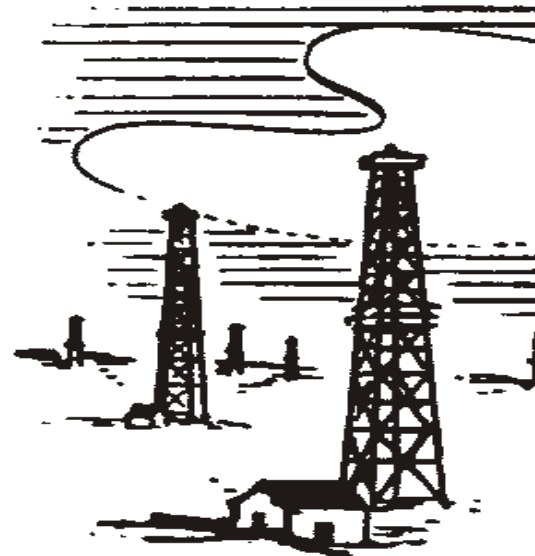


From:

To:

A GUIDE TO SPLIT ESTATES IN OIL AND GAS DEVELOPMENT



What is a split estate?

A split estate occurs when the right to develop oil or gas deposits is severed from the surface. Therefore, one party may own the right to farm the land, build a house, or graze cattle, but another party owns the right to drill for the underlying oil or gas.

How does an estate become split?

Governments around the world have long recognized the importance of reserving mineral rights when giving away or selling land - maintaining the option of developing minerals could mean cash in the future. As land was settled in Montana and the rest of the West under numerous Homestead Acts, the federal government reserved the rights to develop coal and other minerals.

Who owns what?

In Montana, the federal Bureau of Land Management as well as the state of Montana

are large land and mineral owners. But many minerals also are owned privately. Between federal, state and private ownership of either estate, there could be any combination of ownership. Private owners may sell the surface to one party and the minerals to another. Or, the owner of an estate may sell the surface but retain the minerals. In the case of minerals, it is worth noting that under a piece of land, different parties may own rights to different minerals. For example, one party may own the right to develop the coal, while another may hold the rights to the oil and gas.

Where are the mineral ownership records?

The deed to the property is a good place to start. For surface owners, if the deed says ownership of the property is fee simple or fee simple absolute that means the surface and minerals rights are intact unless otherwise indicated in the chain of title. If a personal copy of the deed isn't available, the information is most likely on file with the Clerk and Recorder for the county in which the land is located. A legal description of the land would be helpful in finding mineral deeds, grants or reservations.

If initial searches are unsuccessful, some title companies may be able to assist for a fee. Make sure the company will provide mineral rights in the title search.

What about mineral leasing?

Mineral owners often lease minerals to an oil and gas developer. To find out if minerals are leased, contact the mineral owners if they are known. Mineral leases are usually on file with the Clerk and Recorder for the county in which the land is located. State-owned minerals are administered and leased by the Minerals Management Bureau of the Department of Natural Resources and Conservation. For more information, or to be placed on a mailing list for mineral sales, call 406-444-2074.

Federally-owned minerals are administered and leased by the BLM. The Montana web site for the agency is <http://www.mt.blm.gov>. The site contains information on current and historical sales as well as regulations.

What about partial mineral ownership and pooling?

In some cases, more than one party may own minerals under a parcel of land. Even if some of the mineral owners do not want to drill, Montana law allows that the mineral interests may be still be developed. See Title 82, chapter 11, part 2 of the MCA or call the Board of Oil and Gas Conservation for more information.

Who can do what?

Both the surface and mineral owners in a split estate have property rights. But courts have held that the mineral right has no value unless the oil or gas can be removed from the ground. That means mineral owners have the right to reasonable use of the surface, regardless of whether or not the surface owner grants permission. However, state and federal regulations further define this relationship. Surface and mineral owners are encouraged to open a line of communication as soon as possible to discuss plans and needs. This can happen before drilling is planned. If the surface owner leases the land to another party, the surface owner is encouraged to include the lessee, or any others who may have an interest in the surface use, in discussions about the use of the property.

What happens with exploration?

Most exploration is done with seismic equipment that tests for the presence of oil or gas by shaking the ground. Surface damage is usually minimal.

The exploration firm shall:

- * Apply for a permit from the local County Clerk and Recorder

- * Notify the surface owner when exploration will occur.

The surface owner shall:

- * Provide the exploration firm with the name and address of a contact person.

The surface owner should:

- *Ask for the name and address of the exploration firm, proof of a valid permit, evidence of insurance, the number of the surety bond, a description and

locations of planned activities, the need, if any, to use water.

- * Notify any employees, lessees or others who may be affected by the exploration.

- * Learn who owns the minerals and inquire about future plans, including but not limited to well locations, placement of roads, ponds and other facilities.

Seismic exploration is further explained in Title 82, Chapter 1, Part 1, of the MCA.

What is the drilling notice?

When a surface owner receives a drilling notice, that usually means a developer will be entering the property soon to drill a well. The full text of the law is contained in 82-1-503; MCA.

The developer shall:

- * Provide notice to the surface owner of "any activity on the land surface" which could include survey staking, at least 10 days prior, but not more than 90 days prior to entry.

- * Sufficiently disclose the work plan so the surface owner may evaluate effects on land.

The developer and the surface owner should:

- * Provide each other with contact information that can be used at any time, especially in emergency situations.

- * Work together on the location and appearance of wells, roads, other facilities, power lines, pipelines and impoundment ponds.

- * Discuss conditions of access, including times; dust mitigation and any special situations that may require special attention, such as seasonal agricultural operations.

The surface owner may:

- * Want to examine the BLM handbook of Best Management Practices that addresses such things as facilities placement, road building, visual resources and reclamation. It can be found at local BLM offices and on the web at www.blm.gov/bmp.

- * Wish to consult an attorney.

What are surface damage /disruption payments?

State law says that while developing oil and gas reserves is necessary, surface owners should be justly compensated for damages to the property caused by drilling. When determining damages, consideration must be given to how long the oil and gas activity will be present. The full text of the law is contained in 82-10-504, MCA.

Damages must be paid for:

- * Loss of agricultural production and income.

- * Lost land value.

- * Lost value of improvements.

The surface owner and mineral developer may:

- * Determine the amount of damages by any mutually agreeable formula.

- * Decide on a form of compensation besides money.

The surface owner may:

- * In the case of a producing well, ask that damages be paid annually instead of in a lump sum.

- * Wish to consult an attorney.

The surface owner and developer should:

- * Discuss items such as reclamation of roads and impoundment pond sites; restoration of fences, trees, grasses and shrubs; length of drilling activity; and the handling of produced water.

In the absence of agreement on damages:

- * The surface owner must notify the mineral developer of the damages sustained within two years after the injury occurs.

- * The mineral developer must reply within 60 days with a written offer.

- * If the surface owner does not receive a written reply, rejects the offer or receives a written rejection, the surface owner may bring an action for compensation in the district court of the county in which the damage was sustained.

What about coal bed methane development?

In general, coal bed methane development

falls under the same laws and regulations as oil and conventional natural gas. But state law does address CBM operations specifically in regard to water. The full text of the law is contained in 82-11-175; MCA

Before a CBM well is drilled, the developer shall:

- * Notify and offer a reasonable mitigation agreement to each appropriator of water who holds an appropriation right or a permit to appropriate under Montana law that is for ground water and for which the point of diversion is within one mile of the coal bed methane well or a half mile of a well that is adversely affected by a CBM well. The mitigation agreement must address the reduction or loss of water resources and must provide for prompt supplementation or replacement of water from any natural spring or water well adversely affected by the CBM well. The mitigation agreement is not required to address a loss of water well productivity that does not result from a reduction in the amount of available water because of production of ground water from the coal bed methane well.

Ground water produced from a CBM well may be:

- * Used as irrigation or stock water or for other beneficial uses defined in state law.

- * reinjected to an acceptable subsurface strata or aquifer pursuant to applicable law;

- * discharged to the surface or surface waters subject to the permit requirements of state law.

- * managed through other methods allowed by law.

What if the minerals are federally owned?

The BLM has its own set of regulations that apply to the relationship between a surface owner and mineral developer who leases the federal minerals. The agency produces a brochure called "Split Estate - Rights, Responsibilities and Opportunities." It is available at local BLM offices.

Under those regulations, the mineral developer must make a good faith effort to:

- * Obtain a written surface use agreement

with the surface owner, or

- * Obtain a written waiver for access to the land from the surface owner, or

- * Agree to pay for damages in an amount agreed to by the surface owner, or

- * Post a bond of at least \$1,000.

For More Information

Searchable index of Montana law (MCA)

www.leg.state.mt.us/css/mtcode_const

Board of Oil & Gas Conservation

2535 St. Johns Avenue

Billings, MT 59102

(406) 656-0040

Fax: (406) 655-6015

www.bogc.dnrc.mt.gov

Mineral Leasing Section, DNRC

P.O. Box 201601

Helena, MT 59620-1601

406-444-2074

<http://dnrc.mt.gov/trust/MMB/OG/>

Bureau of Land Management

Montana State Office, 5001 Southgate Dr

Billings, Montana 59101

(406) 896-5000

FAX: (406) 896-5298

www.mt.blm.gov

Montana Land & Mineral Owners Association

www.mlmoa.org

Herb Vasseur

HCR 71 Box 29

Chinook, MT 59523

(406) 357-3563

The MLMOA is a nonprofit organization that aims to promote a better working relationship between those engaged in developing the mineral resources of the area served by the association and the respective land and mineral owners.

Northeast Montana Land and Mineral Owners Association

Dennis Trudell

34410 County Road 147

Fairview, Mt. 59221

406-798-3427

Created by the HB 790 subcommittee of the Environmental Quality Council, this brochure is a summary document and is not a substitute for complete laws and regulations.