



Mineral Rights Integration Information Sheet

Idaho has seen increased interest from companies seeking to drill for oil and gas. Mineral interest ownership (including oil and gas rights) and how those resources can be extracted is often complicated.

Oil and gas resources have the potential to be pooled in large geologic formations below the surface, with a patchwork of different mineral interest ownerships covering this formation. Wells typically drain oil or gas owned by multiple mineral interest owners. The legal principle of correlative rights establishes that each owner in a pool has the opportunity to produce his just and equitable share of oil and gas in a pool without waste.

Oil and gas mineral interests are divided into spacing units to ensure proper spacing of the wells and efficient and economic development of resources while protecting correlative rights. Idaho's Oil & Gas Conservation Commission (Commission) has set the standard spacing unit at 640 acres for natural gas and 40 acres for oil in the Oil and Gas Rules (IDAPA 20.07.02.120).

Idaho requires an operator developing oil and gas resources to pay production royalties to the mineral interest owners in these established spacing units, on a pro rata basis according to the number of mineral acres held by each owner in the unit. Pro rata means that every mineral interest owner is paid a royalty in proportion to the amount of mineral acres he or she owns.

What happens if within the patchwork of mineral interest owners some want to drill and others do not? Or perhaps mineral interest owners or their heirs can't be located? Most oil producing states allow for voluntary and involuntary [integration](#), which allows those who want to drill for resources to move forward while making sure other mineral interest owners in the spacing unit receive their fair share financially.

In accordance with state law ([Idaho Code § 47-322](#)), after good faith negotiations, it would take mineral interest owners with 55% of the mineral interest acres supporting the application (by leasing or participating as a working interest owner) in order for a well operator to submit an integration application with Idaho Department of Lands (IDL)

The integration process begins with the operator making a good faith effort on at least two occasions to negotiate an agreement with each uncommitted owner in the spacing unit. The applicant then sends the integration application to IDL along with other supporting information. After staff determines the application is complete, IDL then mails a copy of the application and notice of hearing to all known and located uncommitted

owners. The applicant publishes notice of the application, hearing, and response deadline in the county newspaper for those uncommitted owners who could not be located. IDL also publishes notice on its website.

The hearing must be held within 30 days of the applicant filing a complete application, and owners must file any objections or responses at least 7 days prior to the hearing.

IDL's Director, or a hearing officer on his behalf, conducts a hearing, listening to testimony from the applicant and uncommitted mineral interest owners in the spacing unit. If all legal requirements are met, the Director shall issue an integration order with terms and conditions that are just and reasonable. Integration orders must provide the following options for the unleased mineral interest owners to participate in the drilling and production of oil and gas within the unit.

- 1) **Participate as a Working Interest Owner** – The mineral interest owner will pay the proportionate share of the actual costs of drilling the well up front as an investment, then receive their proportionate share of the production of the well. They will not get their investment refunded if the well turns up dry.
- 2) **Elect to be a Non-Consenting Working Interest Owner** – Mineral interest owners can choose to invest without paying drilling costs upfront. They will receive a 1/8 royalty until the operator has recovered up to 300 percent of the non-consenting working interest owner's share of the drilling and operating costs. This is called a risk-penalty and is considered the working interest owners' investment in the well, similar to an investment in a business. Once the penalty is met, the owner will receive 100 percent of their proportionate share of the production of the well from that point forward. They are not required to pay the risk-penalty if the well turns up dry.
- 3) **Lease (Voluntary)** – This can be done by signing a lease with an operator (applicant) under the lease approved in the integration order. The owner shall receive a one-eighth (1/8) royalty. A leasing owner will be paid the same bonus per acre as the operator originally paid to other owners in the spacing unit.
- 4) **Objector** – Mineral interest owners can object to the participation, and they will be deemed leased under terms and conditions established in the integration order, as described below. The owner may elect to have his royalty payments directed to the STEM Action Center.
- 5) **Deemed Leased** – Mineral interest owners can decide not to enter any agreement with an operator. They will be deemed leased, under terms and conditions established in the integration order, and given 1/8 royalty. The owner also receives a bonus payment based on the highest bonus paid in that spacing unit. They are not subject to paying any costs of the well nor is there any risk-penalty.

Mineral Rights Integration Frequently Asked Questions

Q. How do I find out if I own the mineral estate on my property?

A. In the State of Idaho, the mineral estate is conveyed unless the mineral estate has been specifically reserved or is already separated from the property. If the documents show a complete or partial mineral reservation by any previous owner it means you do not own the mineral estate that was reserved. If the documents show a mineral reservation by the Idaho Department of Lands or in the federal patent, you do not own the portion of the mineral estate that was reserved. If you own the mineral estate no reservation will be shown against the property.

Title insurance policies do not necessarily disclose whether the mineral estate has been previously severed. If a title insurance policy was previously issued insuring your ownership interest, the title company that issued the title insurance policy is able to look it up for you. If mineral interests are expressly exempted from the policy's coverage, the title company may be able to conduct a mineral title examination for you. Contact your title company for further information.

If the property was previously owned by the State of Idaho, you may check whether the State retained mineral estate ownership by going to <http://gis1.idl.idaho.gov/DLR/> or by calling 208-334-0200.

Q. What if there are different owners for the surface and mineral estates?

A. This is called a split estate. Let's say Sam owns both the surface and mineral estates on his property, then sold the surface estate to his brother Fred while reserving the entire mineral estate to himself. Fred may build a house and live on the property, but since Sam retained his mineral estate, Sam is the person an oil and gas company will approach to sign an oil and gas lease and Sam will receive royalties from the lease. Also, the surface estate is "servient" to the mineral estate, meaning the mineral estate owner may use as much of the surface as is reasonably necessary to recover his minerals.

Q. A company has approached me about drilling a well in my section. What options do I have?

A. If you are both the surface and mineral interest owner, you have three basic options: 1) voluntarily negotiate a mineral lease agreement, 2) request to participate in the well, or 3) in the absence of an agreement, possibly be subject to integration before the Commission.

Q. Do I need a Surface Use Agreement?

A. If you own the surface estate and the drilling company wants to cross your property, or if they want to put the well on your property, the drilling company must attempt to reach a Surface Use Agreement with you that, at a minimum, compensates you for lost agricultural income and lost value of improvements directly caused by the oil and gas production. If you are unable to reach agreement on a bond amount, then you can file an objection with IDL, which will determine a surface use bond to be held by the Department and paid to you if the affected lands are not reclaimed.

Q. I've been told that our minerals are being integrated. What does that mean?

A. Integration is a process used to ensure the orderly development of the crude oil and natural gas resources in the State of Idaho. It also ensures that all mineral interest owners within a specific spacing unit receive their fair share of the profits of the minerals.

When a mineral interest owner cannot be located or the mineral interest owner chooses not to participate or sign a lease agreement, the operator may apply for integration through IDL. The Director decides the terms and conditions which must be met for the drilling to move forward. The Director will set a specific time frame for the mineral interest owner to decide on one of five options: agree to a lease, participate as working owner interest, elect to be a non-consenting working interest owner, elect to be an objector, or be deemed leased.

Q. How do I know the cash bonus and conditions that are being offered are fair?

A. The terms and conditions of mineral lease agreements are negotiable and terms and prices paid vary. Although many factors influence the price paid, generally the value of the mineral interest is relative to the potential for resource development in that area. You should consult with an attorney licensed to practice in Idaho whenever signing a contract or lease in Idaho.

Q. I don't own the mineral estate on my property and a company wants to drill on my land. Can I stop them? What are my options?

A. It is not uncommon for part or all of the mineral estate to have been severed from the surface ownership at the time of the land sale. The common law principle is the mineral estate is dominant over the surface estate and surface owners must allow a reasonable portion of their land to be used for drilling and production. The mineral interest owner has a right of reasonable access but is subject to obligations of reasonable accommodation, and is responsible for any damages to the surface estate.