

## OIL & GAS ISSUES IN THE COLLINGWOOD SHALE

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SUSAN HLYWA TOPP  
TOPP LAW, PLC

## OIL & GAS LAW BASICS

- Oil and gas mineral interests are part of the realty until the time that they are severed;
- The ownership of the mineral interests can be severed from the ownership of the surface estate;
- The severance of mineral interests from the remainder of the land may be effectuated by a reservation or exception in deed;
- Upon the severance of title to the mineral interest from the remaining land, the mineral estate and the surface estate each become freehold estates in fee simple and are subject to laws of dissent, devise, and conveyance;

## OIL & GAS BASICS CONT.

- The owner of the severed mineral interests may lease the interests;
- Under an oil and gas lease, the lessee acquires the right to use and occupy that portion of the surface of the land that is needed for the exploration of oil and gas; and
- The owner of the surface estate has an implied duty to allow the owners of the mineral estate to exercise their rights to extract oil and gas.

## MINERAL ESTATE IS DOMINANT

- ▣ MINERAL RIGHTS ARE AN INTEREST IN REAL PROPERTY THAT CAN BE OWNED SEPERATELY FROM THE SURFACE.
  - When the minerals are severed from the surface, two separate estates exist: the surface estate and the mineral estate.
  - When the mineral estate is severed from the surface, the mineral estate is the dominant estate and the surface estate is the servient estate.
  - The owner of the mineral estate can make "reasonable use" of the surface estate that is necessary for the development of the minerals.

## DORMANT MINERAL STATUTE

- ▣ Michigan Dormant Mineral Act, MCL 554.291 et seq
  - Any interest in oil or gas in any land owned by any person other than the surface owner that has not been sold, leased, mortgaged, or transferred by an instrument recorded in the office of the register of deeds for 20 years is deemed abandoned if
    - 1) a drilling permit is not obtained;
    - 2) actual production is not obtained from the property or pooled unit;
    - 3) interest not used for underground gas storage.

## REGULATION OF OIL AND GAS DEVELOPMENT

- ▣ PART 615, NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, MCL 324.61501 ET SEQ. (SUPERVISOR OF WELLS ACT)
  - Administrative Rules MAC 324.101-324.1301
  - Administered by Geological Survey Division, even when there is contamination from a release.

## WHAT IS THE EFFECT OF A SEVERED MINERAL ESTATE?

- ▣ RISK OF FUTURE MINERAL DEVELOPMENT ON THE SURFACE.
  - Mineral owner can drill wells, build roads, lay pipelines, and construct other facilities on the surface without obtaining the consent of the surface owner.
  - Surface owner not entitled to damages for diminution in value.
    - See Topp, *Severed Minerals: Are Surface Owners Entitled to Damages for Diminution of Their Property Value?* Vol.78, No. 2 Mich. B. J. 148 (Feb. 1999)
    - Court's logic is that it would be a windfall to the surface owner because they presumably paid less for the property.
  - Doctrine of "reasonable accommodation"
    - Customary uses in the industry
    - Surface owners intended use must be documented

## TITLE INSURANCE

- ▣ MINERAL RIGHTS ARE EXCEPTED
  - Title insurance companies except mineral rights and mineral conveyances from the title policy.
  - If you want verification of mineral ownership, a separate mineral title search must be obtained from a company who specializes in such searches.
  - The search results should be reviewed by an oil and gas attorney who will draft a mineral title opinion.

## DEEDS

- ▣ MINERALS ARE TRANSFERRED WITH THE SURFACE ESTATE UNLESS THEY ARE EXCEPTED AND RESERVED IN THE DEED.
  - If not carved out by Seller, Buyer gets what ever the Seller owned.
  - If the minerals were reserved to the Seller in the purchase agreement, but erroneously not retained in the Deed, the courts have reformed the Deed based upon the intent of the parties as reflected in the purchase agreement.

## MINERAL OWNERS

- The companies use "landmen" to solicit oil and gas leases from mineral owners.
- The lease forms are drafted for the benefit of the company, not to protect you
- There is much to be negotiated in the oil and gas lease to protect the interest of the mineral and property owner.

## WHO ARE THE PLAYERS?

- ▣ ENCANA
  - Leasing companies are Energy West or Coughlin Land or Mason Dixon
  - Canadian company with office in CO
- ▣ CHESAPEAKE
  - Leasing company is Western Land Services
  - OIL Niagara in Traverse City

- ▣ Core Energy
  - Leasing under Hidden Valley, Inc.
- ▣ Atlas
- ▣ Meridian
- ▣ Continental (out of play)
  - Leasing by Exterra

## WHAT IS THE COLLINGWOOD

- ▣ The Collingwood is a shale between 9,000 and 10,000 feet deep in the Utica formation, below the Niagaran and above the Trenton.
- ▣ Developed by horizontal drill. May have 5 to 8 wells on one drill pad.
- ▣ Anticipate the production unit to be 640 acres.

## THE OIL AND GAS LEASE

- ▣ This will set the stage for what the company can do and how they will do it on your property for the next 30 years.
- ▣ Look past the signing bonus – understand what the lease says and doesn't say
- ▣ Do not be pressured into signing – do not sign a lease you are not comfortable with
- ▣ Verbal promises do not count - EVER

- ▣ Have your issues addressed in an addendum to make the lease work for you.
- ▣ A good lease is a win/win for you and the company, but you must fight for it.
- ▣ Do not sign a lease without having it reviewed by an oil and gas attorney first, it is a contract. We cannot help you after it is signed and the consideration is paid.

## GRANTING CLAUSE

- ▣ Lessor, for and in consideration of \$ , the receipt of which is hereby acknowledged, does hereby grant, lease and let unto Lessee the land described below, including all interests therein Lessor may acquire by operation of law, reversion or otherwise, (herein called "said land"), exclusively, for the purposes of exploring by geophysical and other methods, drilling, mining, operating for and producing oil and/or gas, **together with all rights, privileges and easements useful or convenient** in connection with the foregoing and in connection with treating, **storing**, caring for, transporting and removing oil and/or gas produced **from said land or any other land adjacent thereto**, including but not limited to rights to lay pipelines, build roads, drill, establish and utilize wells and facilities for **disposition of water, brine or other fluids**, and for enhanced production and recovery operations, and construct tanks, power and communication lines, pump and power stations, and other structures and facilities.

- ▣ CAN USE SURFACE FOR OPERATIONS ON ADJOINING LAND
- ▣ INCLUDES RIGHT TO DRILL DISPOSAL WELLS
- ▣ STORAGE

## ROYALTY

- ▣ You only get paid a royalty if your land is included in a production unit
- ▣ Most leases offering 1/6
- ▣ Have seen some leases for 3/16
- ▣ Other states paying 1/5 for shale leases

### **TERM**

- ☐ PRIMARY AND SECONDARY
  - MOST LEASES ON THIS PLAY 5/5
  - BONUS HAVE RANGED FROM \$300 TO \$2,000
  - BONUS FOR SECONDARY TERM SHOULD BE SAME AS PRIMARY TERM

### **CONSULTATION AND DEVELOPMENT PLAN**

- ☐ Lessee and Lessor shall mutually agree on the location of drill sites, tanks and necessary structures for production equipment, and the course, route and direction of roads and pipeline installations.

- ☐ The locations should be a minimum of 500 feet from any existing building unless the prior written consent of Lessor is obtained.
- ☐ If you object to the proposed locations, propose an alternate location to Lessee.
- ☐ Do not make unreasonable requests of the Lessee.

### **Non-Development**

- ☐ Need 5 acres for these drill site pads, plus access road and pipeline
  - Been advised that road and pipeline needs to be 50 feet wide during construction
- ☐ Drill sites do not have to be precise location
- ☐ No reason why you cannot negotiate certain portions of your property as non-development areas

### **DAMAGES**

- Signing Bonus is consideration for granting of the lease, not compensation for damages
- Negotiate per acre damages for well pads, pipeline routes and access corridors that reflect fair market values

### **INJECTION WELL/COMPRESSOR**

- ☐ Should only be located with consent
  - Understanding is that will not be one at every drill site
  - Risk of trucking in brine from other wells
- ☐ Compressor Facilities
  - Have been advised these wells will need compression
  - Separately negotiate.

### **MUD/BRINE PITS**

- ▣ Used during drilling process for brine and fracing
- ▣ When well completed, will suction off liquids and bury the plastic liner in place
- ▣ Limit use to well on your property only to prevent trucking of brine

### **Post Production Costs**

- ▣ Some companies not charging any
- ▣ Encana Lease says "all PPC's from well head to point of sale"
- ▣ OIL and other leases enumerates specific PPCs then includes all PPC's in catch all phrase.
- ▣ Statutory limits
- ▣ Negotiate these.

### **WATER PROTECTION**

- ▣ Good idea to sample your own water
- ▣ Require water protection clause that includes provision of alternate water supply if contaminated
- ▣ Require that the Lessee notify you of any spills of contaminates on the property

### **TIMBER**

- ▣ Specify how timber will be handled, you want to have the option to remove yourself
- ▣ Cut in sawlog lenth/8 foot lengths for pulpwood
- ▣ Have your forester value the timber before it is cut

### **Compulsory Pooling**

- ▣ Company can petition the Supervisor of Wellls to force pool your land if you do not agree to lease
- ▣ Cannot use your surface
- ▣ Treated as a working interest owner or investor and get 1/8 royalty and penalty
- ▣ Not a bad way to go if cannot negotiate a good lease.

### **THINK IT THROUGH**

- ▣ Consider the way you currently use your property and how you might use it in the future
- ▣ Consider preservation of pastures and fencing of pipelines to prevent injury
- ▣ If the company really wants to lease you, the landman will work with you or your attorney to reach an accommodation.

▣ IF IT ISN'T IN THE  
LEASE, IT NEVER  
HAPPENED.

**Contact information**

- ▣ TOPP LAW GAYLORD
- ▣ [WWW.TOPPLAW.COM](http://WWW.TOPPLAW.COM)
- ▣ SUSAN TOPP
- ▣ 989-731-4014