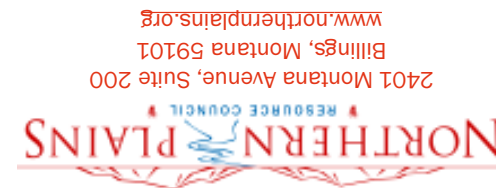


YOUR LAND, YOUR RIGHTS



DOING IT RIGHT:
Protect your land
and livelihood
from irresponsible
coal bed methane development



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YOUR LAND, YOUR RIGHTS



If you own land where
coal bed methane will be developed,
chances are you face
serious impacts.

**DON'T WAIT UNTIL THE BULLDOZERS ARE AT YOUR GATE.
TAKE ACTION NOW TO PROTECT YOUR PROPERTY AND LIVELIHOOD.**

The **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 unique quality of life. Information in **YOUR LAND, YOUR RIGHTS** reflects Northern Plains' understanding of state and federal laws as of September 2003.



PROTECTING YOUR LAND

If you own land where coal bed methane will be developed, chances are you face serious impacts. Few landowners own all of the minerals under their land. The average farm or ranch sits over a checkerboard of mineral parcels with owners ranging from distant family members, other landowners, corporations, and the federal government.

The federal government, in fact, owns 60% of Montana's methane. Roughly 90% of federal methane sits under private farms and ranches.

When mineral and surface rights conflict, the mineral right takes precedence. This is a hard reality for many landowners to accept. The roads, compressor stations, pipelines, wastewater pits, dust, and traffic that accompany methane development can destroy hay meadows, spread noxious weeds, disrupt farm or ranch operations, and generally devalue property.

Though laws favor mineral rights, you have protections. However, you cannot wait for government agencies or industry to protect your rights for you. **Only you can ensure mineral operators respect your property and your livelihood.**

YOUR LAND, YOUR RIGHTS can help you minimize damages to your land. Inside, you will find information about:

- How to determine who owns the minerals under your land, whether they've been leased, and who leased them;
- State and/or federal laws that apply to your situation;
- Tips for negotiating a good lease, surface agreement, or water well mitigation agreement;
- Concrete things you can do right now to protect your property and your livelihood.

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MINERAL OWNERSHIP

A man telephones. He says he's leased the minerals under your land and will be by tomorrow with a bulldozer to begin drilling operations. Is that legal? The answer is no. In most cases, he will have to provide you with written notice first, and may have to post a bond to cover potential damages. State and federal laws provide varying levels of protection for landowners. 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.

DETERMINE WHO OWNS THE MINERALS

To understand which laws apply to you, you must 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 the county courthouse). You may need to contact both state and the federal agencies. Contact information is listed to the right.*

STATE

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

FEDERAL

- In Carter, Treasure, Rosebud, Custer, or Powder River Counties, contact Bernice Knopp at the Bureau of Land Management's (BLM) Miles City office.
- In Sweet Grass, Stillwater, Carbon, Wheatland, Golden Valley, Musselshell, Yellowstone, or Big Horn Counties, contact Chun Wong at the Billings BLM office.

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

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

*The Montana Department of Environmental Quality, while not responsible for leasing, oversees implementation of Montana's environmental laws and could be a valuable source of information.

STATE

Montana DNRC
Minerals Management Bureau
PO Box 201601
Helena, MT 59620-1601
406.444.4576

Art Compton
Montana DEQ
PO Box 200901
Helena, MT 59620
406.444.6754
acompton@state.mt.us

FEDERAL

Bernice Knopp
U.S. BLM
111 Garryowen Road
Miles City, MT 59301
406.233.3652

Chun Wong
U.S. BLM
5001 Southgate Drive
Billings, MT 59101
406.896.5099



STATE AND FEDERAL LAWS THAT APPLY TO YOU

After determining mineral ownership, the next step is to figure out what laws pertain to the minerals under your land so that you can hold methane operators and government agencies accountable. If the minerals under your land are privately-owned or owned by the state, then only state laws apply. If the minerals are federally-owned, then in most cases, both state and federal laws apply.*



STATE

1. WRITTEN NOTICE: Before drilling, the methane operator must give you written notice of intended drilling operations and a plan of work no more than 90 and no fewer than 10 days before activity begins. If you do not receive notice within this time frame, the methane operator has no right to begin drilling operations.

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

3. 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 of improvements. This right to compensation cannot be reserved, assigned, or severed from the surface estate. In other words, you cannot sign your right to compensation away. Additionally, methane operators are responsible for all damages resulting from a lack of ordinary care. That means a methane operator is responsible for any damage to your property caused by drilling.

It is your responsibility to prove negligence (see tips on documenting your property’s condition on page 6). If an operator’s actions damage your property, you must give the operator written notice within two years from the damage’s occurrence (or two years from the date at which it became apparent). The operator must make a settlement offer within 60 days. You can reject or accept the offer. If you reject, you can take the methane operator to court.

4. SURFACE USE AGREEMENTS: Surface owners and mineral operators sometimes negotiate “surface use agreements” to specify compensation for damages, although these agreements are not required. A well-negotiated agreement can allow you to direct development on your land, from the location of roads to a payment schedule for damages. For negotiating tips, review “Negotiating for your Rights” on pages 5 and 6.

FEDERAL

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 agreement, the operator can bypass this requirement by posting two bonds.

2. BONDS: Failure to reach agreement requires posting of a surface use bond and reclamation bond with the appropriate BLM officer. The **surface use bond** must cover damages to crops, permanent improvements, and your land’s grazing value. The bond must exceed \$1,000 and be provided to you, along with a description of your right to appeal 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 wells and reclaiming and restoring adversely affected land and surface waters. Standard bond amounts per company are: \$10,000 per lease, \$25,000 for all leases in a state, or \$150,000 for all leases nationwide. If you determine the total reclamation costs will exceed the bond amount, you can ask the BLM officer to use his 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, sewage, and produced methane wastewater; 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, to which 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.

*Laws regulating federally-owned minerals may vary depending on the law under which the surface was transferred to private ownership. Contact an attorney to determine those laws that apply to your situation.



NEGOTIATING FOR YOUR RIGHTS



Regardless of who owns the minerals under your land, when you are asked to sign a lease, a surface use agreement, a surface damage agreement, or a water well mitigation agreement, you are negotiating for your land, your water, and your rights. Go the extra mile to make sure your interests are protected!

LEASING YOUR OWN MINERALS

Landowners who own their own minerals have the power to ensure that their property is protected. The following information applies to those who wish to lease, or who have leased their minerals.

1. BEWARE 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 a 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 injection facilities over landowner objections. Get all concessions or stipulations before signing.

4. IF YOU HAVE SIGNED A LEASE: Signing a lease limits your opportunity to negotiate more favorable conditions. But, you can:

- Determine lease time limit. Most leases are subject to forfeiture if development has not occurred within a specified term. You can renegotiate an expired lease.
- Research accommodation alternatives. Courts will require methane operators to adopt alternatives that protect landowners if they allow for reasonable development. Educate yourself about alternatives, and be ready to advocate for them.
- Some damages can be avoided by ensuring operators comply with applicable statutes. Stay in touch with state and federal agencies. See page 2 for contact information. Or contact Northern Plains.

POSSIBLE LEASE TERMS

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

NEGOTIATING A SURFACE OR WATER WELL MITIGATION AGREEMENT

Odds are you'll be approached by a methane operator with a sample surface or water well mitigation agreement in hand. State law requires methane operators to offer water well mitigation agreements to landowners living within 1/2 mile of a methane field or a water well adversely affected by methane development. Before signing anything, consider the following:

- Most sample agreements don't 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 document 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 water or extra water pumping costs. Also, negotiate criteria that require the methane 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.

WHAT YOU CAN DO NOW: DOCUMENT YOUR PROPERTY

If a spring goes dry because of methane drilling, but you can't prove the spring's historic water level, then you could have a hard time showing the loss of water in court. Though you are entitled to compensation for damages to your property from methane drilling, you must be prepared to demonstrate your property's 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 use electricity to pump water in perpetuity? How much would it cost to replace a hay meadow? Take and date photos of springs, creeks, sub-irrigated meadows, and other water sources. File for water rights on all water uses. Keep copies of receipts that indicate the value of crops, cattle, etc.

DOCUMENTING TOOLS

- Photos and video footage
- Soil and water samples
- 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/acre, head of cattle, etc.