Another element of the Romney energy plan that was announced this week is a proposal to turn over to the states the process of leasing of federal lands for oil and gas development. The Romney campaign argues that this will result in quicker and cheaper leasing development than under current federal management.

This seems to me like a very problematic idea for a number of reasons, but I want to focus on just one here. The Romney proposal effectively creates a new division of property rights – the states get the ability to control oil and gas development on federal lands, while the federal agencies retain management authority over all other resources. As with any division of property rights, this creates the possibility for spill-over effects, or an externality (where property rights do not fully align with environmental impacts from management decisionmaking).

Here, the states will get control over, and many of the benefits from, oil and gas development (from increased economic activity associated from the development – my understanding is that the royalties would continue to flow to the federal government as under current law). But the impacts on other resources from oil and gas development – on wildlife, water quality, recreation, air quality – would be mostly remain the responsibility of the federal land agencies to deal with, since they would otherwise continue to own the relevant land.

This is similar to the concept of surface versus mineral estates in the context of private landownership. The mineral owner has the right to extract oil and gas from underground, and the right to the benefits of that oil and gas extraction; the surface owner retains all of the remaining property rights. This is usually how oil and gas development occurs on private lands – often because the surface owner does not have the capital or expertise to conduct oil and gas extraction on their own. But this division does have its problems. The many conflicts over (for instance) fracking and other forms of natural gas and oil development on private land show that many surface owners feel that the mineral estate owner does not adequately consider the impacts on surface resources from development. Again, because of the division of property rights, we get the possibility of an externality (whether an externality exists and how severe it is depends in part on how the agreement between the mineral and surface owner is drafted and the extent it requires the mineral owner to consider or compensate for damage to the surface resources from development).

Under the Romney proposal, decisionmaking is similarly fragmented. Now of course state officials making leasing decisions likely will not totally disregard environmental quality impacts on federal lands from oil and gas leasing. But the

state officials do not own the federal land, so there is the possibility that they will underweigh those effects (especially if there are public choice or other failures in the state government decisionmaking process). The Romney proposal would also apparently impose national air and water quality standards on leasing activities. Again, this would help reduce the possibility of an externality, but there are many other environmental quality issues that might be relevant for oil and gas leasing decisions (impacts on visibility, non-endangered wildlife populations, recreational activity) that would not be covered by those standards (even assuming they are stringent enough – national standards may also not take local conditions into account sufficiently). The proposal would also exempt "protected wildlife areas and national parks" – but there are surely many other environmentally important pieces of land besides these on the federal domain.

There is an interesting historical context to this proposal. There have been many proposals over the years for transfer of federal lands to Western states, such as in the Sagebrush Rebellion in the late 1970s and early 1980s. One of the reasons that those proposals have never really gone anywhere is that many states (although they wouldn't say this publicly) are skeptical about taking full ownership of much of the federal land because it is relatively worthless overall economically. In fact, a federal proposal to transfer ownership of federal lands to the states in the 1920s didn't go anywhere because of resistance from the states (and the federal government's proposed retention of the valuable mineral rights!). Many states have also resisted transfer of federal land to private ownership because of concerns about loss of public access for recreation, grazing, and mining exploration activities (for instance, proposals to allow the transfer of unpatented mining claims to private ownership in 2005 were rejected by Western senators and governors because of concerns that it would result in a boom in development in scenic areas, undermining tourism ). But this proposal falls into a sweet spot for the states – they get control over the most economically productive activity for many of these lands, without having to worry about responsibility for the money-losing parts of land management (wildlife management, protection of environmental resources, provision of public recreational access).