Lithium and Critical Minerals: A Multi-State Legal and Development Overview

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A Multi-Jurisdictional Comparison of Lithium and Critical Minerals

The Smackover formation extends through Texas, Arkansas, Louisiana, and Mississippi.

There are open questions about the ownership of Lithium, a critical mineral, through these states. This presentation provides an analysis of Critical Mineral ownership, with an emphasis on Lithium.

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Agenda

1. What is a “Critical Mineral”
2. Uses of Critical Minerals
3. The Core Legal Question and Its Significance
4. Production of Critical Minerals
5. Who Has the Power to Define “Minerals”
6. State-by-State Comparison (TX, LA, AR, MS)
7. Q&A

What is a "Critical Mineral"

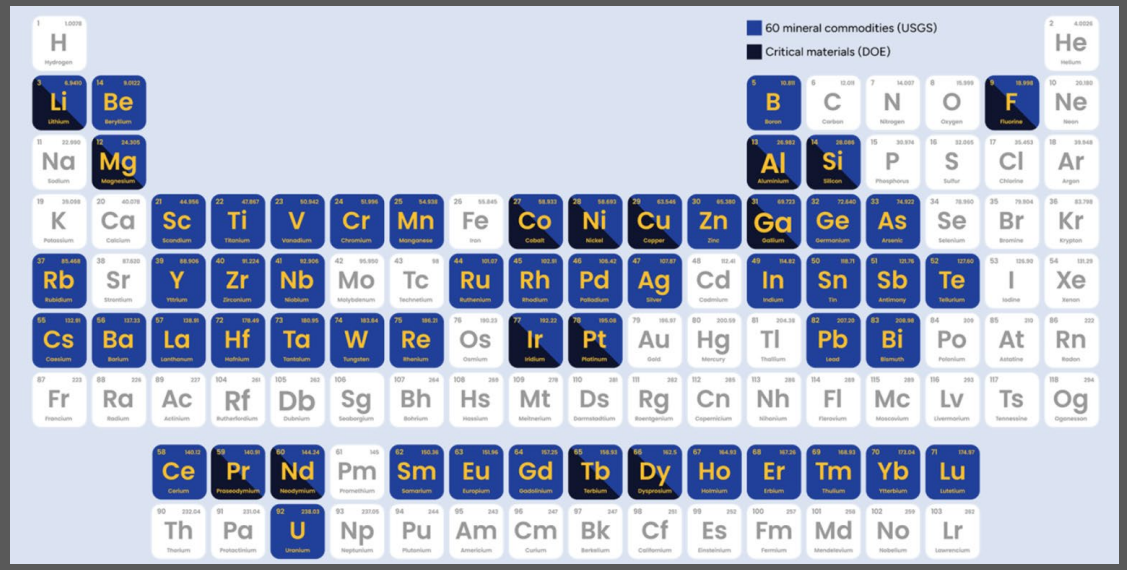
The Energy Act of 2020 defines a "critical mineral" as:

- Any non-fuel mineral, element, substance, or material that the Secretary of Energy determines;
    i. has a high risk of supply chain disruption; and
    ii. serves an essential function in one or more energy technologies, including technologies that produce, transmit, store, and conserve energy; or
- A critical mineral, as defined by the Secretary of the Interior.
    i. Any mineral, element, substance, or material designated as critical by the Secretary of the Interior, acting through the director of the U.S. Geological Survey.

What is a "Critical Mineral"

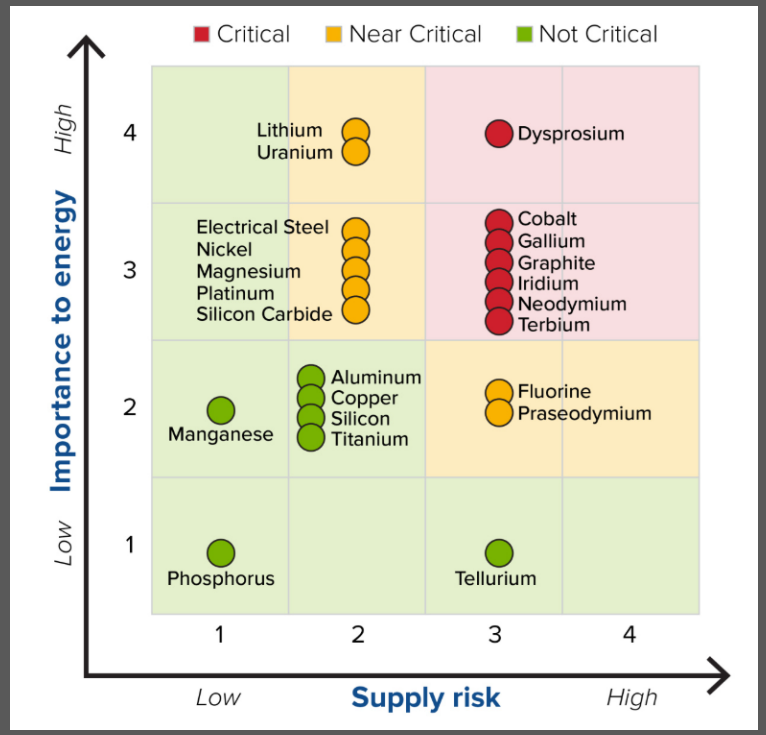
The 2022 final list of critical minerals includes the following 50 minerals:

Aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, **lithium**, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc, and zirconium.

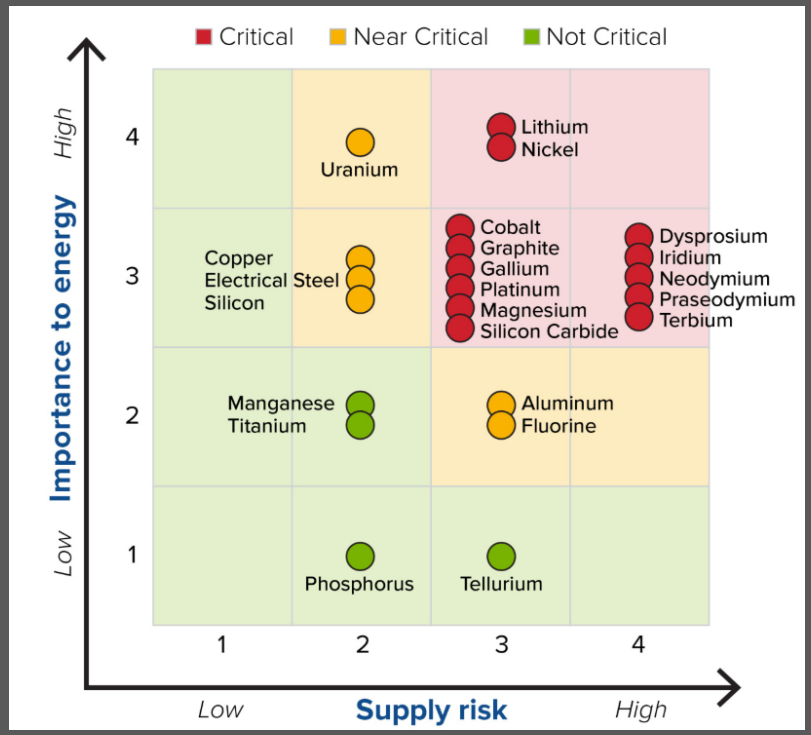


Results of the Department of Energy Critical Materials Assessment

Short Term 2020 - 2025



Long Term - 2025 - 2035



Uses of Critical Minerals

A. Energy Production & Storage

BATTERIES	NUCLEAR ENERGY	FUEL CELLS	SOLAR CELLS
Antimony	Boron	Graphite	Aluminum
Cobalt	Europium	Scandium	Silicon
Graphite	Graphite		Silver
Lanthanum	Hafnium		Tellurium
Lead	Holmium		
Lithium	Lithium		
Manganese	Samarium		
Nickel	Thulium		
Phosphate Praseodymium	Uranium		
Silver	Zirconium		

Uses of Critical Minerals

B. Electronics & Technology

LIGHTING	GENERAL ELECTRONICS COMPONENTS	LASERS	ATOMIC CLOCKS & GPS
Scandium	Aluminum	Dysprosium	Cesium
Yttrium	Copper	Erbium	Rubidium
	Lutetium	Holmium	
	Magnesium	Neodymium	
	Palladium	Tellurium	
	Rhodium	Terbium	
	Ruthenium	Thulium	
	Silver	Ytterbium	
	Tantalum		
	Tellurium		
	Terbium		
	Tin		

DISPLAYS & OPTICS	CATALYSTS	SEMICONDUCTORS & MICROCONDUCTORS	MAGNETIC MATERIALS
Erbium	Cerium	Arsenic	Dysprosium
Germanium	Iridium	Boron	Gadolinium
Indium	Lanthanum	Fluorspar/Fluorine	Holmium
Terbium	Palladium	Gallium	Neodymium
Yttrium	Rhenium	Germanium	Praseodymium
	Rhodium	Hafnium	Samarium
	Ruthenium	Terbium	Terbium
	Ytterbium	Silicon	

Uses of Critical Minerals

C. Metallurgy & Advanced Materials

STEEL PRODUCTION & STRENGTHENING	ALLOYS FOR AEROSPACE, DEFENSE, & HIGH PERFORMANCE
Boron	Beryllium
Chromium	Cobalt
Fluorspar/Fluorine	Copper
Gadolinium	Hafnium
Manganese	Lead
Metallurgical coal	Lithium
Nickel	Magnesium
Niobium	Platinum
Silicon	Praseodymium
Vanadium	Rhenium
	Scandium
	Tellurium
	Thulium
	Titanium
	Tungsten
	Yttrium
	Zinc
	Zirconium

Uses of Critical Minerals

D. Industrial & Manufacturing Application

PLASTICS & SYNTHETIC MATERIALS	LUBRICANTS	RUBBER PRODUCTION	CERAMICS & GLASS
Fluorspar/Fluorine	Graphite	Neodymium	Boron
	Lithium	Tellurium	Cerium
			Erbium
			Fluorspar
			Lead
			Praseodymium

CORE Legal Question

When a deed, reservation, lease, or conveyance refers to "minerals," does that term includes lithium or other critical minerals in the jurisdiction at issue?

The Answer…

It Depends.

Several Deciding Factors

- It depends on:
  - The state;
  - The date of the instrument;
  - The substance involved; and
  - The way the substance is produced.

Practically, Why This Matters

- We are increasingly being asked to evaluate whether lithium and other critical minerals are already covered by existing mineral ownership, lease forms, reservations, and development practices. A classification dispute can affect:
  - Title
  - Leasing strategies
  - Surface-use planning
  - Project timing
  - Commercial value
  - Development disputes
- Lithium is one example of a mineral that has become commercially and legally significant in the broader category of so-called critical minerals.

Legally, Why This Matters

- Are older deeds and leases broad enough to cover newer resource targets?
  - The current legal focus on lithium and critical minerals has been driven by supply-chain concerns, energy-transition demand, domestic development efforts.

- Federal Overview: A substance may be important as a matter of federal policy or commercial demand without automatically being resolved as a "mineral" for private title purposes under state Law.

How Are Minerals Produced?

A. Traditional mining;
B. Recovery from brines or fluids; or
C. Newer extraction processes that do not fit neatly into older oil-and-gas assumptions

<u>Why the process of production matters…</u>

- The method of production may influence how parties frame ownership, leasing, and surface issues.

Who has the Power to Define "Minerals"?

- Courts
- Legislature
- Parties - Contract

Texas: Current Issues Facing Lithium Ownership Today

Over the next decade, the value of lithium is predicted to increase exponentially. The dispute over lithium ownership in Texas is far from settled.

A. Litigation. Courts will be asked to settle disputes about the ownership of Lithium and other Critical Minerals as parties disagree about the nature of these resources.

A. Legislation. "Wait and See." The Texas Legislature only meets every 2 years for 140 days for a regular session. Special Sessions are called by the Governor and last up to 30 days.

A. Contractual Agreement. Parties can contract whatever terms they decide. However, a non owner can challenge ownership and seek declaratory judgment which result in length and expensive litigation.

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The Main Legal Tests

- Courts have used different approaches to decide whether a substance is a mineral, including;
  - Surface-Destruction analysis
  - Plain-and-Ordinary-Meaning analysis

Texas: General Mineral Ownership

Frameworks

1. Surface-Destruction Framework: Whether the substance should be treated as part of the surface estate or the mineral estate under the surface-destruction framework.

1. Plain-and-Ordinary Meaning Framework: If the substance is not excluded by that inquiry, the analysis then turns to whether it falls within the plain and ordinary meaning of "minerals" in the instrument at issue.

Texas highlights that the first dispute may be about estate allocation, while the second dispute may be about the meaning of the word "minerals."

Texas: Definition of a "Mineral"

- Surface Destruction Test - *Acker v. Guinn*
  - "unless the contrary intention is affirmatively shown, a grant of minerals should not be construed to include a substance that must be removed by methods that will consume or deplete the surface estate."
    Acker v. Guinn, 464 S.W.2d 348 (Tex. 1971).
- Moser Test (Ordinary and Natural Meaning)
  - " uranium is a mineral within the ordinary and natural meaning of the word for purposes of oil, gas, and other minerals clause."
    Moser v. U.S. Steel Corp., 676 S.W.2d 99 (Tex. 1984).

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Texas: Mineral Ownership Tests

A. Surface-Destruction Test

- In 1971, the Supreme Court in *Acker v. Guinn*, created the Surface Destruction Test to determine what constitutes a mineral that is owned by the mineral owner.

> "Unless the contrary intention is affirmatively and fairly expressed, therefore, a grant or reservation of 'minerals' or 'mineral rights' should not be construed to include a substance that must be removed by methods that will, in effect, consume or deplete the surface estate." *Acker v. Guinn*, 464 S.W.2d 348-52 (Tex. 1971).

- Lithium: Lithium's extraction does not destroy the surface, so under this test it is interpreted as a mineral and is owned by the mineral estate.

Texas: Mineral Ownership Tests

B. Ordinary Meaning Test

- In 1984, the Supreme Court in *Moser v. United States Steel Corp.*, created the Ordinary Meaning Test and held that all upon severance of a mineral estate, all substances within the ordinary and natural meaning of the word mineral was a mineral.

- Lithium and other Critical Minerals: As we will see later, the surface owner and mineral owner may leverage this test in different ways.

Moser v. United States Steel Corp., 676 S.W.2d 99 (1984).

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Water, Brines, and Incidental Resources

- Some ownership disputes may not turn only on whether a substance is a mineral, but also on whether associated water, brines, or produced fluids are merely incidental to mineral development or instead involve separate property-rights analysis.

- Resource recovery may occur through fluid-based methods that complicate older assumptions about minerals, water, and surface use.
  (*See Cactus Water Servs., LLC v. COG Operating*, LLC, 718 S.W.3d 214 (Tex. 2025))

Water, Brines, and Incidental Resources

- Subsurface water is typically owned by the surface owners–except when it's tied to mineral production.

- *Cactus Water Servs., LLC v. COG Operating, LLC* (Tex. 2025) held ownership depends on how the water is produced;
  a. Water incidentally produced during oil and gas operations belong to the mineral estate holder and is treated as a byproduct of hydrocarbon extraction.
  b. Water NOT produced in operations remain with surface owner.

Cactus Water Services, LLC v. COG Operating, LLC, 718 S.w.3d 214 (Tex. 2025).

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Texas: Definition of a Mineral

Mineral Interest Owners

- Mineral Interest Owners (severed) do not own the surface but have the implied right to use it.
- Reasonable Use Standard
    i. A mineral interest holder may *use* as much of the surface as is reasonably necessary to explore and develop the surface not to *own* it."
    Getty Oil co. v. Jones, 470 S.W.2d 618, 621 (Tex. 1971).

    ii. Surface use must benefit the mineral estate of the specified tract and no other purpose.
    Robinson v. Robbins Petroleum Corp., 501 S.W.2d 865, 867 (Tex. 1973).

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Legislative Definition of a "Mineral"

- Tex. Prop. Code § 75.001 later defined; oil, gas, uranium, sulphur, lignite, coal, and any other substance that is ordinarily and naturally considered a mineral in this state is a mineral.
  - The depth at which these substances are found, are irrelevant.

- Senate Bill 1763 would have established that "brine minerals" like lithium belong to the mineral estate, but this bill was not passed.

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Foreseeable Ownership Arguments

- Surface Owners
  - May argue that they own the groundwater and should own dissolved minerals (ie: lithium).
- Mineral Owners
  - May argue that the mineral estate is dominant and may use as much of the surface as reasonably necessary to extract minerals, including extracting brine for valuable minerals.

Texas: Lithium Ownership

Surface Destruction & Ordinary Meaning Tests

- Under these tests, lithium is a considered a mineral and is owned by the mineral estate.
- Brine Water Exception: If lithium is found to be part and parcel of the brine water extracted to produce lithium, it *may* be owned by the surface owner.

Tex. Prop. Code § 75.001

- Classification would likely depend on whether it is "ordinarily and naturally considered a mineral."

Texas: Final Takeaways

- Legislation has not affirmatively weighed in on a definitive definition of lithium and other critical minerals. This means Texas parties should expect ownership disputes to place greater weight on whether associated brines, water, or other substrates affect the ownership analysis.
  - ➢ *Safest course is to negotiate, draft expressively, and come to an agreement!*
- The extraction method and location of lithium deposits (e.g., whether near-surface or deep subsurface) could influence its classification.
- Texas courts have historically *excluded* near-surface substances that require destructive extraction methods from the mineral estate.

Arkansas: Historical Usage and Local Recognition Matter

- Under Arkansas law, the legal definition of a "mineral" is not fixed.

- Arkansas courts have consistently held that whether a substance qualifies as a "mineral" is a question of fact, determined by examining the;
  i. General legal or commercial usage of the term at the time and place of its usage; and
  ii. Intent of the parties involved in the relevant transaction.

ARKANSAS: "MINERAL" DEFINED

- The Strohacker case is especially helpful in determining whether a Critical Mineral will be defined as a "Mineral" for purposes of ownership in Arkansas

  Missouri Pac. Ry. Co. v. Strohacker, 152 S.W.2d 557 (Ark. 1941).

- When there is ambiguity as to the meaning of "minerals" in instruments purporting to convey or to reserve certain unspecified minerals, Strohacker requires a factual determination of the true intent of the parties.
  - "[a] grant of minerals does not, of course, include mineral rights not embraced in the deed, nor minerals which were not within the contemplation of the parties." *Id.* at 655, 152 S.W.2d at 563.

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Arkansas: "Mineral" Defined

Stegall v. Bugh

- Commercial usage of the term Mineral at the time of the grant or reservation

  > "that the meaning . . . hereafter give[n] to the word 'mineral' in connection with its use . . . is governed not by what the grantor meant or might have meant, but by the general legal or commercial usage of the word at the time and place of its usage." *Stegall v. Bugh*, 310 S.W.2d 251, 254 (Ark. 1958)

- Necessitates a commercially recognized usage

Arkansas: "Mineral" Defined

- Brine was recognized as a commercial product in Arkansas in 1955 due to the discovery of high concentrations of Bromine in the Brine.

- Reservations or conveyances of "minerals" before January 1, 1955 would not include the Brine. After January 1, 1955, Brine would be a "mineral" and would be included in the reservation or conveyance.

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ARKANSAS: "MINERAL" DEFINED

- The Brine Act (ARK. CODE ANN. § 15-76-302(2)(A))
- The Additional Substances Provision in Ark. Code Ann. § 15-76-315(c)
- Recognizes brine as the only commercially contemplated mineral produced under a brine lease
  - any substance extracted from the brine, such as lithium, is part of the brine and included therewith

LOUISIANA

- Louisiana requires more than a simple "is it a mineral?" inquiry, because ownership structure, development rights, and instrument language all have to be read through the Mineral Code.

- The core ownership distinction requires separating minerals occurring naturally in a solid state from oil, gas, and other minerals occurring naturally in liquid or gaseous form.

Louisiana: The Mineral Code Is Broad, But Context Still Controls

- Rather than by common-law labels alone, the mineral-rights analysis in Louisiana is shaped by;

  (1) Mineral Code;

  - Broadly applies to minerals, including oil, gas, soil, gravel, shells, subterranean water, and other naturally occurring substances. (La. R.S. § 31:4)

  (2) Statutory Framework;

  - *Holloway Gravel Co. v. McKowen* classifies mineral-rights through;
    - ➢ the language of the instrument,
    - ➢ the surrounding circumstances, and
    - ➢ the intent of the parties.

Holloway Gravel Co. v. McKowen, 200 La. 917 (1942).

LOUISIANA: Statutory Structure & Mineral Code-Framing

- Louisiana Mineral Code now expressly applies to all forms of minerals and also to rights to explore for or remove substances including subterranean water, including brine.

- <u>Land Ownership</u>
  - Includes minerals occurring naturally in a solid state. (La. R.S. § 31:5)
  - Does not include oil, gas, and other minerals occurring naturally in liquid or gaseous form, or elements or compounds in solution, emulsion, or association with such minerals; instead, the landowner has the exclusive right to explore for and develop them and reduce them to possession and ownership. (La. R.S. § 31:6)

LOUISIANA: Statutory Structure & Mineral Code-Framing

- Key Statutes addressing reasonable regard, basic mineral rights, and the mineral servitude;
    i. La. R.S. § 31:11 states that the landowner and the mineral-right owner must exercise their rights with reasonable regard for each other.
    ii. La. R.S. § 31:16 identifies the mineral servitude, mineral royalty, and mineral lease as the basic mineral rights.
    iii. La. R.S. § 31:21 defines a mineral servitude as the right to use another's land to explore for and produce minerals and reduce them to possession and ownership.
    iv. Lithium: Although not classified as a mineral, lithium is incorporated into the definition of brine, which is owned by the owner of the minerals, whether it be the owner or servitude holder. (La. R.S. § 30:21)

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Louisiana: Lithium

- Louisiana law does not explicitly classify it as a mineral.

- However, given its occurrence as a naturally occurring substance in geological formations, it is likely that lithium would fall under the broad definition of "minerals" in Louisiana, subject to the specific context and intent of the parties involved in a legal dispute.

Mineral Servitudes in Louisiana v. Mineral Estates in Texas

- Louisiana Mineral Code treats a mineral servitude as the right to use another's land to explore for and produce minerals to reduce them to possession and ownership
  - Note: A Louisiana mineral servitude is subject to a 10-year prescriptive period of nonuse; if it is not used within that period, it is extinguished. (La. R.S. § 31:27)

- Texas often analyzes the same dispute through the distinction between the mineral estate and the surface estate.

Mississippi: Title Caution Where the Law is Less Explicit

- In Mississippi, land departments may face the same practical questions there even if the law is less developed or less frequently discussed in the critical-minerals context.

- Where the classification issue is less explicit, title and leasing teams should be cautious before assuming that existing mineral language necessarily includes lithium or other emerging resource targets.

Mississippi: Minerals Defined

- The term "mineral" does not have a universally fixed definition and is subject to interpretation based on the context of the specific legal instrument or statute in question.
- *Singer v. Tatum*
  - "Minerals" is a term of general language, not a term of art, and its meaning can vary depending on the context.
  - "Minerals" is "susceptible of limitation or expansion according to the intention with which it is used in the particular instrument or statute". *Singer v. Tatum*, 251 Miss. 661 (1965).

- Contextual approach: Courts examine;
  - the language of the relevant legal document,
  - the circumstances surrounding the transaction, and
  - the intent of the parties.

Mississippi: Lithium

- Likewise, there is no explicit classification or definition of lithium as a mineral under Mississippi law.

- However, given the court's emphasis on context and intent, the classification of lithium would likely depend on;
  - the specific circumstances; and
  - the language of the relevant legal instrument.

Final Takeaways

- Land departments should not assume that a federal "critical minerals" label answers the state-law ownership question.
- Land teams should therefore ask;
  1. which state's law applies,
  2. whether the instrument date matters,
  3. whether the extraction method affects surface-estate treatment, and
  4. whether the governing code or case law changes the ownership analysis.

Resources

- La. R.S. §§ 30.3, 31.11, 31.16, 31.21, 31.27, 31.4, 31:5, 31:6.
- Tex. Prop.Code § 75.001
- 2024 La. Acts No. 126 (S.B. 285)
- Energy Act of 2020, Pub. L. No. 116-260, div Z, 134 Stat. 2418 (2020).
- U.S. Dep't of Energy, *What Are Critical Minerals and Materials*, https://www.energy.gov/cmm/what-are-critical-minerals-and-materials.
- Dep't of the Interior Geological Survey, *2022 Final List of Critical Minerals*, FEDERAL REGISTER (Feb. 02, 2022), https://www.federalregister.gov/documents/2022/02/24/2022-04027/2022-final-list-of-critical-minerals
- Owen, L. Anderson, Brian Sullivan, Smith & Weaver, Meaning of "Other Minerals", 1 Texas Law of Oil and Gas § 3.6 (2026).
- Acker v. Guinn, 464 S.W.2d 348-52 (Tex. 1971).
- Cactus Water Services, LLC v. COG Operating, LLC, 718 S.w.3d 214 (Tex. 2025).
- Roderick E. Wetsel & Hannah N. Davis, The Quest for Lithium: California Dreamin' or Key to The Magic Kingdom, 18 Tex. J. Oil Gas & Energy L. 198 (May 2023).
- Robinson v. Robbins Petroleum Corp., 501 S.W.2d 865, 867 (Tex. 1973).
- Getty Oil co. v. Jones, 470 S.W.2d 618, 621 (Tex. 1971).
- *Holloway Gravel Co. v. McKowen*, 200 La. 917 (1942).
- *Moser v. United States Steel Corp.,* 676 S.W.2d 99 (1984).
- *Storm Associates, Inc. v. Texaco, Inc.*, 645 S.W.2d 579 (1982)
- *Nicholson v. Upland Indus. Dev. Co.*, 2012 Ark. 326 (2012).
- *Southern Title Ins. Co. v. Oller, 268 Ark. 300 (1980).*
- *Stegall v. Bugh*, 310 S.W.2d 251, 254 (Ark. 1958)
- *Missouri Pac. R.R. Co. v. Strohacker, 202 Ark. 645, 152 S.W.2d 557 (1941).*
- *D.M. Riche, Inc. v. McGowen Working Partners, Inc., 79 Ark. App. 321, 87 S.W.3d 844 (2002).*
- Thomas A. Daily, *Arkansas' Brine Production Business*, INTERSTATE OIL & GAS COMPACT COMM'N (May 12, 2021),
- *Singer v. Tatum*, 251 Miss. 661 (1965).

Thank you!

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