

BE A SAVVY LANDOWNER: UNDERSTANDING MINERAL RIGHTS

What do Montanans need to know about mineral rights and development?

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Most Montanans don't have to do much thinking if you ask them if they own or rent their property. Montanans have a good understanding of these terms; the concept of land ownership and the rights associated with it are fairly clear to most. However, many Montanans probably are not as familiar with the rights associated with the minerals that may be under the surface of their property.

Property rights associated with land can be divided into two distinct categories: surface rights and mineral rights. Surface rights are generally well-understood. Mineral rights allow the owner to develop (remove) minerals that are contained under the surface. Oil, gas, coal, gold, silver, copper, and others are minerals that could be developed. In some cases, the surface and mineral owner is the same person. This is referred to as a unified estate, fee-simple, or unified tenure. In other cases, the surface and mineral owners are not the same, which is referred to as a severed or split estate.

Why two types of property ownership?

Severed mineral rights exist for two reasons. Most of the privately owned land in Montana was originally transferred to private ownership through a homestead act. Earlier homestead acts often granted both surface and mineral rights while later acts granted only surface rights. After 1916, the federal government retained the mineral rights and did not grant them to homesteaders. In cases when the mineral rights were granted to the private landowner, the landowner may have chosen to split their estate at some point. A landowner

may have decided to sell the mineral rights to a developer or they may have sold the surface rights while maintaining the mineral rights. The landowner may have also transferred the mineral and surface rights to different family members upon their death. For example, one child may have received the surface rights so they could continue farming while another child may have received the mineral rights. Of Montana's 93 million acres, the federal government has retained ownership of 37 million acres of mineral rights while retaining surface ownership of around 26 million acres. The State of Montana owns over 6 million acres of mineral rights but only 5 million acres of surface rights. The Bureau of Land Management (BLM) manages the split estate land involving a private surface owner and the federal government as the mineral owner. The Montana Department of Natural Resources and Conservation manages the state of Montana's land and mineral rights.

How do I find out what type of ownership I have?

The best place to start your research into property ownership is with your property deed. Your deed may indicate the ownership is "fee simple" or "fee simple absolute." Both of these phrases indicate this is a unified estate. If you don't have a copy of the deed or can't determine the status from the deed, you may need to do some research. The Clerk and Recorder's office in the county in which your property is located has a copy of the deed to your property. You will need to find the correct plat book to locate your property (in most counties you can ask the staff for help). Deed numbers will be listed and can then be researched further. You may find multiple deeds for a single property. This history should help

you determine the current status of your property ownership. If you don't have the time, interest, patience, or skill set to do this research, you can hire someone to do a search. Some title companies, landmen, and attorneys can assist with this research. They will charge a fee for their services. The Montana Association of Professional Landmen has an online directory that may be useful in locating a local professional.

Are my mineral rights valuable?

Some mineral rights are quite valuable while many others are not. The value of mineral rights depends on many factors. First, the type of mineral(s) on a property is important. For example, land containing oil is likely more valuable than land containing natural gas. Second, the quantity and quality of the mineral resource is a key factor. Some oil wells produce much more than others. Some mineral reserves contain much higher concentrations of minerals (e.g., gold, silver). The quantity and quality may not be known until exploration or production begins. Thirdly, the cost of extracting the minerals varies due to geography and geology. Finally, the market price (now and in the future) for the mineral often is the most important factor to consider. Private oil and gas mineral rights owners are often able to negotiate a 14 to 19 percent royalty rate on the minerals removed.

How does the mineral development process occur?

The process for developing minerals on a property varies depending, in part, due to the type of mineral (e.g., coal vs. oil) to be developed. Specifically with oil and gas development, it is common for the development of the resource to be done by someone other than the surface owner. The developer typically leases the mineral rights to be developed. The developer may offer to negotiate a surface use agreement with the surface owner. The mineral owner has the right to a reasonable use of the surface even if the surface owner does not grant their permission. Even if the surface owner isn't in favor of the mineral development, it is often in their best interest to communicate with the developer.

Your parcel of land (with mineral rights) may be adjacent to or surrounded by mineral rights that are being developed. The developer will likely contact you about leasing your mineral rights so they may be developed with an adjoining parcel(s). Oil and gas wells are typically developed as regulatory "units" which are determined by the Montana Board of Oil and Gas Conservation. If your acreage is included in a unit, land may be developed with the unit even if you do not agree to a lease. Montana law (MCA 82-11-2) explains when this is allowable.

Conclusion

Mineral development can bring new opportunities to both surface and mineral owners in Montana. Understanding your opportunities with respect to mineral development is the best way to ensure a good experience. For more information:

MSU Extension MontGuide, *Understanding Mineral Rights*, <http://store.msuextension.org/publications/OutdoorsEnvironmentandWildlife/MT201207HR.pdf>

Montana Board of Oil and Gas publication, *A Guide to Split Estates in Oil and Gas Development*, www.leg.mt.gov/content/publications/Environmental/hb790brochure.pdf

Montana Association of Professional Landmen website: <http://maplweb.org/> ■