

YOUR LAND, YOUR RIGHTS

OIL & GAS LEASING

George Smith, a Wyoming rancher, is forced to deal with gas development on his ranch near Sheridan in the documentary film 'A Snowmobile for George.'



Photo by Todd Darling/www.asnowmobileforgeorge.com

Northern Plains Resource Council's campaign to help you protect your land and livelihood from irresponsible oil and gas development.

If you own land where oil and gas will be developed, chances are you face serious impacts. It is very common for the mineral estate beneath a farm or ranch to be owned by other parties — distant family members, other private parties, corporations, or the state or federal government. When rights conflict, mineral rights take precedence. However — regardless of who owns the minerals under your land — when you are asked to sign an agreement, you are signing for your land, your water, and your rights. You can take steps to ensure your interests are protected. **State and federal laws provide varying levels of protection for land owners, but it is up to you to pursue enforcement.**

Mineral Ownership

Determine Who Owns The Minerals

Two different sets of laws apply, depending on who owns the minerals. For minerals owned privately or by the state, state laws apply. For federally owned and leased minerals, state laws may apply in addition to federal laws.

To understand which laws apply to you, you must first determine who owns the minerals under your land. You will need a legal description of your land, which is printed on your title. It's also available at your county courthouse. You may need to contact both state and federal agencies. Contact information is listed to the right.*

State

For private and state minerals, contact the Montana Department of Natural Resources and Conservation (DNRC).

Federal

Contact your local Bureau of Land Management (BLM) office.

Either write a letter, including the legal description of your land, or call the appropriate agency and ask the following questions:

- Are the minerals under my land leased?
- If so, who leased them and when were they leased?
- What are the lease terms, conditions, and stipulations?
- How much money were the minerals leased for?
- When does the lease expire?

STATE

**Julie David
DNRC Minerals
Management Bureau
P.O. Box 201601
Helena, MT 59620
406.444.4576**

FEDERAL

**U.S. BLM
5001 Southgate Dr.
Billings, MT 59101
406.896.5099**

PRIVATE

**Visit the Clerk and
Recorder's office at
the local courthouse
or visit the website
www.glorerecords.blm.gov**

STATE AND FEDERAL LAWS



State Laws

1. WRITTEN NOTICE: Before drilling, the operator must give you written notice of intended drilling operations and a plan of work no more than 180 days and no fewer than 20 days before activity begins. If you do not receive notice within this time frame, the operator may not begin drilling operations.

2. BONDS: The state requires \$1,500 - \$10,000 (depending on depth), or a multiple well bond of \$50,000. The amounts can, at most, be doubled at the discretion of the director.

3. SURFACE ENTRY: After giving written notice, the operator has the legal right to enter your property, drill wells, build roads and pipelines, and generally maintain operations without your permission.

4. SURFACE USE AGREEMENTS: Surface owners and mineral operators must offer a “surface use agreement” to specify compensation for damages. However, these are not required. A well-negotiated agreement can allow you to direct development on your land. See next page.

5. DAMAGE COMPENSATION: Though you cannot legally stop a mineral owner or lessee from accessing his or her minerals, you are entitled to compensation for damages to your property. Montana law entitles you to “the amount of surface damages sustained” for any loss of agricultural production or income, loss of land value, and lost value improvements. You cannot sign away your right to compensation.

However, it is **your** responsibility to prove negligence (see tips on documenting property on back page). If your property is damaged, you must give the operator written notice within two years from when the damage became apparent. The operator must make a settlement offer within 60 days, which you can reject or accept. If you reject, you can take the operator to court.

Federal Laws

1. ENTRY INTO SURFACE LAND: Before entering your property, a federal mineral lessee must negotiate with you to obtain either your consent for access, a waiver of your consent, or an agreement detailing compensation for certain property damages. If you and the mineral operator cannot reach an agreement, **the operator can bypass this requirement by posting two bonds.**

2. BONDS: Failure to reach an agreement requires posting of a surface use bond and reclamation bond with the BLM. The surface use bond must cover damages to crops, permanent improvements, and your land’s grazing value. The bond must be provided to you, along with a description of your right to appeal the amount of the bond. A second copy must be provided to the appropriate BLM officer. **REVIEW THE BOND CAREFULLY.** If the bond is insufficient, you may submit a challenge with the BLM officer within 30 days. If the BLM officer deems the bond sufficient, you have a right to appeal the decision. The reclamation bond must cover the cost of plugging the wells and reclaiming and restoring adversely affected land and surface waters. Standard bond amounts are \$10,000 per lease, \$25,000 for all leases in the state, or \$150,000 for all leases nationwide. If you determine the total reclamation costs will exceed the bond amount, you can request the BLM officer uses his or her authority to increase the bond.

3. DRILLING PLAN: A mineral operator must submit a drilling plan with an application for permit to drill (APD) on your land. A drilling plan must detail the location of proposed roads, well pads, and other facilities; methods for handling waste such as garbage and sewage; reclamation plans; and other requirements. You can request a copy of the drilling plan by contacting the appropriate BLM field office.

4. ON-SITE VISIT: Within 15 days of receiving a complete APD, the BLM must conduct an on-site inspection of the drilling area. You must be invited. Surface use and reclamation stipulations will be developed during the on-site inspection. By participating, you can press for tough reclamation requirements and responsible siting of roads and other infrastructure.



YOUR RIGHTS

Negotiating Surface Mitigation Agreement

Before signing anything, consider the following:

- Most sample agreements do not address potentially difficult issues such as reclamation or site selection for drilling and pumping facilities.
- In all cases, consult with an attorney before signing, read any documentation thoroughly, ask questions and **NEVER SIGN ON THE FIRST VISIT!**
- Keep detailed records of any correspondence.
- Try to negotiate an agreement that compensates you for any loss of crops, access to your land, property devaluation, and loss of clean water. Also, negotiate criteria that require the operator to reclaim when drilling ceases.
- Propose development alternatives that make sense in terms of your agricultural operation.
- Understand infrastructure and facilities that development might require on and under your land.



Deb Thomas photo

Industry operators create a drilling pad for tight-sands natural gas on the edge of the Beartooth Mountains in Wyoming. Here you can see the heavy equipment, trailers, changes to the landscape, and an unlined waste pit covered with dirt in the lower right.

Leasing Your Own Minerals

1. BEWARE OF SAMPLE FORMS: Sample forms tend to favor industry interests because most legal work drafting oil and gas lease forms is done within the industry. **NEVER SIGN ON THE FIRST VISIT!**

2. BECOME INFORMED: Gather as much information as possible. Understand the infrastructure and facilities that may be required on or under your land, research going rates for similar leases or deeds, and ascertain the operator's reputation and history. Deeds and leases are freely sold or traded, so the company signing the lease may be different from the one that arrives on your property.

3. GET WHAT YOU WANT UP FRONT: Unless limitations are specified in a lease, a court will allow for all activities "reasonably necessary" to development. Courts have allowed tree cutting, employee housing, large waste lagoons, noisy compressors and other facilities over landowner objections. Get all of the stipulations before signing.

4. IF YOU HAVE ALREADY SIGNED A LEASE: This limits your ability to negotiate more favorable terms, but you can do the following: determine the lease limit, ask how and where workers will be housed (man camps), and stay in touch with state and federal agencies to ensure compliance with applicable laws.

Possible Lease Terms

- Timely reclamation for current and future land use
- Off-property waste disposal
- Agreed-upon dispute resolution method
- Compensation for damages to all land uses
- Landowner indemnity if operations damage a third party
- Landowner attorney fees when prevailing in litigation arising from lease
- Operator compliance with all laws
- Specific method for computing royalties and landowner right to check computations.

WHAT YOU CAN DO NOW

Protect Your Property

If your water becomes contaminated or a section of your land becomes irreputably harmed due to oil and gas development, but you can't prove the pre-damage condition, you could have a hard time showing the historic state of your property. Although you are entitled to compensation for damages to your property from drilling, you must be prepared to demonstrate your properties pre-damage condition.

Quantify what makes your property valuable, including irrigation water, artesian springs, wetland areas, crops, pastures, and other improvements. How much would you pay to replace a spring and bring clean water to your property perpetually? How much would it cost to replace hay from a meadow?



Take and date photos of springs, creeks, structures, meadows, wetlands, and other property enhancements. Keep copies of receipts that indicate the value of crops, cattle, etc.

Fracking is often used to increase production. Fluids are injected underground at high pressure, the formations fracture and oil or gas can flow freely. Some of these fluid remain underground. A number of these, such as diesel fuel, qualify as hazardous, carcinogens, and are toxic enough to contaminate groundwater resources, but are exempt from hazardous materials status. Residents across the U.S. have reported a change in water quality after fracking. See our Hydraulic Fracturing factsheet for more information.

Documenting Tools

- Photos and video footage
- Soil and water samples (including flow)
- Receipts
- Descriptions of improvements, such as fences, corrals, irrigation systems, structures, etc.
- Estimated cost for replacement of improvements, crops, etc.
- Detailed inventories of acreage, crops, price per acre, head of cattle, etc.

Keep informed! Take action! Join

Northern Plains Resource Council is a grassroots conservation and family agriculture group that organizes Montana citizens to protect our water quality, family farms and ranches, and our unique quality of life.

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Visit our website at
www.northernplains.org



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