

North Dakota Petroleum Council

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Surface Owner Info Center



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Surface Owner Info Center

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Surface Owner Info Center

Surface owner issues can sometimes be difficult to understand, especially in a split estate situation. "Split estate" is the term used when ownership of the surface estate is legally severed, or split from ownership of the subsurface mineral estate. The members of the North Dakota Petroleum Council recognize this difficulty and want to provide you with the resources to address your questions and to help you understand issues that typically affect a surface owner. Below are some frequently asked questions and the answers are intended to help surface owners.

[View the SOIC Glossary of Terms](#)

- What surface owner notifications are the operator required to make prior to commencement of drilling operations under North Dakota law?
- What surface owner notifications are the operator required to make prior to conducting seismic and geophysical operations under North Dakota law?
- What do North Dakota laws say regarding measurement and payment of surface damages for seismic and/or oil and gas drilling operations?
- Is there a way to compare the value of an offer of surface damage payment with other land value estimates?



Questions Answered

- Before a company commences drilling, what notification to a surface owner is the company required to make under North Dakota law?
- What are the considerations for determining payments to surface owners for land impacts from seismic and drilling operations as described by North Dakota law?
- What can a surface owner expect during wellpad staking, new well development and drilling, and well completion operations?



Google Analytics

- Site visits up nearly 20% over last month
- May 1 – Aug 24, 2010
 - 61,719 pageviews
 - 26,094 visits
 - ROIC, SOIC and FAQ account for more than 14,250 of pageviews
 - Country visits
 - US 24,628
 - Canada 960
 - Norway 103
 - UK 59
 - India 37
 - Australia 26



NDPC Ad Hoc Committees

- Transportation
- Road Infrastructure
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- Regulatory
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- Royalty Owners
- Bakken VOC
- Split Estate/Surface Owner
- Communications
- Oil Can!
- Membership
- Workforce
- Tribal Lands
- Producer Export Capacity



Split Estate Task Force

Eric Dillé

Brief EOG Overview

EOG Offices, Stanley, ND



EOG Rail Facility, Stanley, ND



EOG Gas Processing Facility Stanley, ND



Overview of Split Estate Task Force

- Summer 2009 Industry hearing complaints
- NDPC members take proactive steps
 - Stand up industry split estate task force, Jan '10
 - Develop Surface Owners Information Center
 - FAQ's for split estate surface owners
 - Develop Communications Plan
 - Start SOIC and post FAQs on NDPC web site, April '10
 - Educate through public forums such as Cookfest, Oil Can!, and Tidbits, ongoing public forums

Previous Surface Owner Issues

- Testimony from March 2010 to Interim NRC
- Lack of negotiation
 - Since shared right not a buyer/seller transaction
 - Permission to stake location of pad, access road, etc. is typically negotiated at this time
- Annual payments
 - NDCC allows for annual payments OR lump sum, not annual payments AND lump sum
- Devaluation of property
 - Dividing land, aesthetic, nuisance and noise damages
 - If paying for nuisance and noise, then farming operations need to be addressed
 - Subjective statement, How is devaluation determined?
Example?

Previous Surface Owner Issues

- Large disparity in what companies offer
 - Actual damages to crops is ND law
 - Business transaction – one size does not fit all
 - Locations of wells
 - Size of the well pad
 - Length of the access road
 - Different farm land has different value
 - Different operators have different philosophies and operational issues
 - Lease expirations, rig movements, etc.

Why differing Payments?

- Differences in surface damage payments
 - Mineral lease vs. easement
 - Mineral lease for drilling
 - Oil and gas minerals are separate property than the surface and can be sold or leased separately.
 - A mineral lease includes the right to use the surface to access minerals.
 - In split estate situation, the surface owner has a “shared” property right
 - Surface damages are based on actual losses suffered
 - Wind towers, cell towers, pipelines are easements
 - Easement is a right held by one party to make use of the surface of another for a limited purpose, as right of access.
 - An easement is “purchased” to access and use the land. Surface owner can negotiate whatever price he wants and purchaser can pay fair and reasonable price.
 - The wind tower, cell tower, or pipeline owner has no property right.

What does the Law say?

(note: this is not intended as an exhaustive legal opinion and should not be used as such)

- State of North Dakota Oil and Gas Production Damage Compensation Act, N.D.C.C. Chapter 38-11.1
 - The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages, consideration must be given to the period of time during which the loss occurs and the surface owner may elect to be paid damages in annual installments over a period of time; except that the surface owner must be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section only cover land directly affected by drilling operations. Payments under this section are intended to compensate the surface owner for damage and disruption. Section 38-11.1-04
 - ND Supreme Court has not been presented with a case concerning the determination of the amount or nature of surface damages under NDCC 38-11.1
 - The statute was examined by federal 8th Circuit Court of Appeals, applying ND law, and affirming the federal District Court for ND. In *Murphy v. Amoco Production Company*, 729 F.2d 552, 556, n.3 (1984), the 8th Circuit Court emphasized that N.D.C.C. Chapter 38-11.1 did not require “a developer to pay for anything other than the **actual damage** to the surface estate which results from development...” There is no reason to suspect that a ND state court applying the same statute would rule any differently, and consistently, the federal District Court in Montana reached the identical result when examining Montana’s surface protection act.

Surface Damages Value

- What do surface damages pay for?
 - ***Actual damages*** to crops at fair market value
 - Most operators are paying above crop market prices
 - for loss of agricultural production and income
 - lost land value
 - lost use of and access to the surface owner's land
 - lost value of improvements.
 - Mineral owner has the right to access minerals and therefore is ***not*** paying for access

Surface Damages Value

- Accounting for management and labor costs
 - The 2008 North Dakota Farm Business Annual Report for the western 1/3 of ND lists net income/acre after management and labor costs for several crops.
 - After management and labor costs the average NI is \$22.53/acre and the median NI is \$46.95/acre.
 - Both of these values are well below the \$/acre paid by operators.
 - In 2008 five different crops (corn, corn silage, oats, small grain hay and peas) **lost money** which demonstrates that weather risk is significant year to year. In the case of corn in 2008, losses were significant at -\$51.58/acre.
 - This information shows that operators typically pay more than fair market value for actual damages.

Is there a Problem?

	Number of	Number of	Unsettled	Unsettled
<u>OPERATOR</u>	<u>Locations</u>	<u>Settled Damages</u>	<u>Surface Damages</u>	<u>%</u>
EOG Resources	328	311	17	5%
Marathon	205	198	7	3%
ConocoPhillips	100	97	3	3%
XTO	72	71	1	1%
Newfield Exploration	69	63	6	9%
Continental Resources	250	245	5	2%
Whiting Petroleum	190	190	0	0%
TOTAL	1214	1175	39	3%

Current ND Law Works

- North Dakota already has good protection for split estate surface owners.
- The current law is working
 - 97% of locations have settled damages
 - Only 3% of locations are not settled but are being worked on