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According to current expert and non-expert opinion, Wyoming has excellent prospects of becoming one of the great oil and gas producing states of the Union. If the pattern of production follows that established in other states, the volume of oil and gas produced will be accompanied by a corresponding volume of litigation and resulting legal problems which cannot be answered from existing local authority.

When confronted with the same situation in the past, other states have looked to traditional property law for analogy and guidance, seeking also to maintain a measure of consistency with established concepts. While the fixed rules of property law may have provided a skeleton upon which to build, it has been necessary to depart from them occasionally in order to meet the practical requirements of the oil industry, and thus a body of legal concepts has been assembled which is peculiar in its application to oil and gas. The development of this field, while not entirely orderly, has been a credit to the bench and bar of those states where early oil and gas production was also productive of novel legal problems.

Among the various states, however, the approach to the problems in the field has by no means been uniform, with the result that many conflicts exist among prevailing fundamental theories. If Wyoming develops into a great producing area, the Supreme Court of Wyoming will find itself in the peculiarly advantageous position of having the abundant experience of other states at its disposal, and may find it possible to avoid the embarrassing contradictions found in other jurisdictions where decisions were pioneer in character. It should be possible to do what the Wyoming Supreme Court has already exhibited a tendency to do, and that is to adopt no ready-made, comprehensive accumulation of decisions from another state, but to accept only those parts which will round out a body of law containing certain basic concepts for purposes of stability, yet having sufficient flexibility to meet the demands of practical considerations as technology and business methods in the field progress, and from which problems as yet unforeseen may be treated with a minimum of difficulty and contradiction.

While the absence of local authority in the field of oil and gas may be of advantage to the judiciary, it is by no means an advantage to the practicing attorney confronted with a problem in the field. Because theories vary so widely among other states, he can find no

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safety in unqualified generalization. Further, the atmosphere of urgency which surrounds oil and gas activity seldom permits exhaustive research and has also served to accelerate the legal evolutionary process in other states, so that the general practicing attorney has a difficult task in distinguishing the obsolescent from the evanescent concepts.

It is with these thoughts in mind that this, the first of a series of articles, is submitted, with the view of attempting to describe the pattern of Wyoming law and of respectfully suggesting a pattern where none is indicated.

I.

THE NATURE OF OIL AND GAS

The first problem encountered in the petroleum field concerns the nature of oil and gas, i.e., whether or not they are considered to be "minerals" as the term is commonly used, and what character of ownership is possible in oil and gas so long as they remain in the earth. Considering the first aspect of the problem, oil and gas are considered to be minerals in Wyoming when they are specifically mentioned in the grant or reservation, and as such they are part of the mineral estate capable of being severed from the surface estate.[1]

Although oil and gas may be considered to be minerals for other purposes, still a vexing problem arises when a grant or reservation is made in which the word "minerals" alone is used and no mention is made of oil and gas. It is a question of extreme importance to the title examiner, particularly if the grant or reservation is remote in point of time. The remoteness in time may make the problem of construction or correction a more difficult one, and at the same time extends no comfort to the examiner in the light of the law relating to adverse possession of minerals. On the point of whether or not a reservation of "minerals" reserves oil and gas (or a similar grant conveys them) there is no direct Wyoming authority and the decisions in other states present a multiple choice. The choices range from an arbitrary holding that oil and gas are not included in the term "minerals" to an arbitrary holding to the contrary, with variations in between.

In Pennsylvania, the question was presented at an early date in the case of *Dunham and Shortt v. Kirkpatrick*,[2] and a conclusion was reached that a reservation of all minerals[3] did not include petroleum. This result was predicated upon the proposition that although petroleum is a mineral in the broad sense by general defini-

1. Ohio Oil Co. v. Wyoming Agency, 179 P. (2d) 773 (Wyo. 1947); Mineral Severance in Wyoming, 2 Wyo. L. J. 62 (1948).
2. 101 Pa. 36, 47 Am. Rep. 696 (1882).
3. " . . . excepting and reserving all timber suitable for sawing; also all minerals; also the right to take off such timber and minerals."

tion, if such a broad meaning of "minerals" be employed, then all inorganic substances, including water, sand, clay, etc. would be covered and the reservation would be as broad as the grant and therefore void. Instead of relying upon inflexible definitions which vary in breadth and character according to the source of the definition, the court considered that the term "minerals" should be given the meaning to it by all mankind, i.e. its meaning in common usage. In that day and time, it was not difficult for the court to arrive at the conclusion that the "mass of mankind" would not consider petroleum as being embraced within the term "mineral." The court was purporting to apply an intention test and, in construing the language of the instrument, assumed that the parties used the term "minerals" as the "mass of mankind" would use it. In a subsequent decision, the court followed the *Dunham* case and held that *gas* was not a "mineral" within the meaning of a reservation using that term.[4] Although the *Dunham* case presents a rule of construction based upon *intention,* the Pennsylvania court has accepted it as a settled and arbitrary rule of *property* law to the effect that petroleum is not a "mineral" within the meaning of the term as used in reservations and grants, and refuses to upset it as so construed or to apply its rule of intention in the light of what the "mass of mankind" would consider to be mineral in modern grants.

The rule as so crystalized was applied with absurd results in the case of *Preston v. South Penn Oil Co.*[5] There, the Aetna Oil Company purchased the land in question in 1864 and drilled for oil without success. In 1876 it conveyed the land, "excepting and reserving thereout, unto the Aetna Oil Company, all mineral and mining rights and the incidents thereto whatever." Because there "was no evidence at the trial to show that the parties to the deed intended the word 'mineral' to include petroleum or gas, or that the word had acquired a meaning in conveyancing to include them," it was decided that petroleum was not reserved, on the basis of the settled rule of property law announced in the *Dunham* case. This result appears to be absurd because, from the history of the land, together with the fact that the reserving party was an oil company, which had used the land for purposes of exploring for oil and which would presumably be primarily interested in oil and its prospective discovery and production, it would seem that the language of the instrument with the attending circumstances would clearly indicate that the parties were thinking in terms of petroleum and therefore *did* intend to reserve it from the grant.

Even though it considers oil and gas to be minerals for other purposes,[6] the Pennsylvania court, as indicated, has consistently held

4. Silver v. Bush, 213 Pa. 195, 62 Atl. 832 (1906).
5. 238 Pa. 301, 86 Atl. 203 (1913).
6. Hamilton v. Foster, 272 Pa. 95, 116 Atl. 50 (1922).

that oil and gas are not minerals within the meaning of the term as used in instruments of conveyance, unless there is evidence showing a "clear intention" to include them. That the showing of intention must be a strong one is evident from the *Preston* case.

The so-called "Pensylvania Rule" finds some support but variation in Ohio. There, in the early case of *Detlor v. Holland,*[7] the court said: "Do the words 'other valuable minerals' include petroleum oil? The deed of conveyance was made in February, 1890, and it must be construed in the light of the oil developments as they then existed in the vicinity of the land. . . . Oil was then produced in small quantities within from 10 to 20 miles of the lands, but there is nothing to show that the parties to the conveyance had any knowledge thereof." Relying upon the foregoing proposition, together with the fact that the other terms of the grant applied peculiarly to solid minerals,[8] as well as reliance upon the *Dunham* case, the court held that a grant of "other valuable minerals" did not convey the oil and gas. In Ohio, then, oil and gas would or would not be included in a grant or reservation of the minerals, depending upon intention as derived from the instrument and from surrounding circumstances at the time and place of the grant, which would leave the question an open one in each case.

A recent announcement of a result like that in the *Dunham* and *Detlor* cases is contained in a case from Arkansas where the court was called upon to construe the recitals of instruments executed in 1892 and 1893.[9] The court concluded that as to modern conveyances, the reservation of "minerals" effectively reserves the oil and gas.[10] As to conveyances remote in point of time, however, the court took the position that "a contemporaneous construction is best and most powerful in law." The court quoted from the 1887 edition of Devlin on Deeds to the effect that petroleum was not included in a reservation of all minerals, and after reference to other decisions, it said "Although there were court decisions holding oil and gas to be minerals, such was not the general construction; and this was particularly true in a country where oil and gas were not given the slightest commercial consideration in connection with land values," finally holding that an 1892 and 1893 reservation "reserving all coal and mineral deposits in and upon said lands" did not reserve oil and gas.

In Indiana, the use of the word "minerals" without further definition in a conveyance creates an ambiguity which would permit the

7. 57 Ohio St. 492, 49 N. E. 690 (1898).
8. " . . . of mining and removing such coal, ore, or other minerals, . . . with the right to the use of so much of the surface as may be necessary for pits, shafts, platforms, drains, railroads, switches, side tracks, etc., to facilitate the mining and removal of such coal, ore, or other minerals, and no more."
9. Missouri Pacific R. R. v. Strohacker, 202 Ark. 645, 152 S. W. (2d) 557 (1941).
10. Citing Sheppard v. Zeppa, 199 Ark. 1, 133 S. W. (2d) 860 (1939).

use of parol evidence to arrive at the intention of the parties at the time and place of the grant.[11]

From the original position taken in the *Dunham* case, several variations have evolved: (1) that oil and gas arbitrarily are not included in the term "minerals" unless a contrary intention is clearly shown, (2) that the intention of the parties controls as arrived at from facts and circumstances attending the grant, (3) that the construction given the instrument must be a contemporaneous one with emphasis upon the contemporaneous legal construction, and (4) that the unexplained use of the term "minerals" creates an ambiguity.

The line of authorities considered as being contrary to the cases just mentioned has its origin in the Tennessee case of *Murray v. Allard.*[12] In that case, the court came to a conclusion contrary to the result reached in the *Dunham* case and marked the line of departure between the two views. The conclusion that oil and gas are minerals was reached entirely on the basis of definition of the term "minerals" to "be determined from dictionaries and other similar sources," and, as to the question of the intention of the parties, the court said that the bulk of mankind would consider oil and gas to be minerals.

The Tennessee case has the greatest numerical following among the other states and hence has become known as the "majority rule." Implicit in the *Murray* holding and expressed in many of the cases following it, is the qualification that, if there is an evident intention to restrict the meaning of "minerals" so as not to include oil and gas, they will not be included.[13] Among the cases following the

11. Monon Coal Co. v. Riggs, 115 Ind. A. 236, 56 N. E. (2d) 672 (1944), rehearing denied, 57 N. E. (2d) 598 (1944).
12. 100 Tenn. 100, 43 S. W. 355 (1897).
13. The following cases are representative, and not an exhaustive list of authorities:
Kansas: Roth v. Huser, 147 Kan. 433, 76 P. (2d) 871 (1938).
Virginia: Warren v. Clinchfield Coal Corp., 166 Va. 524, 186 S. E. 20 (1936).
Michigan: Weaver v. Richards, 156 Mich. 320, 120 N. W. 818 (1909).
Oklahoma: Barker v. Campbell-Ratcliff Land Co., 64 Okla. 249, 167 Pac. 468 (1917); Crain v. Pure Oil Co., 25 F. (2d) 824 (C. C. A. 8th 1928).
West Virginia: Sult v. Hochstetter Oil Co., 63 W. Va. 317, 61 S. E. 307 (1908); Horse Creek Land & Mining Co. v. Midkiff, 81 W. Va. 616, 95 S. E. 26 (1918); Murphy v. Van Voorhis, 94 W. Va. 475, 119 S. E. 297 (1923); Norman v. Lewis, 100 W. Va. 429, 130 S. E. 913 (1926); Prindle v. Baker, 116, W. Va. 48, 178 S. E. 513 (1935); Burdette v. Bruen, 118 W. Va. 624, 191 S. E. 360 (1937).
Kentucky: (In spite of an early tendency to the contrary in McKinney's Heirs v. Central Kentucky Natural Gas Co., 134 Ky. 239, 120 S. W. 314 (1909) and Scott v. Laws, 185 Ky. 440, 215 S. W. 81 (1919), Kentucky's position, through strict application of former rules of construction, now approximates that in the Murray case.) Berry v. Hiawatha Oil & Gas Co., 303 Ky. 629, 198 S. W. (2d) 497 (1946); Federal Gas, Oil, & Coal Co. v. Moore, 290 Ky. 284, 161 S. W. (2d) 46 (1941); Maynard v. McHenry, 271 Ky. 642, 113 S. W. (2d) 13 (1938).
Texas: Anderson & Kerr Drilling Co. v. Bruhlmeyer, 134 Tex. 574, 136 S. W. (2d) 800 (1940); Humphreys-Mexia Co. v. Gammon, 113 Tex. 247, 254

Murray case the results vary from an arbitrary holding that "minerals" include oil and gas[14] through equivocal conclusions, where an intention to include oil and gas was found to further support the conclusion, [15] to the view that "minerals" prima facie includes oil and gas, to be overcome by contrary intentions drawn from the context of the instrument,[16] as by application of the doctrine of ejusdem generis.[17]

Although the results in the cases in other states vary from one extreme to the other, there is a common thread running through them all. In each instance, except where a "settled rule of property law" was followed, the court purported to arrive at the intention of the parties. That the intention test as applied is completely unsatisfactory is demonstrated by the variety of results which flow from it. Further, such a test is completely without value for use in the future in determining the character of substances which remain unknown or are presently considered to have no intrinsic value.

The contradiction and conflict between the cases on the point arise from the very fact that the courts are seeking to give effect to an *intention* to include or exclude a *specific substance,* when, as a matter of fact, the parties had nothing specific in mind on the matter at all. It is submitted that an intention test is the proper one, but not as applied heretofore. The intention sought should be the *general intent* rather than any supposed but unexpressed *specific intent,* and, further, that general intent should be arrived at, not by defining and re-defining the terms used, but by considering the *purposes* of the grant or reservation in terms of manner of enjoyment intended in the ensuing interests.

When a general grant or reservation is made of all minerals without qualifying language, it should be reasonably assumed that the parties intended to sever the entire mineral estate from the surface estate, leaving the owner of each with definite incidents of ownership enjoyable in distinctly different manners. The manner of enjoyment of the mineral estate is through extraction of valuable substances, and the enjoyment of the surface is through retention of such substances as are necessary for the use of the surface, and these respective modes of enjoyment must be considered in arriving at the proper subject matter for each estate.

S. W. 296 (1923); Elliott v. Nelson, 113 Tex. 62, 251 S. W. 501 (Comm. of App. 1923); Luse v. Parmer, 221 S. W. 1031 (Civ. App. 1920); Luse v. Boatman, 217 S. W. 1096 (Civ. App. 1919); Right of Way Oil Co. v. Gladys City Oil, Gas, & Mfg. Co., 106 Tex. 94, 157 S. W. 737 (1913); cf. Carothers v. Mills, 233 S. W. 155 (Civ. App. 1921) in which the court considered the question of intention of the parties in using the term "minerals" to be a question for the jury.

14. Weaver v. Richards, 156 Mich. 320, 120 N. W. 818 (1909).
15. Barker v. Campbell-Ratcliff Land Co., 64 Okla. 249, 167 Pac. 468 (1917).
16. Burdette v. Bruen, 118 W. Va. 624, 191 S. E. 360 (1937).
17. Prindle v. Baker, 116 W. Va. 48, 178 S. E. 513 (1935).

Applying this intention, the severance should be construed to sever from the surface all substances presently valuable in themselves, apart fom the soil, whether their presence is known or not, and all substances which become valuable through development of the arts and sciences, and that nothing presently or prospectively valuable as extracted substances would be intended to be excluded from the mineral estate.

A limitation upon the mineral estate should be that only those substances can be removed without compensation which can be removed without unreasonable injury to the enjoyment of the surface estate, i.e. without unreasonably interfering with the uses for which the land is adapted. To this extent, the surface and mineral estates are not only mutually dominant, but are also mutually servient estates. The surface estate is burdened with the right of access, and the mineral estate is burdened with the right of the surface owner to insist that the surface be left intact and that it not be rendered valueless for the purposes for which it is adapted, by depletion of sub-surface or surface substances. This limitation upon the mineral estate renders innocuous the objection raised in the *Dunham* case that, if all the minerals in the broad sense be included in the reservation, then the reservation would be as broad as the grant and therefore void. Further, it does no violence to the intention of the parties. If the presence of oil and gas is not suspected, or if their value is not known at the time of the grant, it is admitted that the parties had no specific intention either to exclude them or include them. Since there was no specific intention on the matter, effect should be given to their general intentions, and that was to sever substances which become valuable only through extraction. The fact that oil and gas were not substances then considered to be valuable in themselves bears only upon one aspect of this general intention and not upon the associated intention to sever the fee into two separate estates, distinct in form and enjoyment.

Since the enjoyment of oil and gas is through extraction, it should be considered to be within a general grant or reservation of the minerals. Further, since its retention is not necessary to the enjoyment of the surface estate, i.e. its removal does not deplete the soil for surface purposes, nor does its extraction destroy the surface nor remove subjacent support, oil and gas, therefore, should not only be considered to be within a general mineral grant, but also, in the absence of demonstrated special circumstances, should be subject to extraction without compensation to the surface owner. The only interference with the surface enjoyment is in the exercise of the right of access, which is not permanently substantial in character and which must exist by necessity.

A further limitation must be made upon the general proposition

set out. Since minerals may be severed piece-meal, i.e. both as to type and location, if the language of the instrument indicates a specific intention to do so, then that intention must be given full effect. For example, where the purposes of the grant indicate that a specific type of mineral was intended to be covered, or where there is an enumeration of certain minerals having characteristics in common followed by "etc.", or where the description of the rights or removal are sufficiently specific to indicate that only a certain character of mineral was intended to be covered, then, in such cases, there is a specific intent present and it is expressed, although perhaps not with the desired clarity. In all other cases, i.e. where no specific intent can be found, the general intention to sever all substances valuable in themselves should be given effect.

Aside from the advantage of conforming more closely to the original intention of the parties, this proposed view also has the advantage of certainty without the disadvantage of being unreasoned in its certainty. In matters of land titles, and most certainly in the field of oil and gas where heavy expenditures of capital are incident to exploration, development and production, certainty is of the utmost importance. A rule which requires consideration of the contemporaneous factual or legal setting would create the impossible situation of requiring the title examiner to inquire into the local folk-lore of the area or of requiring the examiner to retain a catalogued knowledge of the law as to dates of development. In either event, he could never be confident of his conclusion.

A supporting policy to be considered is that orderly production of oil, gas, or other valuable substances should be encouraged and favored wherever possible to contribute to the wealth and well-being of society in general and the community in particular. As petroleum and petroleum products grow in importance as military supplies, a consideration of national security should also be included in the policy favoring production. Obviously, the policy favoring production is best served by a rule which makes title to minerals most certain.

It should be pointed out at this point, also, that the discovery of new substances valuable in themselves would not serve to "expand the grant or reservation" but would only serve to make more certain the specific subject matter of a general grant.

Aside from arriving at a reasonable immediate result, this concept is sufficiently flexible to be adaptable for use in coping with future problems. As shown by a review of the authorities, the effort to arrive at a specific intention concerning a specific substance has led to conflicting results in the case of oil and gas and, unquestionably, will lead to further confusion and conflict in the future as new valuable substances are discovered. If some substance, heretofore thought to be valueless in itself, should suddenly become very

valuable by virtue of a new scientific or technological development, nothing but uncertainty would confront the courts in determining whether or not it was included in a general grant of minerals if the conclusion were sought to be reached through definition or determination of intent to include the specific substance. On the other hand, the conclusion would be an easier one if the "manner of enjoyment" test herein submitted were employed.

Taking the most difficult case possible, assume further that the new substance, a mineral by scientific definition, is dispersed through the top-soil of a restricted area of the State, or lies immediately beneath such top-soil. Under these facts, the removal of the substance would involve extensive excavation and a destruction of the use of the land for its surface purposes. How, on the basis of specific intention, could a court ever feel at ease with a conclusion in either direction? On the basis of intended enjoyment, however, a solution is not too difficult. The rights of the surface owner to subjacent support and his right to the use of the top-soil in its place would have to be respected, and at the same time, the owner of the mineral fee should have a right of extraction. Since the right of extraction could only be exercised by destruction of the surface owner's enjoyment, it could only be accomplished with compensation for the damages to the surface estate. Such damages would not be measured by the value of the substance in its new use, but would be measured by the reduction in value of the land for its surface use, and this liability would arise because, in such case, the exercise of a right of access to the mineral would unreasonably interfere with the surface use. Specific mention of the substance, however, together with the usual provisions for extraction, would demonstrate a specific intention to make the surface right subject to the rights of access for purposes of extraction and would not make the mineral owner accountable for necessary damage flowing therefrom.

A case like the hypothetical one just described arose recently in Arkansas where the court was called upon to decide whether or not bauxite was a mineral within the terms of a reservation of "all coal and mineral desposits in and upon said lands."[18] With three members dissenting, the court decided that bauxite was not included within the reservation because the existence of bauxite in Arkansas was not generally known in 1892 and 1896, the dates of the contract and the conveyance, respectively. In addition to such reason, it was observed that bauxite is generally extracted by the digging of open pits, and that if the grant to the surface owner were accompanied by a reservation which would render his estate valueless, the reserva-

18. Carson v. Missouri Pacific R. R., 212 Ark. 963, 209 S. W. (2d) 97 (1948).

tion would be as broad as the grant and void.[19] (The instrument contained a general provision for the right to enter and remove the mineral deposits without accounting for damages.)

The result in the Arkansas case is directly opposite to the result urged herein under the "manner of enjoyment" test. The court, in its zeal to protect the surface estate from invasion, conferred upon the owner of such estate a valuable mineral deposit in addition to his farm land. As a result of the decision, the surface owner could extract the bauxite for his own benefit, which is not a traditional form of enjoyment by a surface owner and which could hardly have been intended by the parties. Under the test herein submitted, the court would have come to a contrary conclusion, complied with the general intention of the parties, and reached a result which would have been of some assistance in the determination of the character of future substances. Since the provision for entry and extraction without accounting for damage was general in nature, and since bauxite was not specifically mentioned, the right of the owner of the mineral estate to extract the mineral by open pit mining would be subject to the right of the surface owner to compensation for the loss of his land for farming purposes. If the mineral is of commercial value, this limitation to the right of extraction would not be prohibitive. Whether or not a specific mention of bauxite in the provision for entry and extraction without accounting for damage would be valid need not be decided here since such condition is not present in the oil and gas problem. It may be observed in passing, however, that if the court were to determine that such a provision made the reservation as broad as the grant and therefore void, it would be more reasonable to hold void the right of entry without compensation rather than to hold void the reservation of the mineral.

Turning to Wyoming authority, no case has been found which deals directly with the question considered herein,[20] and the cases

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19. See also the reasoning Psencik v. Wessels, 205 S. W. (2d) 658 (Civ. App. 1947) (sand and gravel); and in Allen v. Heinatz, 212 S. W. (2d) 987 (Civ. App. 1948) (limestone). Re minerals recoverable only by open pit mining, see Ann: 1 A. L. R. (2d) 787.

20. An extremely strange factual situation is presented in *Denver Joint Stock Land Bank of Denver v. Dixon*, 57 Wyo. 523, 122 P. (2d) 842 (1942). There, the problem is present in the abstract, but it was not involved in the particular case. The exact language of all instruments is not shown because not material to the decision, but apparently "A", a remote grantor, conveyed a section of land and reserved all coal and other minerals with exclusive right to prospect for such mineral. There appeared in the record no later conveyance of the minerals by "A". A subsequent grantee, "B", conveyed the surface and a non-participating royalty interest, reserving "all minerals, oil and gas in, upon, or underlying said lands". A statement in the record indicated that an oil and gas lease had been given on the premises by one claiming under "B" and that there was production. "A" was not a party to the suit and his rights were not involved, but the court was careful to say: "No question as to the ownership of mineral rights prior to that deed is raised herein." The deed referred to was the conveyance by "B."

which fall within the general field are not sufficiently close to the problem to permit a conclusion to be reached with any confidence.

In *Ohio Oil Co. v. Wyoming Agency*,[21] the court uses the terms "minerals" and "mineral fee" as including oil and gas, but in that case, the reservation expressly included oil and gas.[22] Thus, oil and gas are considered to be minerals in the general sense, and it would not be inconsistent to hold that oil and gas are included within the general term "minerals" when used alone, but such conclusion does not necessarily follow.

In *Chittim v. Belle Fourche Bentonite Products Co.*,[23] the court quoted with approval two definitions of "mineral" in arriving at the conclusion that bentonite is a mineral. Those definitions are: " . . . any form of earth, rock, or metal of greater value while in place than the enclosing country or superficial soil;"[24] and "The real test seems to be the character of the deposit as occurring independently of the mere soil, valuable in itself for commercial purposes, that is, close enough to market to have value."[25] Again, it is possible to say that oil and gas are minerals under such definitions, yet it would not be inconsistent to add the words "at the time of the grant" to each definition, if the issue arose squarely between grantor and grantee. It is of some significance, however, that the term "minerals" was not defined in this opinion by scientific definition, nor by reference to other restrictive definitions which look to physical characteristics, but in terms of the intrinsic value of the substance. This type of definition lends itself naturally to the "manner of enjoyment" test presented herein.

It is entirely possible, however, that when an instrument between private parties is being construed, the court may consider that the problem is presented in a different medium and may be lured into the position of placing emphasis upon a rule of construction which seeks an intention to include specific substances. If this is done, the court will be adopting a position from which it can only move in specific cases with difficulty, and it will be adopting a questionable and short-sighted attitude which the experience in other states has demonstrated to be more productive of grief than justice.

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21. 179 P. (2d) 773 (Wyo. 1947).
22. " . . . reserve to themselves, their heirs and assigns, all minerals, mineral deposits, mineral oil and natural gases of every kind and nature contained in or upon said lands, the surface of which is hereby conveyed."
23. 60 Wyo. 235, 149 P. (2d) 142, 146 (1944).
24. Morrison, Mining Rights, 250 (16th ed. 1936).
25. Lindley, Mines and Mineral Lands, 156 (2d ed. 1914).