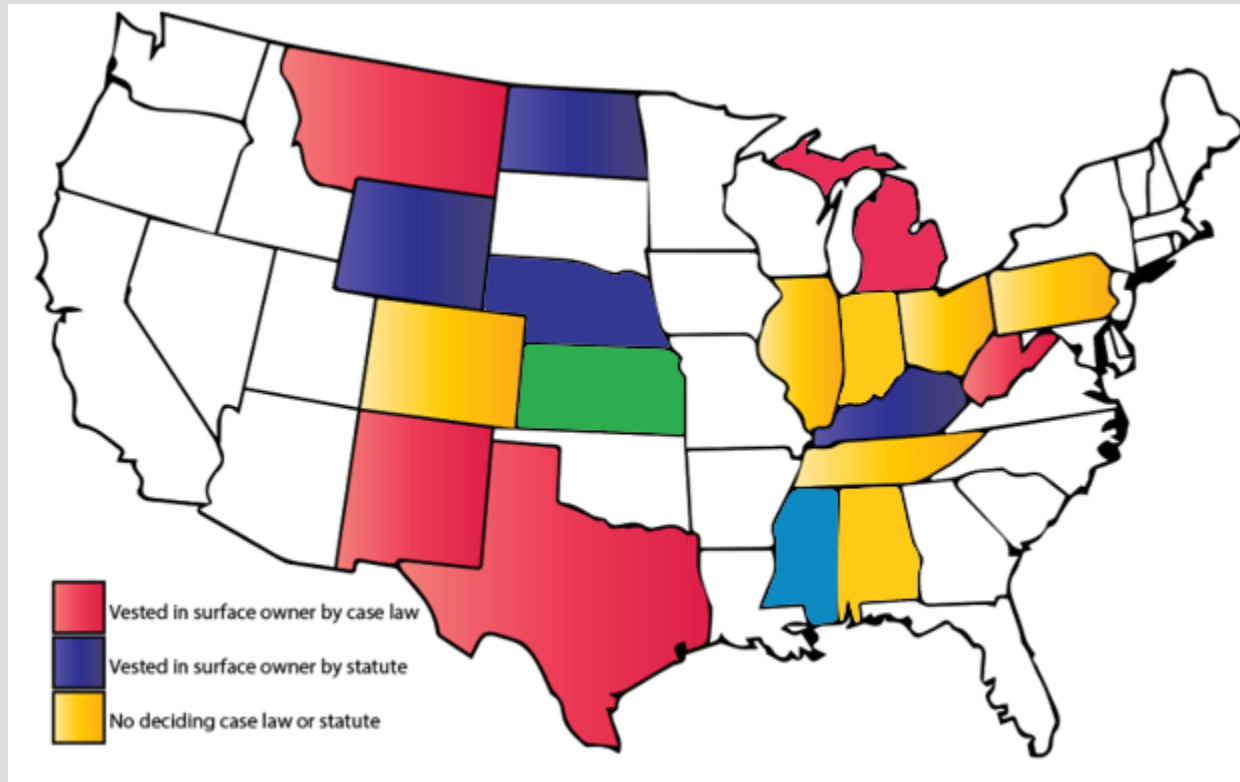
- Important to projects with both federal and private surface and subsurface interests
- Challenges/Opportunities:
 - Federal permitting process
 - Uncertainty of Ownership
 - Preemption issues
 - Preference in multiple mineral development
 - Lack of federal geologic storage land use regulations
 - Eminent Domain Authority
 - Federal Environmental laws

Dominance of the Mineral Estate



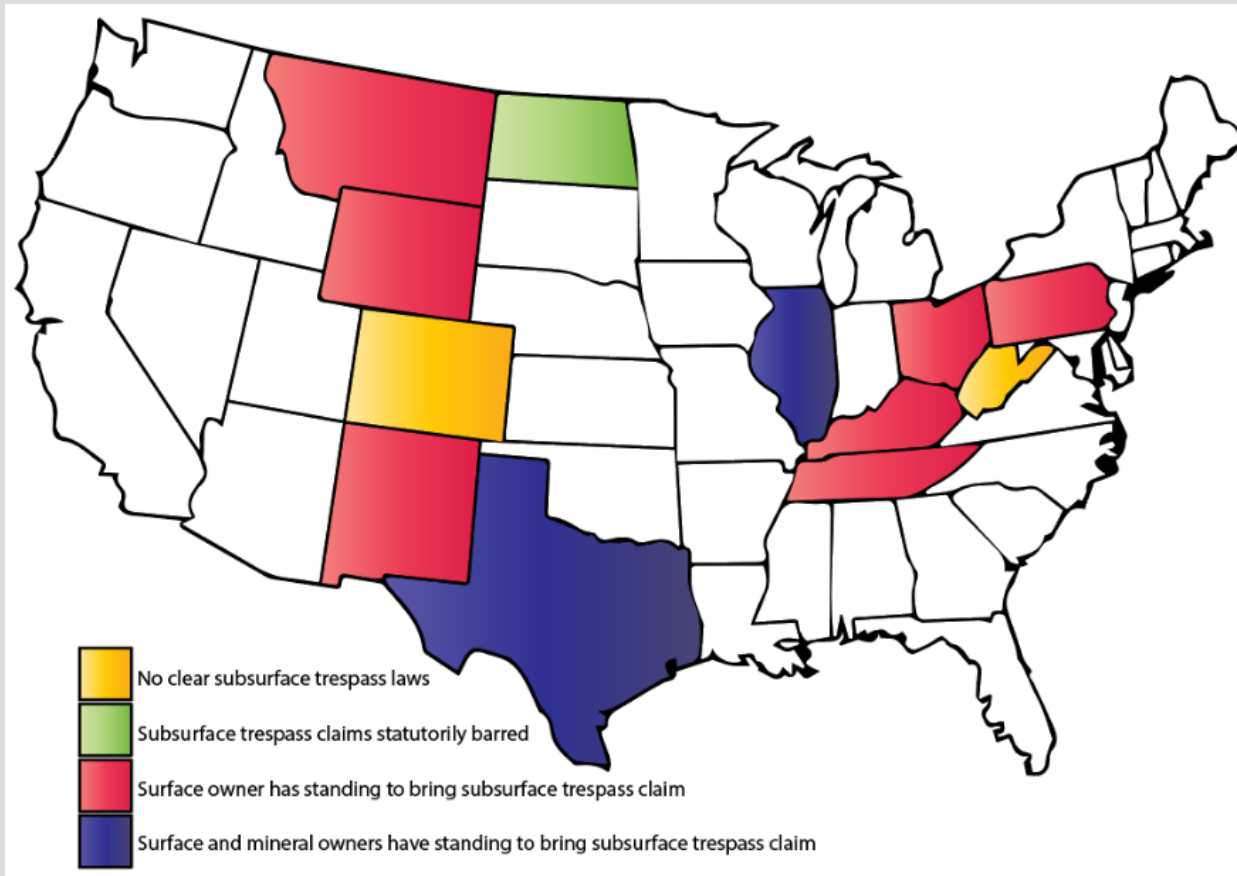
- Varying approaches to resolving surface-mineral disputes
- Statutes vary significantly in compensation and procedural requirements
- Possibility of statutory damages for subsurface use
- Differences may affect cost and feasibility, but are unlikely to pose issues with regional coordination

Pore Space Ownership



- State law may be preempted in split estates
- Most states have vested in surface owner, but many will still require individual title analysis or judicial interpretation of deeds
- Some states have not yet determined ownership of pore space estate

Subsurface Trespass



- Almost no precedent on CO₂ storage – based on review of transboundary fracking and produced water disposal cases
- Existing cases are fact specific and may have limited precedential value
- ND statute currently subject to constitutional challenge



Questions?