An Earth Divided

A Guide to Split Estates in Oil and Gas Development

EQC HB 790 Subcommittee 2006

Draft

What is a split estate?

A split estate occurs when the right to develop oil or gas deposits is severed from the surface lands. Therefore, one party will own the land, including grass, trees and dirt, but another party owns the right to develop the underlying oil or gas deposits. If one thinks of a plot of land as a bundle of sticks, each stick represents a property right. The right to plow or build on the surface is one stick. The right to use the water is another stick. And the right to drill for minerals is yet another stick.

How does an estate become split?

Governments around the world have long recognized the importance of reserving mineral rights; maintaining the option of developing gold, silver, oil, and gas, could mean extra 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?

Between federal, state and private ownership of either estate, there could be any combination of ownership. Because mineral rights were reserved under the Homestead Acts, the federal government is the largest owner of minerals. In Montana, the Bureau of Land Management owns nearly 8 million acres of surface land and administers more than 37 million acres of subsurface rights, which are typically leased. About 5 million acres of BLM oil and gas deposits are under private land. The state of Montana, which also leases mineral rights, owns nearly 5 million acres of surface lands and mineral rights, and 1.3 million acres of only mineral rights. 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 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 absolute that means the surface and mineral rights are intact. 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 resides. 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?

The mineral owner often leases the minerals to a developer. State-owned minerals are administered and leased by the Minerals Management Bureau of the Department of Natural Resources and Conservation. The web site is: http://dnrc.mt.gov/trust/MMB/OG. For more information, or to be placed on a mailing list for mineral sales, call 406-444-2074.

The BLM administers federal leases. The Montana web site is http://www.mt.blm.gov. The site contains information on current and historical sales as well as regulations. For more information, call: (406) 896-5000.

What about partial mineral ownership and pooling?

In some cases, several parties may own minerals under a patch of land. Even if some of the mineral owners do not want to drill for the minerals, Montana law allows that the mineral interests may be pooled and developed under an order by the state Board of Oil and Gas Conservation. For more information, see 82-12-202, MCA, http://leg.state.mt.us/css/mtcode_const. Or call the MBOGC at (406) 656-0040 .

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 each others

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 in discussions about the use of the property. See the Key Contacts section for more information.

What happens with exploration?

Before seismic exploration can be done, a permit must be obtained from the local County Clerk and Recorder. The permit holder also shall notify the surface user, before commencing activity, of the approximate time of the exploration. The permit holder shall furnish, *upon request*:

- Name and address of the firm or designated agent.
- Proof of a valid permit.
- Name and address of insurance company or evidence of self insurance.
- The number of the surety bond filed with the Secretary of State.
- A description and locations of planned activity.
- The need, if any, to obtain water from the surface owner.

The surface user is responsible for providing the permit holder with the name and address of a contact person for further communication.

Seismic exploration is further explained in Title 82, Part 1, of the laws of Montana. (MCA) The most current version of the laws can be found at this web site: http://leg.state.mt.us/css/mtcode_const

What is the drilling notice?

In addition to the notice required for exploration activities, the mineral developer shall provide notice to the surface owner of "any activity on the land surface" at least 10 days before that activity, but not more than 90 days prior. The notice must sufficiently disclose the work plan for the surface owner to evaluate the effect of drilling operations. At this time, the surface owner and mineral developer are encouraged to work together on well locations, placement of roads, ponds and other facilities.

Items that might be discussed between the surface owner and the developer include, but are not limited to: the location of roads, facilities, power lines, pipelines and impoundment ponds; conditions of access, including times; dust mitigation; and contact information for both parties. The full text is contained in 82-1-503; MCA. http://leg.state.mt.us/css/mtcode_const

The BLM publishes a handbook of Best Management Practices that addresses such things as facilities placement, road building, visual resources and reclamation. http://www.blm.gov/bmp/

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 the use of their property by mineral developers. The surface owner shall be paid money or other compensation for loss of agricultural production and income, lost land value, and lost value of improvements caused by drilling.

The developer and the surface owner may arrive at the amount of compensation by any mutually agreeable formula. The surface owner is entitled to a lump sum payment or annual payments over the lifetime of the drilling operations.

Items that might be discussed between the surface owner and the developer include, but are not limited to: reclamation of roads and impoundment pond sites; restoration of fences, trees, grasses and shrubs; length of drilling activity; and the handling of produced water.

More information can be found at 82-10-504; MCA. http://leg.state.mt.us/css/mtcode_const

What about water wells near coalbed methane development?

Before a CBM well is drilled, the developer must 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. For more information: http://data.opi.mt.gov/bills/mca/82/11/82-11-175.htm

What if the minerals are federally owned?

The Bureau of Land Management requires the mineral developer to meet one of the following conditions:

1. Obtain an agreement with the surface owner. (Possible items for negotiation include those listed above).
2. Written consent or waiver for access to lands from surface owner.
3. Payment for damages.
4. Post a bond of at least $1,000.

The BLM produces a brochure that specifically addresses this situation. Called "Split Estate - Rights, Responsibilities and Opportunities" it is available at local BLM offices.

Key contacts

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

OTHERS? Different Contacts? Private groups/Trade groups?

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