Drilling Down into *Stull v. Entek*: Making the Case for Future Litigants

by
Benjamin Scott Adams

A thesis presented to the Honors College of Middle Tennessee State University
in partial fulfillment of the requirements for graduation
from the University Honors College

Spring 2023

Thesis Committee:

Prof. Lara Daniel, Thesis Director

Dr. Mary Evins, Thesis Committee Chair

Drilling Down into *Stull v. Entek*:
Making the Case for Future Litigants

by Benjamin Scott Adams

APPROVED:

_____

Prof. Lara Daniel, Thesis Director
Professor, Jennings A. Jones College of Business

_____

Dr. Mary Evins, Thesis Committee Chair
Research Professor, Department of History

Dedication

To Dr. Tammy Adams: my darling mother and beacon of light these four years.

To Scott Adams: my steadfast father and guide through life's rocky seas.

To John Adams and Grant Adams: my ironclad brothers and closest friends.

Acknowledgments

I wish to thank Professor Lara Daniel for her guidance, patience, and intentionality over the past six months. Your knowledge and willingness while directing my project have grown me as a student and young professional. Thank you for showing me paths to improvement and holding me accountable throughout the process.

I would also like to thank Dean John Vile, Dr. Mary Evins, Ms. Judy Albakry, and the University Honors College staff for supporting my undergraduate ambitions these last two years. I am grateful for their investment in my academic and professional career, and I hope to represent my hometown college well in future endeavors.

I wish to thank Dr. Amy Atchison, Dr. Daniel Trowbridge, and the esteemed faculty of Middle Tennessee State University's Department of Political Science and International Relations. Through time in the classroom and roles working in Tennessee's State Capitol and the District of Columbia, I learned about America's legal system.

Finally, I wish to acknowledge my time at the University of Colorado, where real estate and environmental science studies initially led me to pre-law pursuits. While my path brought me back to Murfreesboro, I remain appreciative of my experiences and friendships gained in the Rocky Mountain region between 2019 and 2021.

Abstract

American landowners take immense pride in pursuing life, liberty, and property, but sometimes these ideals collide in the courtroom with their government's interests. This was the case for Stull Ranches, LLC, in its suit with Entek GRB, LLC, a federal mineral lessee. Stull and Entek disagreed over whether Entek was free to use Stull's road for mining operations on the federal government's property. Stull took issue with Entek's interpretation of the federal government's power, derived from 20th-century statutes, leading Entek to file suit with a federal district court. That court partially ruled in favor of Stull. However, upon appeal, Entek garnered a decisive victory, granting it the right to use Stull's road as incident to its mining activities. So, what factors prompted the court of appeals to diverge from the district court's ruling? If this issue surfaces again, can future litigants reverse its result?

Table of Contents

List of Legal Terms

Accessory: An accessory is an item of personal property that is used in conjunction with real property, such as a window air conditioning unit.

Appellant/appellee: An appellant is the party that initiates an appeal, seeking to overturn a lower court's decision. The appellee is the party that responds to the appeal, seeking to uphold the lower court's decision.

BLM: The Bureau of Land Management (BLM) is a federal agency responsible for the management and conservation of public lands and natural resources in the United States.

Bundle of rights: The bundle of rights is a term used to describe the various legal rights associated with ownership of real property, including the right to use, sell, lease, and exclude others from the property.

Eminent domain: Eminent domain is the power of the government to take private property for public use if it provides the property owner with just compensation.

Fee simple absolute: Fee simple absolute is the highest form of ownership interest in real property, providing the owner with complete and unrestricted ownership rights.

Focus Ranch Unit: The Focus Ranch Unit is a geographical area in Wyoming and Colorado that is used for oil and gas production.

Incident: An incident is a legal right that is typically associated with ownership of real property, such as the right to access and use a shared driveway.

Judicial decisions/precedent: Judicial decisions refer to the rulings and opinions of courts. Precedent is a legal principle established in a previous court decision that is subsequently followed in similar cases.

Just compensation: Just compensation is the amount of money that the government must pay to a property owner when it exercises its power of eminent domain and takes private property for public use.

Legal privity: Legal privity refers to the relationship between parties that have a direct interest in a legal matter, allowing them to sue or be sued in a lawsuit. The doctrine of privity restricts the right to enforce contractual rights and obligations to only those parties that are part of the contract.

Mineral interests: Mineral interests refer to the rights to explore, extract, and sell minerals that are located beneath the surface of a property. These interests can be owned separately from the surface rights to the same property.

Mineral lessee: A mineral lessee is an individual or entity that has leased the right to extract minerals from a property owned by another party (in *Entek v. Stull*, the BLM).

Justiciability: Justiciability refers to the legal capacity of a case to be heard and decided by a court. A case must present an actual controversy that is ripe for resolution, not be moot or unripe, and not involve a political question.

Real property: Real property refers to land and anything permanently attached to it, such as buildings and fixtures. It can also include rights to use and control the land.

Split Estate: A split estate refers to a property where one party owns the surface rights and another party owns the subsurface mineral rights. The surface owner has control over the surface of the land, while the mineral owner has the right to extract any minerals that may be present beneath the surface.

Statute/statutory law/limitations: A statute is a written law passed by a legislative body. Statutory law refers to the body of law created by statutes. Limitations refer to the time within which a legal action must be brought.

Subservient: Subservient refers to something that is subordinate or secondary to something else. In a legal context, it can refer to a property interest that is subject to another interest, such as a servitude.

Subsurface: Subsurface refers to the area beneath the surface of the ground, including any minerals or other resources that may be found there.

Taking: Taking refers to the government's acquisition of private property for public use through the power of eminent domain, which requires payment of just compensation to the property owner.

Tenth Circuit/Court of Appeals: The Tenth Circuit is a federal court of appeals in the United States that has jurisdiction over cases heard in federal district courts in Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming. The court is in Denver, Colorado.

Transverse nature: Transverse nature refers to the direction of a geological formation, specifically whether it runs perpendicular to or parallel to the surface of the earth.

Unitization: Unitization is the process of combining multiple mineral interests in a particular area into a single unit for the purpose of efficient extraction and management.

Writ of Certiorari: A writ of certiorari is a legal order from a higher court, usually the Supreme Court, requesting that a lower court send up the records of a case for review. The Supreme Court uses writs of certiorari to decide which cases it will hear.

CHAPTER I

Overview of *Stull v. Entek*

Real Property Law in *Stull v. Entek*

Grasping the intricate nature of the land, or real property, in America requires definitions for numerous sources of law. Robert Aalberts in *Real Estate Law* cites several sources, including statutory law, judicial decisions, precedent, and legal scholarship on property.[1] Statutory laws, on which Stull's case heavily relies, are rules passed by lawmakers in either a state legislature or the federal Congress.[2] Judicial decisions are judgments offered by judges presiding over a court case that guide future outcomes in cases. Legal scholarship is the academic study of laws, case outcomes, and the conditions that have molded the rights enjoyed by members of society.[3] Real property is fixed and typically takes the form of land or buildings.

These definitions guide Americans in utilizing real property and the resources upon, above, or below it. Property rights should be understood in disputes as a bundle of definite or indefinite rights distributed among individuals and society.[4] These rights include possession, control, exclusion, enjoyment, and disposition. The lots, plots, parcels, and tracts that fill America's real estate landscape include physical features, whether natural or manufactured; this is real property. Real property is fixed in nature, and its features are not annexed, adapted, or swayed by the possessor's intentions. This

---

[1] Robert Aalberts. *Real Estate Law* (Cengage Learning, 9th ed. 2015) at 4.
[2] *Id.* at 7.
[3] *Id.* at 7.
[4] John Rogers Commons. *The Distribution of Wealth*, 27 (London: Macmillan and Co., 1893).

cornerstone of the law entails extensive legal precedent to ensure individuals and society can interact cohesively, given land's limited supply.[5]

Notable Statutes in *Stull v. Entek*

Interpretations of statutory laws make up most of Stull and Entek's dispute, particularly courts' viewpoints on the Stock Raising Homestead Act (SRHA) of 1916 and the Mineral Leasing Act (MLA) of 1920. The SRHA is based on the Homestead Act of 1862, and the MLA is rooted in the General Mining Act of 1872. The Homestead Act was signed into law by President Abraham Lincoln and permitted U.S. citizens to acquire 160 acres of land from the government, with a requirement that the new property owners reside and cultivate the land for five years before receiving a deed to the contents on and below that estate.[6] The General Mining Act governs prospecting and mining for economic minerals on federal public lands, allowing individuals and corporations to mine without paying federal royalties.[7]

The federal government soon realized that its claims to mineral interests would disappear beneath these homesteads, as the property deeds were being offered in the form of fee simple absolute, which offered the fewest restrictions for new landowners.[8] This led Congress to pass the Stock-Raising Homestead Act in 1916, a refinement of the Homestead Act of 1862. The SRHA now allowed settlers to acquire up to 640 acres of public land in certain western states for raising livestock.[9] Under the new law, while still

[5] Aalberts, *supra* at 27.
[6] Homestead Act of 1862, Pub. L. No. 37-64, 12 Stat. 392 (1862).
[7] General Mining Act of 1872, 17 Stat. 91.
[8] Aalberts, *supra* at 145.
[9] Stock-Raising Homestead Act of 1916, Pub. L. No. 62-290, 39 Stat. 862 (1916).

promoting the development of the livestock industry and settlement of the western United States, the deeds offered were now split estates, thanks to the SRHA's ninth section.[10] This meant the federal government retained rights to subsurface materials such as oil. However, the federal government had no way of capturing these minerals beneath privately owned property. Congress then passed the unitization amendment within the Mineral Leasing Act of 1920. The 1920 federal law established a framework for the leasing and revenue sharing of public lands and subsurface estates for mineral extraction, including coal, petroleum, natural gas, and other minerals.[11]

The SRHA's unitization provision added more significant considerations for parties deciding how surface estate plays into the activities necessary for extracting minerals from the subsurface estate. The MLA allowed entities to enter public lands, drill, remove material from the subsurface estate, and obtain minerals upon passage of the unitization amendment. Still, entities were to compensate the public for the privilege of mining on behalf of the Bureau of Land Management (BLM). This newly-established lease permitting system would prevent the federal government from losing out on interests beneath the surface of deeded estates.

In common law, the party with the deed to an estate typically has rights to the material underneath its surface.[12] However, the MLA's language legally unitized vast

---

[10] Tyson Welch, *Entek GRB, LLC v. Stull Ranches, LLC*: Upholding the Dominance of the Mineral Estate, 93 Denv. L. Rev. F. (2015), available at https://www.denverlawreview.org/dlr-online-article/2015/8/12/entek-grb-llc-v-stull-ranches-llc-upholding-the-dominance-of.html.
[11] Mineral Leasing Act of 1920, Pub. L. No. 66-146, 41 Stat. 437 (1920).
[12] Aalberts, *supra* at 85.

minerals underneath SRHA-created estates into separate subsurface estates, or "units." This newly-established interest in subsurface materials allowed the federal government to issue separate mineral lessees on property already sold to private parties, to conduct mining activities on SRHA-deeded surfaces. BLM-backed entities now had access to the units underneath immense stretches of the West's public and private lands.

One such unit is the Focus Ranch Unit (FRU), a unitized oil reservoir found underneath Routt County, Colorado. This subsurface pool of oil, stretching underneath privately and publicly owned surface estates, became the catalyst for lawsuits between a private landowner and a federal mineral lessee due to its classification under the MLA as a mineral estate (per the SRHA). Mineral resources, codified as single units by an amendment to the SRHA, required brokered agreements for these units underneath surface estates deeded by federal initiatives. Yet agencies ushering these agreements could lead many surface estate owners to believe that federal mineral lessees' use of their property as an accessory to mining activities is an uncompensated taking, as described in the U.S. Constitution,[13] orchestrated by statute.

Neither the SRHA nor MLA offered Stull or Entek a clear guideline for how the federal government, or its lessees, should approach privately owned surface estate when extracting its subsurface estate. Constitutional law was also inapplicable in solving Stull's dispute, as the foundations for the activities occurring derive from statutory law. The SRHA does offer homesteaders surface estate rights to their plots, but the government possesses the rights to the units of minerals underneath deeded properties. And to ease the federal government's efforts in accessing subsurface minerals, the MLA was passed

[13] U.S. Const. amend. V, § 5.

to allow mineral lessees to extract unitized estates underneath public and private surface estates by necessary means,[14] including those underneath plots granted by the SRHA.

Background in *Stull v. Entek*

In *Entek GRB, LLC v. Stull Ranches, LLC*,[15] questions over the federal government's authority to use Stull's lands prevented Entek GRB, LLC (Entek) from being able to extract the natural resources found under both the privately and publicly owned surface estates.[16] According to Entek, it had been approved through the MLA by the Bureau of Land Management (BLM), thereby possessing the right to extract the oil from the Focus Ranch Unit (FRU) found under the surface estates owned by both Stull Ranches, LLC (Stull) and the federal government. According to Entek, this subsurface unit could also be mined while atop Stull's grouse hunting land, even if the oil lay under the public land bordering Stull's property.[17] Out of a perceived necessity, Entek sought to utilize Stull's road on Stull's surface estate to access the adjacent public surface estates owned by the federal government, to travel to the public property for drilling the FRU more easily. Even though Stull's SRHA-deeded land bordered these publicly-managed parcels, Stull argued it gave the mineral lessee no right to utilize the road toward extraction operations on public land.[18]

Entek filed suit in the United States District Court for the District of Colorado. This court ruled in favor of Stull, writing that activity incident to the extraction of

[14] Welch, *supra* at 4.
[15] 937 F.Supp.2d 1328 (D.Ct. Colo. 2013), refer to WestLaw page numbers hereafter.
[16] *Id.* at 1.
[17] *Id.* at 2.
[18] *Id.* at 4.

minerals underneath a private surface estate is permissible by statute. However, the district court also ruled that activities conducted on a private surface estate are not to be incident to mining interests under an adjoining piece of the public surface estate.[19]

Entek, dissatisfied with that rendering, appealed to the United States Court of Appeals for the Tenth Circuit, which recognized Entek's right to utilize Stull's surface estate as an activity incident to mining the FRU underneath the adjoining public lands and Stull's property.[20] That court viewed the use of the road as a necessary accessory for the lessee to access that public surface estate, in order to drill from the FRU. Also relying on the SRHA and MLA, this court affirmed that the use of the road, to achieve its leased minerals, was reasonably incident to extracting a singular, transverse, and subsurface estate belonging to the federal government, even if the oil sat underneath numerous separately-owned surface estates.

Entek could now utilize the road on Stull's surface estate to establish its drilling operations on the public land, allowing it to best extract from the FRU, and move across Stull's property onto federal lands to continue collecting from the unit in the subsurface estate within reason.[21] Stull was dissatisfied with the conflicting outcomes between the district court and Tenth Circuit, so Stull petitioned for a Writ of Certiorari from the United States Supreme Court.[22] In 2015, the Supreme Court denied Stull's Writ of

---

[19] *Id.* at 9.
[20] *Entek GRB, LLC v. Stull Ranches, LLC*. 763 F.3d 1252 (10th Cir. 2014), refer to WestLaw page numbers hereafter.
[21] *Id.* at 4.
[22] Petition for a Writ of Certiorari, *Stull Ranches, LLC, v. Entek GRB, LLC*, No. 14-1007, 2015 WL 722487 (2015).

Certiorari, leaving a ruling intact that poses several challenges to surface owners from those with subsurface interests. Now, three questions linger for Western landowners:

(1) Should the federal government have the authority to expand its power by modifying a statute in ways that potentially injures landowners?
(2) Can the transverse nature of mineral units established by the SRHA encourage too much federal authority on private surfaces?
(3) Does the Tenth Circuit's interpretation of the SRHA and MLA allow for the taking of private property without just compensation?

Thesis Statement

By not granting a Writ of Certiorari in *Stull Ranches, LLC v Entek GRB, LLC*, the United States Supreme Court exposes private estate owners to exertions of eminent domain by the federal government through its mineral lessees execution of the SRHA and MLA. These private landowners still need a definitive decision from the Supreme Court, considering that the SRHA and MLA statutes do not explicitly permit mineral lessees to use a private surface estate to conduct mining of subsurface estates underneath public lands. The current statutory misinterpretation too broadly expands federal use of privately-owned surface estates for mining efforts incident to its subsurface interests. This taking of a private surface estate by the federal government alters privately owned property's function without compensation and compromises its owner's right to objection. Therefore, future litigants must find a way to petition the Supreme Court, so it can answer lingering questions about uncompensated access to private land.

Research Supporting Stull's Underlying Argument

In its ruling, the Tenth Circuit granted authority to Entek to use the road that stretches across Stull's land.[23] This determination vastly expands the liberties afforded to federal mineral lessees and offers broader legal protection from contesting surface estate owners. To halt such activities, a federal lessee's use of privately-owned surface estates for activities "reasonably incident to the exploration and removal of mineral deposits" must now be found legally unreasonable rather than simply unnecessary, according to the Tenth Circuit. Stull argued that the ruling, in favor of Entek, was rooted in flawed law, calling them "too generous to subsurface interests and insufficiently solicitous to surface interests."

Stull maintained that the court only offered an interpretation of statutory laws rather than just compensation for the value lost due to the mining activities on its surface estate.[24] To Stull, and others who possess lands deeded by the federal government, it remains paramount to have the power, of taking private land to access public land, properly apportioned between surface estate owners and those with rights to adjacent subsurface estates. The current holding tramples the rights of surface estate owners in rural areas of the United States. It also places urban and suburban areas within the crosshairs of natural resource extraction efforts, as unitized mineral estates potentially sit beneath private land developments in multiple burgeoning cities across the West.

---

[23] *Entek*, 763 F.3d (10th Cir. 2014) at 4.
[24] Neal McConomy. "Beneath the Surface: *Entek GRB, LLC v. Stull Ranches, LLC* and the Continuing Battle Between Surface Owners and Subsurface Owners." Real Estate Litigation. Snell & Wilmer, December 29, 2014.

Therefore, it is essential to determine the extent of the federal mineral lessees' rights below the surfaces of privately-owned properties across the country.

This thesis explores the interpretations of the SRHA and MLA in federal court rulings, which the Supreme Court will inevitably review as it considers future cases of federal mineral lessee takings. The statutes in focus, enacted over one hundred years ago, are utilized in the West to capture the federal government's mineral interests, even with private owners object to suspected mistreatment of their property rights. Digging deeper into these acts offers insight into the federal government's arguments that could rationalize its actions surrounding the Fifth Amendment. Such knowledge can bolster future litigants' petitions for a Writ of Certiorari.

In the words of then Judge Neil Gorsuch, disputes over resource rights can "invite confusion—and litigation" because, unlike in most areas of the eastern United States, property owners are not always granted mineral and water rights in the West.[25] After being heard by the U.S. District Court of Colorado and the Court of Appeals for the Tenth Circuit, this dispute almost reached the U.S. Supreme Court, but the Court denied Stull's petition, leaving the Tenth Circuit's rendering in place. To offer future litigants a chance at having the Supreme Court grant a Writ of Certiorari – an order to have a lower court send up the record of the case for review. These courts' opinions need to be dissected, along with the doctrines and case law applied in rulings against Stull. Judicial rulings in numerous states also play into this present evaluation.

[25] *Entek* 763 F.3d (D.Ct Colo. 2013) at 2.

The final piece to unravel is Stull's brief offered to the Supreme Court regarding the Writ of Certiorari.[26] However, Entek's Brief in Opposition, which is also necessary to review, shows conflicting viewpoints on Stull's injury.[27] Stull sought to maintain the ranch's livelihood by reducing the SRHA's power, whereas Entek cited the partial consensus between the district court and court of appeals on the dispute as conclusive and final. One case that could grant support to Stull would be *Mountain Fuel Supply Co. v. Smith (1973).*[28] In this case, between a mineral lessee and an owner of several individually-leased tracts of land, the Tenth Circuit found that Smith's private surface estates cannot be subservient to, or used as an accessory toward, activities taking place on a dominant piece of land. Although that case featured much larger tracts of land, Stull's land acts similarly, like a gate through which Entek's mining operations must pass, to best capture the federal government's mineral interests in a subsurface estate.

Championing *Mountain Fuel* might make the difference in the outcomes of future litigation, if paired with Judge Gorsuch's forewarning of future conflicts such as in *Entek v. Stull*.[29] Such a possibility demands consideration of whether the SRHA and MLA, in their present form, open the door to unconstitutional takings. Future suits will likely erupt in the coming years, considering resource needs, and modern mining innovations that lead subsurface operations to butt against surface owners' rights.[30] The rights of surface owners will likely remain a hotly contested topic for real estate litigation nationwide. When next presented with such an opportunity, the Supreme Court must clarify whether

[26] Petition for a Writ of Certiorari, *supra* at 18.
[27] Brief in Opposition, *supra* at 19.
[28] 471 F.2d 594 (10th Cir. 1973).
[29] *Entek* 763 F.3d (D.Ct Colo. 2013) at 1.
[30] McConomy, *supra* at 23.

activity occurring on a private estate, incident to mining subsurface estate underneath an adjacent public property, is a form of taking. In my thesis, I argue that, in future cases, the Court must rule in favor of private surface rights to best preserve landowners' Fifth Amendment rights amid high demand for America's natural resources.

CHAPTER II

Procedural Posture of *Stull v. Entek*

The Federal District Court of Colorado's Decision

The first court to hear *Entek GRB, LLC v. Stull Ranches, LLC* was the United States District Court of Colorado in 2013, which ruled partially in favor of Stull Ranches, LLC. It held that Entek did not have the right to cross the surface of Stull's property to perform mining operations on a third party's surface estate. Entek sought a ruling on three claims:

> (1) the right to "stake, survey, drill, and develop well locations on Stull's surface," (2) the right to "use Stull's surface to reach well locations on the adjacent property if those wells will develop Entek's mineral estate subjacent to Stull's surface," and (3) the right to "access all surface areas within the unitized federal exploratory unit because of the unitization agreement."[31]

The district court granted Entek's first claim, citing *Kinney-Coastal v. Kieffer (1928)*[32] and *Gilbertz v. United States (1987)*[33], among other rulings. The court also referenced the SRHA,[34] since Entek's claim related to the nature of the surface estate and subsurface estate's relationship, its need for predetermining successful well sites, and

[31] 937 F.Supp.2d 1328 at 3.
[32] 277 U.S. 488, as referenced in 937 F.Supp.2d 1328. at 3.
[33] 808 F.2d 1374, *Id.*
[34] Stock-Raising Homestead Act of 1916, Pub. L. No. 62-290, 39 Stat. 862 (1916).

reasonable access to obtain its leasehold within the FRU. The 2013 district court reiterated that the surface estate is subservient to the subsurface (mineral) estate, as the interests below dominate those above.[35] The court used *Kinney-Coastal* to establish that those with rights to subsurface mineral estates also have rights to use any surface estate reasonably necessary to achieve possession of the subsurface mineral.[36]

The district court also found that Entek has the right to "enter upon the lands entered or patented ... for the purpose of prospecting for coal or other mineral therein."[37] It can also "use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold." *Gilbertz v. United States* validated Entek's mineral right and right to enter and use the surface estate; this granted lessees protections from a landowner's restrictions on reasonable activity.[38] The district court then clarified that, according to the SRHA,[39] reasonable use of Stull's surface estate would include surveying and staking for suitable well locations, potentially across the entire surface estate. This stipulation was affirmed in *Gilbertz* and *Kinney-Coastal*, affirming that Entek could both perform preparatory work reasonably incident to the development of its claim of the FRU that lay underneath Stull's surface estate; and that Entek could access proposed well sites on Stull's surface estate to remove minerals from the FRU subjacent to that property.

[35] 937 F.Supp.2d 1328, *supra* at 3.
[36] As referenced in 937 F.Supp.2d at 3.
[37] Stock-Raising Homestead Act of 1916, as referenced in 937 F.Supp.2d 1328 at 3.
[38] 937 F.Supp.2d 1328 at 3.
[39] Stock-Raising Homestead Act of 1916, as referenced in 937 F.Supp.2d 1328 at 4.

Entek did not prevail on its second claim. The district court used *Mountain Fuel Supply Co. v. Smith*[40] and *Carmichael v. Old Straight Creek Coal Corp (Ky. 1928)*[41] to emphasize that inconveniences confronted in accessing wells on the adjacent surface estate were reasonable, but they were Entek's problem — not Stull's. The court ruled against this claim by Entek after questioning the "bundle of [rights]" the federal government reserved for landowners and itself when it transferred other rights, through the SRHA and MLA, to Entek for Entek's efforts with the FRU.[42]

One right that Stull kept, according to the outcome of the *Mountain Fuel* decision, was Stull's right to deny Entek use of Stull's surface estate for any use not expressly granted by the federal government because Entek, a lessee, does not stand in the same position as its lessor. Conversely, Entek based its claim on the SRHA, which stated that activities "reasonably incident" to mining were valid.[43] The district court ruled against Entek's claim that using Stull's road was reasonably incident to mining activities, using the Agricultural Entry Act of 1914, as discussed in *Mountain Fuel*, which stated that road development or use on adjacent lands was not allowed.[44]

Entek's third claim, the right to "access all surface areas within the unitized federal exploratory unit because of the unitization agreement," was also denied by the court. Entek based its claim on a lack of express statutory limitations as grounds to pursue efficiency. Still, the district court quickly used *Carmichael* to dismiss claims of "no statutory limitations," along with state court precedent in *Wiser Oil Co. v. Conley*

---

[40] As referenced in 937 F.Supp.2d 1328 at 5.
[41] *Id*.
[42] *Id.* at 4.
[43] *Id.* at 5.
[44] Stock-Raising Homestead Act of 1916, Pub. L. No. 62-290, 39 Stat. 862 (1916).

(1960) to support its conclusion.[45] The district court concluded that Entek could only use Stull's road to survey and prospect the federal government's neighboring surface but not for actual mining activities that fully develop the federal government's minerals. Therefore, when mining for resources beneath Stull's surface estate, Entek can only use Stull's private road for specific mining tasks underneath Stull's surface estate, even if Entek cannot fully access its entire leasehold within the FRU.

The Tenth Circuit's Decision

Writing for the Tenth Circuit Court of Appeals, Judge Gorsuch opens the court's opinion with the following quote:

> When you own property in the West you don't always own everything from the surface to the center of the Earth. Someone else might own the minerals lying underground and the right to access them. Someone else still might own the right to use the water flowing through your property. All this can invite confusion—and litigation.[46]

In 2014, the Tenth Circuit granted total relief to Entek and explained why Entek, as a lessee of the federal government, has the right to cross Stull's surface estate. The Tenth Circuit reiterated that Stull, as a successor to the lands granted in the SRHA, is still bound by its stipulations, including the federal government's right to:

[45] As referenced in 937 F.Supp.2d 1328 at 6.
[46] *Entek GRB, LLC v. Stull Ranches, LLC*. 763 F.3d 1252 (10th Cir. 2014) at 1.

1) enter and use so much of the surface as might be "reasonably incident" to the exploration and removal of mineral deposits, and

2) enact future laws and regulations regarding the "disposal" of the mineral estate.[47]

The second right's sweeping language utilized terms like "disposal," along with "bestow," "assign," "manage," "make use of," and "deal with [them] as [it] pleases."[48] The 1916 law's language was authored intentionally by Congress so that future laws could later identify how to capture mineral estates; in 1916, it mattered just that the federal government reserve that authority by statute, before private miners could diminish the surplus of minerals in the West's subsurface. The Supreme Court decision *United States v. Union Pacific R. Co. (1957)*[49] challenged this preparatory preservation. The Supreme Court found that land grants for railroads or utilities cutting through federal surface estates were subject to federal government subsurface estate interests. This decision allows the federal government to dispose of the minerals found under the granted lands' right of way however it sees fit. The Tenth Circuit concludes the same fate for the surface estate above the federal government's Focus Ranch Unit.

The MLA offered a legal framework for exploiting those subsurface estates outlined by the SRHA, but it brought on unintended problems. The Act tasked the Secretary of the Interior with the allocation of these estates through mineral development leases for individual tracts to private miners. Subsurface deposits do not follow lot lines,

[47] *Id.* at 2.
[48] *Oxford English Dictionary,* 820 (2d ed. 1989).
[49] As referenced in 763 F.3d at 3.

so “in a very wild west sort of way,” miners began collecting from pools that fell outside their surface boundaries.[50] This frantic, quilt-pattern exploration proved inefficient for a single oil field, so Congress amended the MLA to allow for cooperation: unitization. Extended powers were instead granted to the Secretary of the Interior, which combined leaseholds based on the perceived area of a subsurface estate. In practice, this effort could conglomerate multiple private surface estates into a single zone for mineral extraction by a federal lessee.

The mineral "disposal" method of combining any surface estates deemed necessary, resulted in the formation of the FRU. The FRU stretches underneath 40,000-acres, including portions of the surface estate of Stull and BLM. The original agreement, formulated to distribute mining assets amongst the FRU’s leaseholders, instructed those operations “upon any tract of unitized lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of unitized land,”[51] making all other plans, laws, and understandings subservient. Other unitization agreements contain similar language, which follows the MLA’s verbiage: “operations or production pursuant to [a unitization] agreement shall be deemed to be operations or production as to each such lease committed thereto.”[52]

The language in the FRU agreement and the MLA unitization amendment is consistent, fluid, and clear; the federal government’s lessees can utilize any surface estate necessary to "make use of" subsurface units. The Tenth Circuit supported this dominant subsurface principle by citing the SRHA’s allowance for the right to “reenter and

---

[50] *Id*.
[51] Model Onshore Unit Agreement for Unproven Areas, 43 CFR § 3186.1 (1920).
[52] Mineral Leasing Act of 1920, as referenced in 763 F.3d at 9.

occupy" the upper surface for "reasonably incident" purposes whenever such activity is needed.[53] Stull no longer argued whether Entek should be allowed to mine on Stull's grouse hunting ranch. Stull objected to the statutory language, holding that it does not authorize Entek to traverse over and across Stull's surfaces above Entek's leaseholds — whether to service a separate unit under Stull's surface estate or the same unit under another surface estate. Rather than address considerations of Stull's constitutional rights, Stull reiterated its concern with the principles and values of the statute itself.

The Tenth Circuit addressed Stull's concern, citing the federal government's second purported right: the right to adopt future rules, including unitization agreements. Based on the language of the FRU, if mining activity is occurring above the unitized area toward the development of any leasehold, then the operator has reasonable cause to enter and occupy any surface above the unit without respect to individual boundaries. The court cited *Coosewoon v. Meridian Oil Co (1994)*[54] and *Norfolk Energy, Inc. v. Hodel (1990).*[55] Stull raised *Mountain Fuel* to arguing that unitizations agreements cannot be so loosely changed, but the Tenth Circuit dismissed this use of the case because it failed to prohibit the actual or legal modification of the unitization agreement at the center of its question.[56]

Stull then argued that it had not been a party to the FRU's formulation. The Tenth Circuit, however, said that Stull did not have to be, concluding that both the unit of oil and the access to the unit are rights privileged to the federal government through the

[53] Stock-Raising Homestead Act of 1916, as referenced in 763 F.3d at 7.
[54] As referenced in 763 F.3d at 4.
[55] *Id.*
[56] *Mountain Fuel,* 471 F.2d, as referenced in 763 F.3d at 5.

MLA for the benefit of the public, without the need for compensation.[57] Also, Stull had failed to claim a taking, as depicted by the Constitution,[58] resulting from the federal government's mineral lessee complying with a changed unitization agreement. Stull had only offered a policy complaint. Future litigants must instead propose a legal argument for the related injury, whether that be an actual taking or an actual breach of contract.

The Tenth Circuit then discussed Stull's less-convincing arguments, including a previous district court judgment between former lessee Clayton Williams and Three Forks Ranch, the former surface estate owner of Stull's property above the FRU. However, this effort proved null because Williams and Stull reached an agreement after that case, which Stull terminated before Entek became involved. The Tenth Circuit saw a close relationship between Williams and Entek, but not legal privity.

The Tenth Circuit concluded that the FRU agreement provided Entek with all the relief it sought and that the district court's grant of summary judgment of claims one and two was also to be vacated and remanded.[59] This meant Stull's favorable ruling was short lived. The Tenth Circuit's contrasting evaluation of the SRHA and MLA statutes, and of the unitization agreements confirmed expansive rights for the federal government and its lessees when approaching a subsurface estate lying beneath multiple surface estates. Stull's push to consider an expired land use contract with Clayton Williams, a prior lessee, was not well received either. Stull's access road on its personal property can now be used as an incident to mining activities on neighboring BLM surface estates and oil

[57] Mineral Leasing Act of 1920, as referenced in 763 F.3d at 7.
[58] U.S. Const. amend. V, § 5.
[59] *Entek*, 763 F.3d, *supra* at 7.

wells may be constructed and operates on Stull's surface estate, so that Entek can better access the FRU.

CHAPTER III

The Supreme Court's Denial of Stull's Petition

The Petition for a Writ of Certiorari

Stull made several arguments in its petition to the Supreme Court for a Writ of Certiorari, but the Court ultimately denied the petition. Stull's most potent argument in its brief was the Tenth Circuit's broad utilization of the language in the MLA's unitization amendment. However, the Court of Appeals had qualified this amendment, based on the SRHA's allowance for future legislative stipulations regarding mineral lessee entry rights.[60] In its 2014 ruling, the Tenth Circuit concluded that the MLA permitted the actions Entek deemed necessary to extract the minerals within the FRU upon SRHA-deeded surface estate. However, when taking a textualist approach, the SRHA never directly suggested the federal government's agencies have unbridled authority for their efforts to capture mineral interests even if awarded in future statutes.[61]

The MLA's expansion of the federal government's entry rights by way of mineral lessees may very well tarnish the boundaries between private landowners and federal interests. This statutory complaint still leaves a constitutionality principle question about the SRHA and MLA's use by the federal government, through its lessees, in its right of eminent domain: a power that allows the taking of private property for public use, so long as its owner receives just compensation. This concept is acknowledged in the Fifth Amendment of the United States Constitution, stating that private property shall not "be

[60] Stock-Raising Homestead Act of 1916, as referenced in 763 F.3d, *supra* at 4.
[61] *Id.* at 4.

taken for public use, without just compensation."[62] The federal government can declare eminent domain whenever it seeks to acquire land for infrastructure projects such as highways, public buildings, and utilities. Strict procedures dictate how government taking provides fair compensation to property owners. Eminent domain remains controversial, as it can invite abuses of power by the federal government and infringe upon individual property rights.

Stull's concern was that the MLA's language allows for an unjust override of a deedholder's rights without compensation – like Entek utilizing Stull's road without penalty for the BLM's enjoyment of minerals. The MLA instructs a mineral lessee to cooperate in a BLM-brokered unitization agreement between the BLM and an SRHA-backed deed holder. The MLA cannot contain language that overrides that deedholder's rights. As affirmed in *Ashwander v. TVA (1936),*[63] Congress must avoid constitutional contradictions in statutes, and any congressional legislation that leads to a taking of private property may not pass without express authorization for an exception.

In *Kinney-Coastal v. Kieffer (1928),*[64] it was determined that a landowner could rightfully demand compensation for any "damages caused by mining operations." By declining the Writ of Certiorari in 2015, the Court allowed almost one hundred years of landowner protections, found in *Kinney-Coastal v. Kieffer,* to be dismantled by the federal government's mineral lessee. *Kinney-Coastal* guarantees aid to landowners damaged by lessees accessing leaseholds underneath their surface estate. Stull could easily argue that damage was being inflicted by Entek's invasive equipment to its grouse

[62] U.S. Const. amend. V, § 5.
[63] 56 S.Ct. 466, at 5.
[64] Petition for a Writ of Certiorari, *supra* at 27, as referenced in U.S. Reporter.

ranch. The federal government will never be compelled to provide just compensation to Stull for invading its ranch without the Court hearing Stull's case. Furthermore, the Tenth Circuit's standing in the Stull case places limitations on future litigants seeking justice for injuries resulting from mining activities that may have brought about public benefit.

The Court could have found reason to agree with the claim that previous renderings on the SRHA's imitated scope dulls the MLA's language. As described in Stull's petition, the SRHA has been used to restrict the actions of oil companies in the past through *Amoco Prod. Co. v S. Ute Indian Tribe (1999)*,[65] and has been used to refute implied meanings, such as those construed by the appellee in *Russell v. Texas Co. (1954).* [66] This citation, that the SRHA's language has been the focus in a previous Supreme Court case, is credible, but the Court would not hear a suit solely because it regards a statute previously in question.

The Court could have decided not to hear Stull's case from a desire for judicial minimalism[67] – the tendency for the Court to develop precedent slowly – so that the legislative and executive branches could resolve this statutory conflict instead. Incorporating concerns around the Fifth Amendment was well intended, but arguing Fifth Amendment taking and compensation protection was likely too weak to be seriously considered by the Court. Without actual mining activity, Stull failed to properly cite the takings concerns of the MLA's unitization language in its brief to the district court, which

[65] As referenced in Petition for a Writ of Certiorari, *supra* at 18.
[66] As referenced in Petition for a Writ of Certiorari, *supra* at 28.
[67] Constitution Annotated, ArtIII.S2.C1.10.5 Judicial Minimalism, available at https://constitution.congress.gov/browse/essay/ artIII-S2-C1-10-5/ALDE_00013157/.

Judge Gorsuch recognized only as a "policy complaint."[68]

The Brief Opposing a Writ of Certiorari

Entek's Brief in Opposition successfully prevented further litigation of Stull's statutory objections, which allows Entek to use Stull's access road as a path toward quicker disposal of the federal government's interests in the FRU. Entek was able to capitalize on previous favorable outcomes and rely on interpretations from the Tenth Circuit that value forward-thinking legislation that can react to uncertain conditions in the mineral extraction industry. Considering the Stull case as a narrow, non-recurring issue, the Court likely saw that the lower courts had adequately reflected previous precedent and legislative policies for administrations like the BLM. Stull would have needed to overcome several arguments made in Entek's brief without addressing any takings ramifications in the district or appeals courts. The first argument relates to the existing rulings that constitute precedent. In 2013 Entek was granted partial victory at the district court, then total victory upon appeal in 2014. Traditionally, the Court is more likely to grant a Writ of Certiorari when there are conflicting renderings,[69] which was not the case for *Entek v. Stull.* Further legal groundwork needs to be laid.

Additionally, the Court rarely hears cases relating to oil lease rights between federal mineral lessees and landowners. A significant conflict in state or federal law, or a question on the Constitution, would likely have to be at the forefront of the argument for

[68] 763 F.3d 1252, at 4.
[69] Emily Grant, Scott Hendrickson, Michael Lynch. The Ideological Divide: Conflict and the Supreme Court's Certiorari Decision, 60 Clev. St. L. Rev. 559 (2012), at 2, available at https://www.law.csuohio.edu/sites/default/files/academics/lawreview/Vol60Issue3/5-grant_final.pdf.

future cases on takings to be heard by the Court. Also, Stull's 2015 Writ of Certiorari brief also claimed that the Tenth Circuit correctly interpreted the SRHA and the related MLA unitization amendment. If the Court agreed with this assertion, the Court likely concurred with the Tenth Circuit in that unitization treats SRHA-deeded surface estates properly. In future cases, a private landowner's case before the Supreme Court should demonstrate frequent conflict.

The Supreme Court only hears approximately 1% of cases presented.[70] Stull's odds were slightly higher, but its complaint – regarding policy rather than the Constitution – were quickly diminished by Tenth Circuit's claim that: "Stull hasn't seriously attempted any argument."[71] This statement by Entek summarized what the Court needed to know regarding takings concerns raised in Stull's brief. Furthermore, the narrow scope of Stull's case could have prompted the Court not to hear it, as Stull was the only party complaining about the statutory issues in the SRHA and MLA. Entek parlayed this limitation later in its brief with *Leo Sheep Co. v. United States (1979),*[72] in which the Court said that a similar case was "virtually unprecedented" and that "litigation…has been rare."

However, the Tenth Circuit's blunt application of language found in the SRHA, allowing for the MLA's sweeping unitization amendment, goes against the typically cautious approach to statutory interpretations by the Court. Still, regulatory guidelines for administrations often need modification by the judicial branch. A sweeping use of statutory law can pose a severe threat to a landowner's right to fair compensation. The

---

[70] *Id* at 2.
[71] 763 F.3d 1252, *Id.* at 4.
[72] Brief in Opposition, *supra* at 25.

Court's interpretation style should benefit outcomes for landowners rather than for the federal government. However, concerningly, future litigants must now prove lessees' actions deemed "incident" to mining are unreasonable for lessee's operations rather than simply unnecessary.

CHAPTER IV

Lessons in & Approaches to Defending Property Rights

Key Takeaways from Stull's Case

Future litigants can learn several lessons from Stull's case and failed petition for a Writ of Certiorari from the Supreme Court. These three lessons include the timing of the suit, successfully framing arguments and approaching the Supreme Court within the scope of its justiciability. Future litigants must apply relevant interpretations of the SRHA and MLA or reapproach the issue with support from case precedents like *Mountain Fuel*. Future litigants in surface estate conflicts with federal mineral lessees should retry this issue in the courts once an opportunity presents itself. If successfully argued, the Court could rule on this as a constitutional concern, to benefit landowners as Stull saw it.

Future litigants should first learn from Stull's most significant shortcoming: perturbing Entek rather than filing against Entek upon its traversing Stull's surface estate. The mineral lessee grew weary of Stull's stubbornness, so it filed suit and made three claims that could preemptively shutter Stull's ability to sue on future matters regarding such an above-ground – below-ground conflict. Entek was eventually granted all three claims it made by the Court of Appeals:

(1) the right to "stake, survey, drill, and develop well locations on Stull's surface,"

(2) the right to "use Stull's surface to reach well locations on the adjacent property if those wells will develop Entek's mineral estate subjacent to Stull's surface," and (3) the right to "access all surface areas within the unitized federal exploratory unit because of the unitization agreement."

This outcome pushed Stull to petition the Supreme Court. In its petition, Stull raised concerns that the SRHA and MLA allowed for a taking. However, an actual taking needed to have occurred directly from actions prescribed in the SRHA and MLA to sue on this matter. Stull did not allow Entek to drive across the private property and perform the alleged taking. Without this action of inclusion by Entek, the courts would not address any argument, except as a hypothetical, for Stull. In future instances, injured litigants must sue once an act takes place rather than allowing the other party to limit the scope of the case as only a theoretical or policy question.

The second lesson is that Stull's emphasis on the statutory language in its pushback against Entek's three claims was also problematic because of judicial interpretation. Supreme Court judicial interpretations can fall between strict originalism and lenient progressivism,[73] and judges at all levels fall within this spectrum. Courts will resolve conflicts through their interpretations, but they cannot change the statute, and judges may reach slightly different conclusions on any given matter. Both courts in Colorado that ruled on *Entek v. Stull* leaned toward originalism, and both applied a textualist approach to understanding the SRHA and MLA's role in Stull and Entek's

[73] Supreme Court of the United States, The Court and Constitutional Interpretation, available at https://www.supremecourt.gov/about/constitutional.aspx.

disagreement. Courts can also rely on case precedent, but Stull and Entek's issue lacks extensive judicial history, emphasizing the weight of the statutory interpretation in the case. If future litigants are to be successful, their cases will need additional precedent, to rely on more than potentially inhibitive statutory interpretation.

The third lesson revolves around justiciability: how able a court is to address a dispute. Without an injury, Stull could not raise arguments to directly counter Entek's claims to rights expressed to federal mineral lessees within the statutes, given this issue's rare occurrence. The Supreme Court avoids political questions out of a concern for justiciability, or rather how ready a matter is to be heard by a court.[74] In this instance, the Supreme Court must consider the matter's current standing, its ripeness (or readiness), and if a political question is in play, among other factors. The standing already favored Entek, but that does not nullify Stull's petition. However, Entek had not driven across Stull's road, making the takings concern unripe. Stull only rebutted Entek's claims with the statutes, imposing policy questions on a politically adverse Court.

Strategies for Future Litigants

Future litigants might reasonably believe that Stull's failures correlated with the arguments and evidence evaluated in the case. Nevertheless, the principles in Stull's case can be helpful if future litigants' injuries are ripe. Stull understandably halted Entek because it feared the impact on its migratory grouse. Yet Stull's deed, according to the SRHA, was subject to statutory amendments crafted by the federal government, including

[74] Cornell Law School's Legal Information Institute, justiciability, available at https://www.law.cornell.edu/wex/justiciability.

updated access rights to the minerals beneath Stull's surface. Many Americans could reasonably perceive Entek's permission as a taking, even though the federal government benefited from using Stull's property without fair compensation.

Stull v. Entek is not the first time a mineral lessee and a landowner have argued about private property's accessory use. In *Mountain Fuel*, litigants debated whether a mineral lessee may utilize the surface of several commonly-owned, individually-patented parcels of land in attempts to mine other private estates neighboring the lots in question.[75] The district court in Stull's case relied on *Mountain Fuel's* "unity rule" between surface estates, which refuted Entek's claim that using Stull's road was necessary for mining operations. Entek's appeal rebutted using *Mountain Fuel*, where the Tenth Circuit found that the FRU's unitization agreement bound Stull to comply with Entek's needs, exempting Stull from the "unity rule."

Even so, the failure of Stull does not preclude future litigants from citing *Mountain Fuel*, as it protects landowner surface rights from mineral lessees seeking to capture unitized minerals by any means the lessee deems necessary. As a product of the MLA unitization amendment, the FRU allowed for modifications that more clearly benefited the federal government. Not all unitization agreements must follow suit. So, if future litigants can prove that agreements should limit a mineral lessee's authority, they can intertwine *Mountain Fuel* into their arguments. *Mountain Fuel's* precedent can help prove that private surface estates cannot always be used as an accessory to mine adjacent estates by the federal government's mineral lessees without just compensation.

---

[75] *Mountain Fuel Supply Co. v. Smith*, 471 F.2d 594 (10th Cir. 1973).

To overturn *Entek v. Stull* and quell any concerns over takings issues within the SRHA or MLA, future litigants must demonstrate several needed conditions in a future case, must progress through the federal courts, and must petition the Supreme Court to hear this same conflict. First, actual actions against a landowner, in line with the SRHA and MLA, must occur. Actions proving damage would provide a court with an example of the laws as having resulted in a taking.[76] However, addressing an issue before it ripens could favor the plaintiff because overly-proactive litigation could circumvent a broader constitutional concern. Preventing an injury from occurring reduces the Supreme Court's ability to rule on the case, but allowing the injury to occur could increase the chance of a ruling in favor of a landowner.

Second, if a conflict on this issue is to be heard by the Supreme Court, then a decision rendered by one of the courts must conflict with the Tenth Circuit's ruling in *Entek v. Stull*. Such an opposing decision could result based on the facts of that future case, whether it be a contract dispute or another question on the SRHA or MLA's application in mineral leasing of subsurface estates in the West. While the Court will not hear *Stull v. Entek* again, it may consider another case that, upon its outcome, would contrast with the Tenth Circuit's ruling. Such a case would hinge on the actions of the federal mineral lessee rather than on another theoretical debate revolving around the expressed or implied powers of the federal government within the SRHA and MLA.

Third, future litigants must address arguments made in the Tenth Circuit's ruling, mainly involving the distinction between "unnecessary" and "unreasonable" actions

[76] Richard Epstein, Eduardo Penalver. The Fifth Amendment Takings Clause, National Constitution Center, https://constitutioncenter.org/the-constitution/amendments/amendment-v/clauses/634.

committed by the federal mineral lessee. In its ruling, the Tenth Circuit created the standard that an "operator may now 'reenter and occupy' so much of the surface in the unitized area as may be reasonably incident to extracting minerals from the unit."[77] This means that future litigants must prove the actions of a federal mineral lessee to be "unreasonable," such as Entek's use of Stull's road as an incident to mining the FRU. Meeting this standard is a significant challenge, considering that mining companies can far more convincingly express the necessity or reason for their actions in accessing their subsurface leaseholds.

In conclusion, future litigants must prove that enhancing accessibility for the government was unnecessary and unreasonable, given federal resources to construct civil infrastructure for federal mineral lessees. While the federal government may be able to enact eminent domain, it must prove its interest in repossessing and then modifying privately owned land for the public's benefit. Even with a federal interest, and even if other mineral lessees follow the SRHA and MLA under similar circumstances, an indirect taking is apt to occur to others. By showcasing constitutionally compromising actions, that directly derive from statutes, future litigants may reverse laws that injure landowners, uphold private surfaces' rights from federal authority, and prevent takings without just compensation.

[77] 763 F.3d 1252, *supra* at 4.

Bibliography

Aalberts, Robert. *Real Estate Law* (Cengage Learning, 9th ed., 2015).

Ashwander v. TVA, 56 S.Ct. 466.

Brief in Opposition, *Stull Ranches, LLC v. Entek BRB, LLC*, no. 14-1007, 2015 WL 722487.

Commons, John Rogers. *The Distribution of Wealth*, 27 (London: Macmillan and Co., 1893).

Constitution Annotated, ArtIII.S2.C1.10.5 Judicial Minimalism, available at https://constitution.congress.gov/browse/essay/ artIII-S2-C1-10-5/ALDE_00013157/.

Cornell Law School's Legal Information Institute, justiciability, available at https://www.law.cornell.edu/wex/justiciability

Entek GRB, LLC v. Stull Ranches, LLC, 937 F.Supp.2d 1328 (D.Ct Colo. 2013).

Entek GRB, LLC v. Stull Ranches, LLC, 763 F.3d 1252 (10th Cir. 2014).

Epstein, Richard, Eduardo Penalver. The Fifth Amendment Takings Clause, National Constitution Center, https://constitutioncenter.org/the-constitution/amendments/amendment-v/clauses/634.

General Mining Act of 1872, 17 Stat. 91.

Grant, Emily, Scott Hendrickson, Michael Lynch. The Ideological Divide: Conflict and the Supreme Court's Certiorari Decision, 60 Clev. St. L. Rev. (2012), available at https://www.law.csuohio.edu/sites/default/files/academics/lawreview/Vol60Issue3/5-grant_final.pdf.

Homestead Act of 1862, Pub. L. No. 37-64, 12 Stat. 392 (1862).

McConomy, Neal. Beneath the Surface: *Entek GRB, LLC v. Stull Ranches, LLC* and the Continuing Battle Between Surface Owners and Subsurface Owners. Real Estate Litigation. Snell & Wilmer, December 29, 2014.

Mineral Leasing Act of 1920, Pub. L. No. 66-146, 41 Stat. 437 (1920).

Model Onshore Unit Agreement for Unproven Areas, 43 CFR § 3186.1 (1920).

Mountain Fuel Supply Co v. Smith, 471 F.2d 594 (10th Cir. 1973).

Oxford English Dictionary 820 (2d ed. 1989).

Petition for a Writ of Certiorari, *Stull Ranches, LLC v. Entek BRB, LLC*, no. 14-1007, 2015 WL 722487.

Stock-Raising Homestead Act of 1916, Pub. L. No. 62-290, 39 Stat. 862 (1916).

Supreme Court of the United States, The Court and Constitutional Interpretation, available at http://www.supremecourt.gov/about/constitutional.aspx.

Welch, Tyson. *Entek GRB, LLC v. Stull Ranches, LLC*: Upholding the Dominance of the Mineral Estate, 93 Denv. L. Rev. F. (2015), available at https://www.denverlawreview.org/dlr-online-article/2015/8/12/entek-grb-llc-v-stull-ranches-llc-upholding-the-dominance-of.html.

U.S. Const. amend. V, § 5.