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Unearthing Mineral Rights:

An Insider's Guide to Searching Titles for Mineral Rights

Introduction

Mineral rights can be one of the more difficult types of property to research and manage, but at times can also be among the most lucrative. Like the underground treasures they represent, mineral rights can lie hidden and forgotten about for ages, and may require considerable digging to unearth.

This guide is designed to help readers understand how mineral rights work and how to determine the ownership of these rights for any particular piece of property. In the process, we will cover:

- The definition of mineral rights.
- The different types of mineral rights.
- Ownership of mineral rights.
- Reasons for selling or leasing mineral rights.
- How mineral rights are leased.
- Common types of mineral rights deals.
- How to search titles to locate mineral rights.
- Improving the search process.

What are Mineral Rights?

The term "mineral rights" refers to the legal ownership of minerals on (or technically under) a piece of real estate. Whoever owns the minerals has the "right" to extract and sell them. Note that the term "minerals" can refer to almost anything of value that exists under the ground. It does include rocks and ore (such as coal, iron, gold or precious stones), but it more commonly involves oil or natural gas.

Mineral Rights vs. Surface Rights

Mineral rights are distinguishable from surface rights, or the right to use the surface of the land. When most people think of land ownership, they focus on the surface rights, which include:

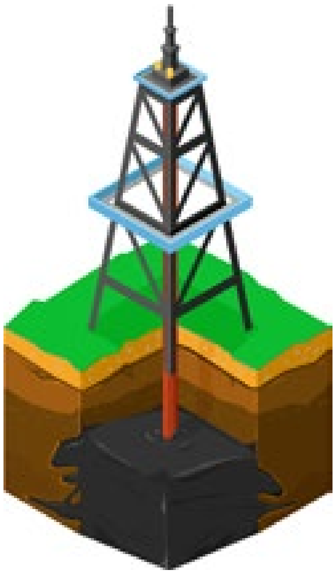
- Any buildings or other man-made structures on the property. Surface rights allow you to build homes, pave roads or put up fences.
- Any plants or animals on the property. This includes the right to raise crops or livestock, as well as logging or hunting activities.
- Any surface water.
- The topsoil, rocks, gravel or sand that is on the surface.

Mineral rights basically include anything below the surface of the ground, whether that be a few feet down or many miles below the surface.

Mineral Interests

The money that comes from developing and selling the oil, natural gas, coal or other minerals from a piece of property is usually divided between different parties that have an interest in the production. At the very least, the revenues are usually split between the owner of the mineral rights and the company that extracts them from the ground. But there can also be other parties that own an interest in part (or all) of the royalty payments.

- A mineral interest is the standard mineral rights ownership. The mineral interest includes ownership of the minerals, the right to execute leases, and the right to collect both royalties and any upfront bonus payments.
- A royalty interest includes rights to the royalty payments, but not to any upfront bonuses.
- An overriding royalty interest only involves the royalties from the current mineral lease. It does not include ownership of the minerals themselves.
- The working interest is the drilling or mining company that actually extracts the minerals, and pays the royalties or bonuses.



Who Owns Mineral Rights?

The exact ownership of mineral rights can get complicated, making it difficult to determine exactly who owns what. In fact, it is not unusual for landowners (those who hold the surface rights) to have no idea who owns the mineral rights to their property. Sometimes, they may not even know whether or not they themselves hold the mineral rights.

Unified vs. Split Estates

Every piece of land contains both mineral rights and surface rights. The mineral and surface rights can be owned together, or can be split between different owners.

- A unified estate, or "fee simple" property, is one in which a single person or company owns all of the rights to the land.
- A split estate, or a piece of land that has severed minerals, is one in which the surface rights are owned separately from the mineral rights.

The mineral rights can become severed if, at any point in the land's history, the owner decides to sell the mineral rights while keeping the surface rights (or sell the surface rights while keeping the mineral rights). In some cases the federal government has severed mineral rights when granting homesteads; only the surface rights were included, while the minerals were reserved by the U.S. Bureau of Land Management.

In split estates, mineral rights can supersede surface rights when the mineral owner needs to go through the surface to extract the natural resources. The surface owner cannot block access to the minerals. They are entitled to compensation for the use of the surface, though.

Fractional Ownership

The mineral (and/or surface) rights for a single estate can also be split among different owners. This is called fractional ownership. Fractional ownership can be set up in different ways:

- Tenants in common own the rights together, with each tenant owning a percentage of the whole. They can pass that ownership on to their heirs.
- Joint tenants with rights of survivorship likewise each own a percentage, but only for their lifetimes. When one of the tenants dies, their percentage will be divided among the surviving owners.

Ownership can also be split by dividing the land itself into different fractions. In this case, though, the result is simply a collection of smaller estates; each new owner still has 100 percent of the mineral rights for their acreage.

In addition, the rights for different types of minerals can be owned separately. For instance, the mineral rights holder may sell the rights to oil and gas on the estate, but not include the mining rights for coal.

Sale vs. Lease

As with the land itself, mineral rights can be transferred via either sale or lease.

A landowner may sell the mineral rights, and therefore create a split estate, in order to cash out the long-term value to cover some shorter-term expense. Often, such sales occur when the current owner does not think any minerals will ever be extracted, or at least not within their lifetime or not soon enough to meet their financial needs.

Mineral rights are also often sold as part of an inheritance. For example, a person who inherits mineral rights may prefer to receive cash instead of managing a long-term asset. Or, the mineral rights may be sold because passing them on to heirs would create a complicated fractional ownership situation.

Leasing mineral rights, on the other hand, is used to facilitate the exploration and production of the natural resources. The average mineral rights holder does not have the capital, equipment, know-how or desire to do the actual work of mining mineral deposits or drilling for oil or gas. Likewise, mining and drilling companies prefer not to own the mineral rights to land that may or may not have any minerals to extract. Leasing provides a workable solution that limits the company's risk, while also providing some income for the mineral rights owner (even if no minerals are produced).

National Mining Association

Per Capita Consumption of Minerals - 2012 (Pounds Per Person)	
Bauxite (Aluminum)	78
Cement	556
Clays	152
Coal	5,666
Copper	12
Iron Ore	348
Lead	11
Manganese	6
Natural Gas	8,435
Petroleum Products	6,473
Phosphate Rock	207
Potash	33
Salt	349
Sand, Gravel, Stone	15,253
Soda Ash	35
Sulfur	79
Uranium	0.18
Zinc	7
Other Metals	24
Other Nonmetals	488
Total	**38,212**

SOURCES:
US Geological Survey; Energy Information Administration; US Census Bureau
Updated April 2013; 2012 data are preliminary.

How are Mineral Rights Leased?

The process of leasing mineral rights involves several steps.

Preliminary Research

Before leasing the mineral rights on a piece of land, the drilling or mining company must have some interest in developing the land. That interest will be based on some kind of preliminary research to determine whether the land is likely to contain oil, gas, coal or other minerals that the company can extract and get to market. It may be based on existing geological data, the known presence of the resources in nearby areas, or simply an educated guess.

Establishing the Lease

Often, the owner (or owners) of the mineral rights for a targeted piece of land are not clearly known. Research must be done to determine who the prospective lessor is.

The parties then have to come to an agreement on the lease terms. A typical lease arrangement usually includes an upfront bonus payment, which secures the right of the company to explore the land for minerals, as well as the royalties to be paid on any minerals that are extracted.

Exploration

The lease will usually specify a certain period of time for the lessee to survey the land and prospect for minerals.

Seismology is often used to look for mineral deposits located deep underground, Man-made seismic waves are created by setting off explosions, or by the large weights carried on "thumper" trucks. The waves travel through the ground and are reflected by different geological features. The reflected waves are then recorded and analyzed.

If the exploration company does not find any useful deposits, or otherwise fails to start production before the date specified in the lease, the lease expires. The mineral owner keeps the upfront bonus and keeps ownership of the mineral rights, which can then be leased to someone else.

Production

If the drilled well hits oil or gas, or the mining operation digs up ore, production can commence.

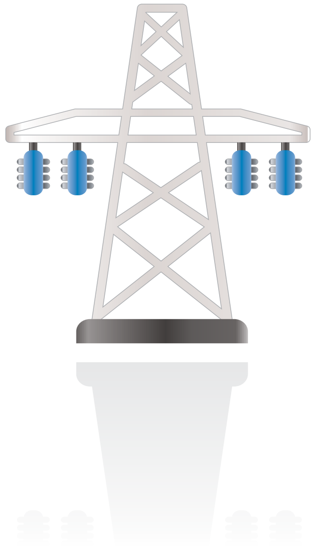
The production company pays royalties to the lessor according to the terms of the lease. The royalties are usually based on a percentage of the revenues produced, though the payments can be structured in other ways.

For oil and gas, a single well can draw from a pool that extends under adjacent properties. Usually, the mineral owners for those lands must also be paid royalties.

The lessee may choose to delay production until a pipeline, road or railway is constructed to transport the product. In such cases, the lease contract may require a delay rental payment to compensate the lessor for the lack of immediate royalty checks, and to prevent the lease term from expiring before production begins.

What are the Most Common Types of Mineral Rights Deals?

There are several different types of transactions that would necessitate searching for mineral rights records. Some of the more common types of mineral rights deals include:



- Leased mineral rights. As detailed above, leasing mineral rights to facilitate their production is a very common type of mineral rights deal. Compared to most other types of leasing, it can also be a quite sizeable deal: though there is a set lease term for the exploration phase, the contract usually states that the production phase can last as long as there are still minerals to be extracted. This usually takes decades to accomplish.
- Co-owned or shared mineral rights. Mineral rights can be divided into fractional ownerships, either through sale or inheritance. The individual fractions can be further divided, sometimes into different types of co-ownership. The eventual result can be a quite convoluted ownership structure that makes leasing deals much more complicated. Different co-owners may independently negotiate different lease deals, for instance, or they may be required to sign off on the lease arrangement of a joint tenant. In some cases, a court order may be required to develop the mineral assets of an unwilling co-owner.
- Severed mineral rights. Deals involving severed mineral rights come with their own set of potential complications. The owner or owners of the mineral rights must be found by searching through title records. The affected surface owner or owners will have to be compensated for any damages to their property, and special accommodations may be required to limit the impact to the surface.
- Transferred mineral rights. Sales of mineral rights usually include ownership of all the minerals present, unless stated otherwise. For instance, someone could choose to sell the oil and gas rights while retaining the rights to all solid minerals, but the deed would have to specifically state which minerals are excluded. Leases are the opposite: they only apply to the specific minerals written into the terms of the lease, and exclude any resources that are not listed.
- Abandoned mineral rights. In some cases, severed mineral rights that go unused for a certain period of time—commonly, 20 years—may revert back to the surface owner. Such unused rights are considered to be abandoned. Mineral rights are generally considered "in use," and therefore not abandoned, if they have been sold, leased, put into production or officially claimed by filing a record with the county.

How to Search Titles to Locate Mineral Rights

Determining who owns which mineral rights for a particular piece of land can be a tedious, time-consuming and sometimes costly process. It often requires searching through the entire title history of the land, which may be split between different tracts owned by different people. You must determine if, when and how the mineral rights were split off from the surface rights, and track down the chain of mineral deeds. And it may require looking up multiple other types of records, such as probates, divorce filings and mortgages.

Below is a step-by-step guide to the title search process.

1. **Determine where the titles are located.** Before searching through the titles, you must determine where they are filed. Traditionally, all land records are filed in paper form at the courthouse of the county in which the land is located. So, there may be some travel involved in researching the titles.
2. **Gather identifying information about the property.** To begin your search, you need to find the current title to the land in question. If you do not have a copy of the title, you can get one in the county assessor's office. To find the title, you will want to have as much identifying information for the property as possible. Examples include the address, tax ID number and name of the current owner.
3. **Search the title index.** Different counties have different ways of indexing the title you are looking for. In some cases, a single county may have more than one indexing system, depending on when the deed was filed

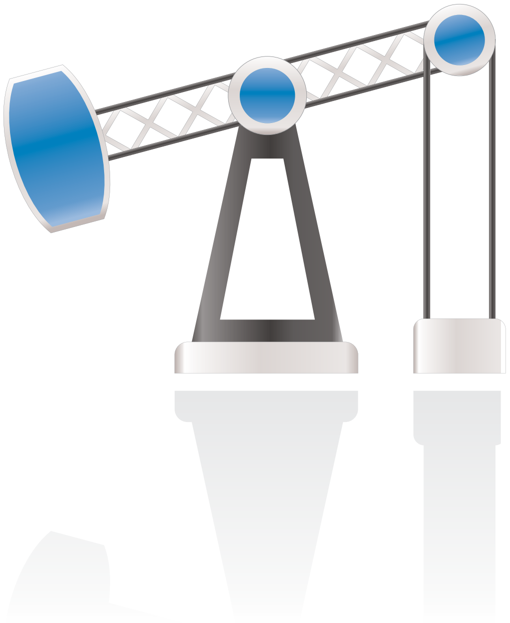
> "Courage, determination, and hard work are all very nice, but not so nice as an oil well in the back yard."
>
> Cooley, Mason

and the system they were using at that time. Because of this, you may want to enlist the aid of a county employee to find out how to search their system.

4. **Read the title.** Once the current title is located, you should read it closely and look for clues. In particular, you want look for any exceptions or reservations, since they may spell out which mineral rights were or were not included in the sale.

5. **Identify the prior title.** Locate the section on the document that identifies the prior title, which is the deed that was held by the seller (or “grantor”) of the current title.

6. **Find and read the prior title.** Essentially, repeat steps 3 through 5 above. Depending on how often the land has changed hands, you may have to repeat the process many times to piece together the entire chain of ownership. Again, you are looking for clues that indicate what mineral rights, if any, are still attached to the surface rights, and where any rights were severed from the property. The transfer of mineral rights may be stated on one of the deeds, or it may be hinted at if one deed excludes mineral rights that were included on the previous title.



7. **Fill in any gaps.** You may come across a gap in the title record, where the buyer (or buyers) on an old deed does not match up with the seller (or sellers) on the newer deed. That means the land changed hands in-between those two records. The change in ownership could be due to foreclosure, marriage, divorce or death. If the title itself does not explain the discrepancy, you may have to look through other records, such as:

   - Probates.
   - Marriage licenses.
   - Divorce decrees.
   - Foreclosures.
   - Mortgage releases.
   - Liens.
   - Tax sales.

8. **Identify the original mineral deeds.** When you have a clear picture (or as clear as possible) of the chain of ownership for the land, you should be able to tell which mineral rights are attached to the property and where the other mineral rights were transferred. The next step is to track down the chain of ownership for any severed mineral rights. Instead of working backwards through time, as with the property titles, you will be starting with the oldest mineral deeds and following the chain forward to the present. This is usually more difficult than working backwards, because the original mineral deed does not tell you when it was later sold. It also does not list who the next buyer in the chain is; it just lists the owner who might have later transfer the rights.

9. **Search for more recent mineral deeds.** Since you do have the potential seller's name, you can look up any property sold by that person in the local grantor's index. As with the property titles in step 3, there are different ways of organizing a grantor's index, so you will have to find out which system the county uses.

10. **Track the progression of the mineral rights.** When you do find more recent mineral deeds in the chain, you will likewise want to read them closely and look for clues (step 4). You will want to search for the next possible deed (or deeds, if the mineral rights become further divided) in the chain by looking up the new owner in the grantor's index (step 9). And you will need to do additional research if there are any gaps in the chain (step 7).

Eventually, you will end up with the current mineral deeds, which have not yet been transferred to anyone else. These deeds will list the current owners, who can be contacted directly. The current mineral rights owners may have the information needed to fill in any gaps in the chain, and should know if there are any current mineral leases on the property.

Conclusion

Searching titles for mineral rights is a necessary chore, and requires equal parts persistence and detective skills. For the right deposit of gas, oil, coal or mineral ore, though, it is a task that is well worth the trouble.

Improving the Search Process

As the world moves further into the information age, the process of searching property titles is rapidly becoming easier. Instead of traveling from courthouse to courthouse and manually digging through rooms filled with centuries of paperwork, the public records from more than 500 counties are now digitized and instantly available online at CourthouseDirect.com. The online database of courthouse records allows you to easily search by name, address, tax number or legal description of the property—and do so from the comfort of your home or office.

If you have any questions or would like to learn more about searching property titles for mineral rights, please feel free to contact us at any time.

Start Searching Mineral Right Titles >>

"The meek shall inherit the earth, but not its mineral rights."
Getty, J. Paul