State and Local Regulation Affecting Public Lands Mineral Lease Activities: What Are the Limits?

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STATE AND LOCAL REGULATION AFFECTING PUBLIC LANDS
MINERAL LEASE ACTIVITIES: WHAT ARE THE LIMITS?

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PUBLIC LANDS MINERAL LEASING:
ISSUES AND DIRECTIONS

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I. Introduction

A. Summary

Congressional authority over the public lands is plenary. State jurisdiction over the public lands within its boundaries is subject to the congressional exercise of this authority. Federal laws governing mineral development on the public lands have recognized the existence of legitimate state interests. Cases over the past decade considering whether certain state actions affecting mineral development on the public lands are permissible offer somewhat conflicting answers. It is proposed here that the appropriate standard for evaluation in such cases should be whether the action represents a reasonable assertion of a legitimate state interest that does not stand as an obstacle to the accomplishment of the purposes of the congressional enactment.

B. Selected References


3. Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, 2 Jurisdiction Over Federal Areas Within the States (1957) (esp. ch. 9).


6. "Notes, the Preemption Doctrine: Shift-


II. Authority Over the Public Lands

A. Constitutional provisions

1. Article I property

a. The Constitution (Article I, section 8, cl. 17) provides that Congress shall have the power:

To exercise exclusive Legislation in all Cases whatsoever, over such District ... as may ... become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dockyards, and other
b. The power of exclusive legislation referred to has been interpreted by the Supreme Court as meaning exclusive jurisdiction. See, e.g., United States v. Bevans, 16 U.S. (3 Wheat.) 336, 387 (1818).

c. Lands governed by the United States under this clause, often called federal enclaves, make up a relatively small share of the public lands. One Third of the Nation's Land, at 277 (1970) (about 5000 locations comprising about 6 million acres of land).

d. Actual jurisdictional status depends upon the manner in which the individual enclave was created. Difficulty in determining the jurisdictional status of an area and problems concerning the legal status of residents in such areas has prompted recommendations to sharply limit situations in which exclusive federal legislative jurisdiction is claimed.

2. Article IV property

a. The Property Clause of the Constitution (Article IV, section 3, cl. 2) states: "The Congress shall have Power to dispose of and make all needful rules and regulations respecting the Territory or other Property belonging to the United States ...."

b. It is this constitutional source that provides authority to the federal government concerning administration of the vast majority of the public lands.

B. Evolution of Article IV Jurisdiction
1. The initial expectation was that the territories would become states and that the lands therein would become private.

2. In the meantime the Supreme Court recognized the authority of the Federal government to administer activities on those lands, even those still held within areas that had become states. E.g., United States v. Gratiot, 39 U.S. (14 Pet) 526 (1840) (upholding a federal leasing program for lead mining).

3. The case of Pollard v. Hagan, 44 U.S. (3 How.) 212 (1845) suggested that the United States holds no more than a temporary trust position with relation to lands which had been ceded to it by colonial states and out of which the new state of Alabama was formed. Only in the case Article I lands does the United States have true sovereign power, under this view.

4. In the context of miners entering the public lands seeking gold in California, the California Supreme Court had the following comments on the position of the United States:

   In reference to the ownership of the public lands, the United States only occupied the position of any private proprietor, with the exception of an express exemption from State taxation. The mines of gold and silver on the public lands are as much the property of this State by virtue of her sovereignty, as are similar mines in the lands of private citizens. She has, therefore, solely the right to authorize them to be worked; to pass laws for their regulation; to license miners; and to affix such terms and conditions as she may deem proper to the freedom of their use. Hicks
5. As summarized by Engdahl (State and Federal Power Over Federal Property, 18 Arizona L. Rev. 283 (1976)), this view held that "[t]itle to the public domain was in the United States, and the Union had all the power over it that was conferred by the Article IV property clause, but as to property within a state as distinguished from that in the territories, the Article IV property power was not conceived to encompass a general federal governmental jurisdiction, or to exclude the general governmental jurisdiction of the state wherein the federal lands lay." At 296.

6. The case of Fort Leavenworth Railroad Co. v. Lowe, 114 U.S. 525 (1885) involved federal lands used as a fort but not established under the terms of Article I. A state tax levied on the property of a private railroad corporation within the federal reservation was overturned. While noting that the state normally would have jurisdiction in such cases, the Court was apparently persuaded by concern about state frustration of important federal purposes. It thus offered this qualification to the general rule of state jurisdiction: "That if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed." Id. at 539.

7. The case of Van Brocklin v. Tennessee, 117 U.S. 151 (1886) firmly established the principle that federally owned property is exempt from state taxation.

8. The Court in Camfield v. United States, 167 U.S. 518 (1897) noted that the United States has the rights of an ordinary proprietor to protect its
lands, but went on to add that the United States "doubtless has a power over its own property analogous to the police power of the several states, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case." Id. at 525. The Court went on to state that "we do not think the admission of a Territory as a State deprives it of the power of legislating for the protection of the public lands though it may thereby involve the exercise of what is ordinarily known as the police power, so long as such power is directed solely to its own protection. A different rule would place the public domain of the United States completely at the mercy of state legislation." Id. at 526-527.

9. Omaechevarria v. State of Idaho, 246 U.S. 343 (1918), involved an Idaho law prohibiting the grazing of sheep on rangeland previously occupied by cattle. Noting that "[t]he police power of the State extends over the federal public domain, at least when there is no legislation by Congress on the subject" (Id. at 346), the Court upheld this state enactment. In its discussion, the Court appeared to be impressed by the value of such regulation for maintaining public order—a traditional state police power objective. It also noted that there is no absolute right by citizens of the United States to use the public domain for grazing purposes (citing United States v. Grimaud, 220 U.S. 506 (1911) and Light v. United States, 220 U.S. 523 (1911)).

10. Decided a year earlier, Utah Power & Light Company v. United States, 243 U.S. 389 (1917) clearly established that private rights to use the public lands can only be acquired by means of federal law:

The first position taken by the defendants is that their claims must be tested by the laws of the State in which
the lands are situate rather than by the legislation of Congress, and in support of this position they say that lands of the United States within a State, when not used or needed for a fort or other governmental purpose of the United States, are subject to the jurisdiction, powers, and laws of the State in the same way and to the same extent as are similar lands of others. To this we cannot assent. Not only does the Constitution (Art. IV, §3, cl. 2) commit to Congress the power "to dispose of and make all needful rules and regulations respecting" the lands of the United States, but the settled course of legislation, congressional and state, and repeated decisions of this court have gone upon the theory that the power of Congress is exclusive and that only through its exercise in some form can rights in lands belonging to the United States be acquired. True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use, and to prescribe in what manner others may acquire rights in them. Id. at 403-404.

11. In more modern decisions, the Supreme Court has been moving away from the proprietary/governmental power distinction. See e.g., Groves v. New York ex rel O'Keefe, 306 U.S. 466, 477 (1939): "As [the federal] government derives its authority wholly from powers
delegated to it by the Constitution its every action within its constitutional power is governmental action...."

12. The Supreme Court in United States v. San Francisco, 310 U.S. 16 (1940) (involving conditions on the sale of electricity included in a law granting San Francisco certain lands and rights of way in the public domain) noted that the "power over the public land thus entrusted to Congress [by Article IV, Section 3, cl. 2 of the Constitution] is without limitations." Id. at 29.

13. Kleppe v. New Mexico, 426 U.S. 529 (1976) involved an extremely expansive interpretation of Article IV authority over the public lands. "And while the furthest reaches of the power granted by the Property Clause have not yet been definitely resolved, we have repeatedly observed that '[t]he power over the public land thus entrusted to Congress is without limitations.'" Id. at 539 (citing United States v. San Francisco). The Court noted that "Congress exercises the powers both of a proprietor and of a legislature over the public domain." Id. at 540. The Court also stated: "Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause." Id. at 543.

C. Summary of the Article IV property power

1. With respect to lands not created as federal enclaves under Article I, there is a shared jurisdiction between the federal and state governments.

2. There are certain clear limits on the state jurisdiction such as the prohibition against taxation.
3. The federal government has clear authority to protect its property interests, an authority exceeding that of a mere proprietor.

4. The federal government has exclusive authority concerning the creation of rights in federal property, including the disposition of that property.

5. In cases where a valid federal law is enacted that conflicts with a state law, the state law is overridden.

III. General Principles of Preemption

A. Supremacy Clause

1. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution art. VI, cl. 2.

2. The case of Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824), established that as "to such acts of the State Legislatures as do not transcend their powers, but ... interfere with, or are contrary to the law of Congress, made in pursuance of the constitution, ... [i]n every such case, the act of Congress ... is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it."

B. Note Tribe's caution (at 377): "The question whether federal law 'preempts' state action, largely one of statutory construction, cannot be reduced to general formulas."
C. A good general statement: Whether the challenged state action has been preempted turns on whether or not it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

Such an obstacle may be found either if:
(1) federal laws indicate an intent to occupy the field, or
(2) the federal and state laws are in actual conflict.

D. Federal occupation of the field.

1. If such a finding is made the state regulation will be invalidated no matter how well it may complement federal regulation.

2. Key finding: Federal legislative intent to occupy; but rarely explicit in the legislation.

3. Other factors which may be considered:
The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it .... Or an Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. .... Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose .... Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

4. In addition, the Court may focus on the nature of the subject matter in considering whether it requires uniform,

5. Is the regulated field one which the states have traditionally occupied? E.g., Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440 (1960) (upholding city smoke abatement ordinance against argument that federal licensing of shipping barred such action).

6. N.B.: "The principle to be derived from [the Supreme Court's] decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion or that the Congress has unmistakably so ordained." Florida Lime & Avocado Growers v. Paul, 373 U.S. 132, 142 (1963).

E. Actual Conflict

1. A recent Supreme Court decision stated: If Congress has not entirely displaced state regulation over the matter in question, state law is still preempted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-143, 83 S.Ct. 1210, 1217-1218, 10 L.Ed. 2d 248 (1963), or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of congress, Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941).

2. How is this conflict determined?
   a. The Court must first construe the state and federal statutes to determine if there is conflict.
   b. In rare cases the federal and state laws may be clearly contradictory by their direct terms. As, for example, when a federal law requires some action to be undertaken that is prohibited by state law, or vice versa.
   c. For a period the Court found preemption in situations where a state law was deemed to present a underlying potential conflict with federal legislation. See "Note, The Preemption Doctrine: Shifting Perspectives on Federalism and the Burger Court," 75 Columbia L. Rev. 623, 636 (1975).

3. Tribe notes: "Over time, however, the Court tempered its undifferentiated hostility to state regulation of matters already regulated by the federal government. Generally speaking, the Court will now sanction state regulations that supplement federal efforts so long as compliance with the letter or effectuation of the purpose of the federal enactment is not likely to be significantly impeded by the state law." American Constitutional Law (1978) at 379.

IV. Accommodating Federal, State & Local Interests

A. The Essential Interests

1. Federal
   a. These are the public lands of all the citizens of the U.S. FLPMA established the fundamental congressional policy of retention of public lands and management of the lands for multiple uses to
benefit the public.
(§102(a)(1), (8) & (12); 43 U.S.C.A. §1701(a)(1),(8) & (12))

b. There is a clear national interest in development of energy and mineral resources.

c. Federal legislative schemes have been established to provide access to the mineral resources. Efficiency and equity considerations suggest the value of a reasonably uniform system for all public lands.

2. State and local

a. In some western states, public lands comprise large portions of the land area, e.g., Nevada--86%; Colorado--36%. (Coggins & Wilkinson, at 3)

b. Public lands cannot be taxed; yet activities on or associated with uses on these lands may create economic burdens on state and local government (roads, police, community services). Are in lieu payments and other compensation enough? See, e.g., Advisory Comm. on Intergovernmental Rel., The Adequacy of Federal Compensation to Local Governments for Tax Exempt Federal Lands (1978).

c. Activities by private persons on public lands may also impact on interests normally within the police power concerns of the state (health, safety, and welfare). Query: Does this include environmental and socioeconomic impacts?

d. Because of the importance of the public lands in the western states, Wilkinson ("Cross-Jurisdictional Conflicts: An Analysis of Legitimate State Interests on Federal and Indian Land," 2 UCLA J. of Env. Law & Policy 145(1982)) argues that the
states should be accorded special opportunities "to be heard" (at 160).

B. Legislative Accommodation

1. 1872 Mining Law--30 U.S.C.A. §21-42

a. Passed at a time when the federal presence on western public land was minimal. State, territorial, and mining district regulations were already in place and operating for many years in some cases.

b. Specific provisions:

30 U.S.C. §22: provides that exploration and purchase of federal lands containing valuable mineral deposit are to be governed by "regulations prescribed by law, and according to the local customs or rule of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."

30 U.S.C. §28: specifically authorizes the "miners of each mining district [to] make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to [some stated requirements] ...."

30 U.S.C. §43: authorizes the legislature of a state to "provide rules for working mines, involving easements, drainage, and other necessary means to their complete development" as a condition of sale.
c. It is evident that the 1872 Mining Law does not preempt all state and local regulation. It does limit such regulation in certain instances to prohibit that which conflicts with federal law. It specifically permits state regulation concerning matters of location, recording of claims, and assessment work. Courts have upheld state laws with requirements more stringent than the federal ones concerning claim size and assessment work. See Lindley, Mines (3d ed. 1914), vol. 1, at 541-571.

d. BLM regulations governing mining plans on BLM lands state: "Nothing in this subpart shall be construed to effect a preemption of State laws and regulations relating to the conduct of operations or reclamation on Federal lands under the mining laws."
43 C.F.R. §3809.3-1(a).

e. Forest Service regulations concerning mining plans on national forest lands require that the operator comply with state air quality standards, federal and state water quality standards, federal and state standards for disposal of solid waste.
36 C.F.R. §228.8(a), (b) & (c) (1984). In addition: "Certification or other approval issued by state agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as
compliance with similar or parallel requirements of these regulations." 36 C.F.R. §228.8(h) (1984).


a. Establishes discretionary control over access to named minerals and subjects lessee to substantial federal regulation.

b. Provisions referencing state and local authority

30 U.S.C. §187: governs activities of lessee concerning lease assignment, exercise of diligence in operation, prevention of waste, provisions concerning welfare of miners, and other purposes. Adds: "None of such provisions shall be in conflict with the laws of the State in which the leased property is situated."

30 U.S.C. §189: "Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."

30 U.S.C. §226: Concerns communitization of federal oil and gas leases for conservation purposes and authorizes the Secretary of the Interior to permit states or other entities to administer such operations.

b. Hubbard ("The Application of State Conservation Laws to Oil and Gas
Operations on the Public Domain,"
32 Rocky Mt. L. Rev. 263 (1960))
concludes from a lengthy examina-
tion of the legislative history and
the provisions of the Mineral
Leasing Act that Congress did
not intend to preempt the field of
oil and gas conservation.

c. Texas Oil & Gas Corp. v. Phillips
Petroleum Company, 277 F. Supp. 366
(W.D. Okla. 1967), aff'd per
curiam, 406 F.2d 1303 (10th Cir.),
cert. denied, 396 U.S. 829 (1969)
(involving the involuntary transfer
of plaintiff's working interest in
a federal oil & gas lease to
defendant as a result of forced
pooling by order of the Oklahoma
Corporation Commission) concerned
whether the provisions of the
Mineral Leasing Act preempted state
conservation law. The Court
stated: "This language is not
aimed at putting the lands under
the exclusive control of the
Federal Government to the exclusion
of the States. Contrary to
the position of the Plaintiffs, the
Federal Mineral Leasing Act of
1920, as amended, seems to leave to
the States the power to exercise
State police power over Federal oil
and gas leases." At 369.

3. Federal Coal Leasing Amendments Act of

a. Proposals for leasing coal to be
surface mined within a national
forest are to be reviewed by the
state governor. If, within 60
days, the governor objects, he is
given six months within which to
submit his reasons to the Secretary
of the Interior who shall then
"reconsider the issuance of such

b. No lease sales may be held until a
land-use plan has been developed
and the sale is deemed "compatible" with such plan.

30 U.S.C.A. §201(3)(A)(i). Plans are to be prepared in consultation with appropriate state agencies, local governments and the general public.


c. "Prior to issuance of any coal lease, the Secretary shall consider effects which mining of the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services." 30 U.S.C.A. §201(3)(C).

d. Exploration licenses for coal must contain conditions "to insure the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations." 30 U.S.C.A. §201(b)(1).


a. The land use planning provisions of FLPMA require that BLM land use plans provide for compliance with state and federal pollution control laws (§202(c)(8); 43 U.S.C.A. §1712(c)(8)) and that these plans be coordinated with state and local governments (§202(c)(9); 43 U.S.C.A. §1712(c)(9)). "Meaningful" public involvement of state and local officials is to be provided in development of land use plans and in land use decisions. Id. "Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." Id.
b. BLM regulations implementing this provision state that BLM resource management plans are to be consistent with "officially approved and adopted resource related plans, and the policies and programs contained therein, of ... State and local governments" so long as they are "consistent with the purpose, policies and programs" of applicable federal laws and regulations. If there are no formal state and local plans, BLM plans "shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of ... State and local governments." 43 C.F.R. §§1610.32(a) and (b) (1984).


a. Surface coal mining on the federal land is made subject to operational and reclamation requirements under a federal lands program which, in states with an approved program, "shall, at a minimum, include the requirements of the approved program." 30 U.S.C.A. §1273(a). Moreover, states with approved programs may undertake supervision of such programs.

b. More to the point here, 30 U.S.C.A. §1281 provides a procedure for designation of certain federal lands as unsuitable for mining and mineral operations other than coal (which is covered separately). Such lands may be nominated for review by a state governor or "[a]ny person having an interest which is or may be adversely affected." §1281(c). Two criteria are established for considering such a designation: "An area of Federal land may be designated
under this section as unsuitable for mining operations if (1) such area consists of Federal land of a predominantly urban or suburban character, used primarily for residential or related purposes, the mineral estate of which remains in the public domain, or (2) such area consists of Federal land where mining operations would have an adverse impact on lands used primarily for residential or related purposes." 30 U.S.C.A. §1281(b).

C. Review of Recent Cases (Last Decade)

1. State ex rel Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976)

a. Held that the operators of a dredge mining operation on valid unpatented mining claims in a national forest must obtain a permit under the Idaho Dredge and Placer Mining Protection Act of 1955 (which permit may be denied by the state Board of Land Commissioners upon a determination that the operation would not be in the public interest) and this state regulation is not preempted by federal law.

b. The Idaho Supreme Court found no actual conflict since simply requiring a permit and requiring restoration of the land does not "render it impossible to exercise rights specifically granted by the federal legislation, although they may make it more difficult." At 975.

c. Neither has Congress occupied the field in the 1872 Mining Law nor has it established a pervasive regulatory scheme. At 976.

d. "Indeed, the preservation of the environmental quality of its lands is a subject particularly suited to administration by the state." Id.
e. Note that the Court did not reach the issue of the constitutionality of the statute if used to deny a permit application. At 975, note 3.

2. Ventura County v. Gulf Oil Corp., 601 F.2d 1080 (9th Cir. 1979)

a. Held that a California county zoning ordinance prohibiting exploration and extraction activities on federal lands in areas of the county zoned "open space" without obtaining a permit "impermissibly conflict[s] with congressional regulation of [the federal oil lessee's] activities on government land." At 1082.

b. The extensive federal scheme for development and environmental control was deemed to preclude such county regulation. At 1084.

c. This impermissible conflict exists even though no permit has ever been applied for or denied. Id.

d. Nor do the references to state and local authority in Sections 30 and 32 of the Mineral Leasing Act permit such regulations "impermissibly conflicting with achievement of a congressionally approved use of federal lands." At 1086.


a. Held that county board of commissioners' denial of a special use permit required under county zoning for drilling activities on unpatented mining claims was precluded by the preemption doctrine because it stands as an impermissible obstacle to the accomplishment of the objective of the 1872 Mining Law.
b. Although the 1872 law "leaves room for operation of non-conflicting state requirements," here the Court found that "[t]he Board seeks not merely to supplement the federal scheme, but to prohibit the very activities contemplated and authorized by federal law. Such a veto power is not consistent with the Supremacy Clause." At 1056.

c. Such a direct conflict exists even though the Forest Service-approved mining plan explicitly stated that the operator shall comply with "all Federal, State, County, and Municipal Laws, ordinances, or regulations applicable to the area or operations covered by this plan." At 1057.

d. Click is distinguished because there the permit requirement "did not render it impossible to exercise rights specifically granted by federal legislation." At 1059.


a. Held that the plaintiff (operator of a mining operation on valid unpatented mining claims in a national forest) must obtain a permit under the California Coastal Act (CCA) (which governs development in the coastal zone concerning ocean access, marine and land resources, and scenic and visual qualities) and that such permissible regulation is not preempted by federal law.

b. A permit requirement alone does not prohibit mining activity. Reasonable state regulation is permissible. "As long as the state's permit requirement does not render
plaintiff's exercise of rights under the Mining Law impossible, no impermissible conflict exists and plaintiff's facial challenge to the CCA's provisions must fail."
At 1373.

c. Neither do the Forest Service regulations requiring Plans of Operation preempt this state regulation because they do not occupy the field nor is there an irreconcilable conflict. At 1374.

5. **Gulf Oil Corp. v. Wyoming Oil and Gas Conservation Commission,___ Wyo. ___, 693 P.2d 227 (1985).**

a. Held that the Wyoming Oil and Gas Conservation Commission may condition a permit to drill a well on national forest land (issued under state law relating to conservation regulation) to prevent access to the federal lease by a route found to be environmentally unacceptable and that this regulation is not preempted by federal law.

b. The Commission is authorized by Wyoming law to "regulate, for conservation purposes: (A) The drilling, producing, and plugging of wells; (B) The shooting and chemical treatment of wells; (C) The spacing of wells; (D) Disposal of salt water, nonpotable water, and oil field wastes; (E) The contamination or waste of underground water." Wyo. Stat. §30-5-104(d)(ii) (1977).

A regulation issued under this authority provides: "The Owner shall not pollute streams, underground water, or unreasonably damage the surface of the leased premises or other lands."

These are the authorities under which the Commission was reviewing
the environmental impact of the access route.

c. The Court found that Gulf had the duty to prove a lack of reasonable alternatives to the route not allowed and that it had failed to do so. At 232.

d. The Court rejected the notion of exclusive federal regulation in the environmental area and found that the Mineral Leasing Act "protects the traditional rights of the states over federal land." At 235. "We find that Congress, far from excluding state participation, has prescribed a significant role for local government in the regulation of the environmental impact of mineral development on federal land." Id.

e. The Court distinguishes this case from Ventura County and Brubaker because the local regulations in those cases were found to prohibit an activity on the federal lands authorized by Congress. At 237.

f. "In contrast to the zoning ordinances at issue in Ventura County and Brubaker, mining permit requirements designed to safeguard the environment have received favorable treatment in the courts. These latter regulations constitute legitimate means of guiding mineral development without prohibiting it." Id.

g. The dissent concluded that the preemption issue should not be reached because the Oil and Gas Conservation Commission had no authority to condition a drilling permit on the basis of the environmental impacts of the access route. At 242.
V. Summary and Conclusion

A. Federal authority over the public lands is extremely broad, encompassing the powers both of a proprietor and a legislature.

B. Nevertheless, the states retain some residue of jurisdiction over lands within their borders—at least with respect to traditional police power functions.

C. In analyzing whether a specific state law or action concerning activities on the public lands is permissible, preemption analysis calls for a determination of whether federal law fully occupies the field and, if not, whether there is an actual conflict between federal and state law.

D. Neither the Mineral Leasing Act nor the 1872 Mining Law express an intention to totally exclude state regulation.

E. The appropriate test to be applied in such situations is whether the state action at issue "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

1. Such a test focuses appropriately on the purposes of Congress in establishing mineral access systems for the public lands. These mineral access systems, as currently enacted, recognize the existence of legitimate state interests concerning public lands mineral development. At the same time, these interests remain subject to the overriding federal purposes which may not be unreasonably frustrated by state regulation.

2. The emphasis should be on whether the state action represents a reasonable assertion of a legitimate state interest. If so, and if its exercise does not create an obstacle to the achievement of the primary federal purposes, then it should be permitted.

F. Recognized legitimate state interests related to the public lands include maintenance of

1. This list should only be considered indicative and subject to change—not exclusive.

2. Arguably, these interests should be considered collectively and not limited to specific statutory origins.

G. Federalism issues are essentially political and cannot be addressed solely by fixed rules of law. Notions regarding legitimate state interests as well as what constitutes a substantial frustration of the federal statutory purposes and objectives are certain to change over time. At the risk of creating some uncertainty, it is appropriate to apply a flexible standard to issues such as these.