EXHIBIT 2
DATE 1/27/11
HB 303

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 a 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 federal regulations, the mineral developer shall make a good faith effort to:	* Obtain a written surface use agreement with the surface owner. * Obtain a written waiver for access to the land from the surface owner. * Agree to pay for damages in an amount agreed to by the surface owner.
If a good faith effort to reach an agreement fails, the mineral developer shall:	* Post a bond of at least $1,000.

For More Information

Searchable index of Montana law (MCA)
www.leg.mt.gov/css/mtcode_const

Board of Oil and Gas Conservation
2535 St. John's Ave.
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.blm.gov/mt

Created by the Environmental Quality Council, this brochure is a summary document and is not a substitute for complete laws and regulations. The brochure reflects Montana law as of October 1, 2007.

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 (BLM) and the state of Montana are large land and mineral owners, but many minerals are owned privately. Among federal, state, and private ownership of either the surface or mineral 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 any 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 mineral 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 or landmen may provide assistance for a fee. Make sure that surface and mineral rights ownership are included 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 lease sales, call 406-444-2074.

Federally owned minerals are administered and leased by the BLM. The Montana website for the agency is www.blm.gov/mt. 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 still be developed. See Title 82, chapter 11, part 2, 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. However, courts have held that the mineral right has no value unless the oil or gas can be removed from the ground. That means that mineral owners have the right to reasonable use of the surface, regardless of whether or not the surface owner grants permission. 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 potential presence of oil or gas by measuring shock waves. 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. * Provide the surface owner with a copy of Title 82, chapter 1, part 1, and Title 82, chapter 10, part 5, MCA, and a current copy of this brochure.
The surface owner shall:	* Provide the exploration firm with the name and address of a contact person. * Provide the name and address of the exploration firm to any lessees, tenants, or other parties responsible for surface operations on the property.
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, and the need, if any, to use water. * Learn who owns and/or leases the minerals and inquire about future plans, including but not limited to well locations and placement of roads, ponds, and other facilities.
The surface owner may:	* Wish to consult with a title company regarding subsurface ownership interests.
What is a drilling notice? When a surface owner receives a drilling notice, that means that a mineral developer may enter the property and begin drilling operations 20 days after the notice is given. The full text of the law is contained in 82-10-503, MCA.	
The mineral developer shall:	* At least 20 days but not more than 180 days prior to entry, provide notice to the surface owner of any activity that will disturb the land surface. (This does not include surveying activities.) * Provide the surface owner with a copy of Title 82, chapter 10, part 5, MCA, and a current copy of this brochure. * Sufficiently disclose the work plan so that the surface owner may evaluate effects on the land.
The mineral developer's surveyor shall:	* Provide 15 days' notice by certified mail before entering on the property unless the notice requirement is waived. * Provide the identity of the person requesting the survey, the purpose of the survey, and the name of the surveyor and the surveyor's employer. * List the dates, times, and location of entry to the land, including the estimated number of entries and provide a timetable for the survey, including an estimated completion date. * Ask the surface owner to provide the surveyor with the name of each person who occupies the land as a tenant or lessee.
The surface owner may:	* Waive the drilling notice requirement. * Request a written surface use agreement. * 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. * Report violations of the notice requirements to the Board of Oil and Gas Conservation. Violations may result in a fine.
The mineral 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, powerlines, pipelines, and impoundment ponds. * Discuss conditions of access, including time, dust mitigation, and any situations that may require special attention, such as seasonal agricultural operations.
What are surface damage/disruption payments? Montana law states that while developing oil and gas reserves is necessary, surface owners must 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 shall:	* Attempt to negotiate an agreement on damages. The amount may be determined by any mutually agreeable formula and, if both parties agree, may be a form of compensation other than money. At the request of either party and upon mutual agreement, the surface owner and the mineral developer may enter into a dispute resolution process, including mediation.
The surface owner may:	* In the case of a producing well, elect to receive annual damage payments over a period of time. * Wish to consult an attorney.
The surface owner and mineral 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 handling of produced water.
In the absence of agreement on damages:	* The surface owner shall notify the mineral developer of the damages sustained within 2 years after the injury occurs. * The mineral developer shall 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 (CBM) development falls under the same laws and regulations as oil and conventional natural gas development. 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 mineral 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 1 mile of the CBM well or 1/2 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 CBM 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.