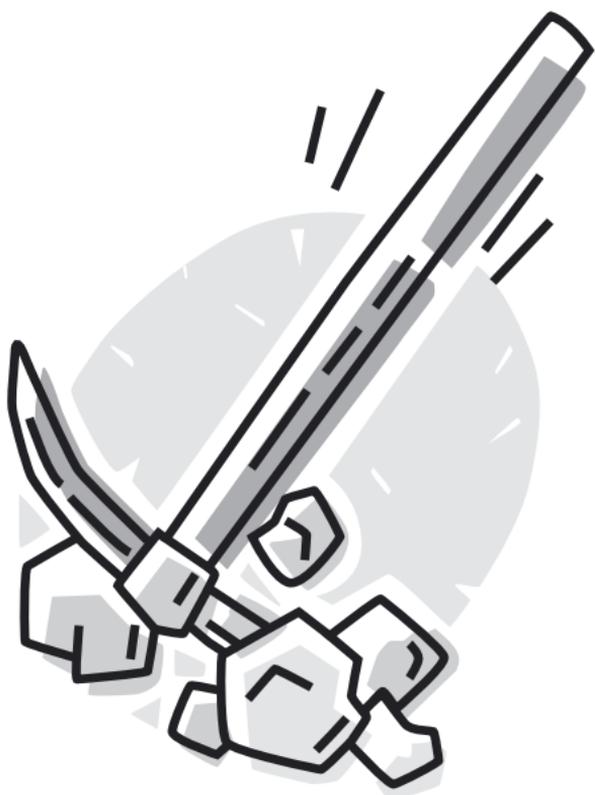


# Do you really OWN the minerals under your land?



Montana State Office



Public Lands USA:  
Use, Share, Appreciate

## Did You Know?

There is a good chance if you purchase property in Montana (and many other areas in the Rocky Mountain West), you may not be getting ownership of as much of the property as you think you are. An estimated 11.7 million acres of the private land in the state of Montana is split estate, meaning the surface land rights are privately owned and the subsurface mineral rights are federally owned.

## Stock Raising Homestead Act (SRHA)

Why do landowners find themselves in this situation? It's largely the legacy of the Stock Raising Homestead Act passed by Congress and signed into law by President Woodrow Wilson in 1916. This law allowed a settler to claim 640 acres of nonirrigable land that had been designated by the Secretary of the Interior as "stock raising" land. At a time when mineral exploration was beginning to escalate, the federal government opted to maintain the mineral rights to the land claimed under that 1916 law.

The actual language found on a SRHA patent for this mineral reservation is: "Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 862)."

## What does "other minerals" mean?

The term "other minerals" includes (but is not limited to): leasable minerals (oil, gas, geothermal, phosphate, sodium, and potassium), locatable minerals (gold, silver, copper, gypsum, and bentonite), and mineral materials (including sand, gravel, scoria, pumice, and stone). In 1982, the Supreme Court affirmed the SRHA mineral reservation definition and further defined it to include substances that:

1. are mineral in character,
2. are inorganic,
3. can be taken from the soil,
4. can be used for commercial purposes,
5. were not intended to be included in the surface estate,
6. have a separate value,
7. are not necessarily metalliferous, and
8. may not necessarily have a definite chemical composition.

## What does this mean to you, as a land owner?

- You own the surface rights on lands patented under SRHA and have the right to develop these lands in the manner set forth by the Homestead Acts, as intended by Congress. This includes developing water sources and infrastructures associated with grazing and raising forage crops.
- Available mineral resources found on these patented lands can be used for the improvement and maintenance of said lands. Generally, the owners of the surface estate where the federal government owns the mineral estate may use, without the benefit of a sales contract or permit, minimal amounts of mineral materials for their personal use within the boundaries of the surface estate.
- As the land owner, you **do not** have the right to sell the mineral resources from lands patented under SRHA. The mineral rights are reserved to the United States and are under the jurisdiction of the Department of the Interior and managed by the Bureau of Land Management (BLM).

## How do I determine the mineral ownership if I'm a land owner or mineral operator?

Contact your local BLM office, which will be able to assist you in determining if the minerals are federally owned. A specialist will check the master title plat for both surface and mineral ownership and will also check the original land patent to determine under which Homestead Act your lands were originally patented. Some Homestead Acts only reserved certain minerals, where the SRHA reserved all minerals.

Several recent trespass cases have involved land owners who thought they owned the minerals and minerals operators with an approved operating permit or small miner exclusion statement (SMES) from the State of Montana (MT DEQ).

An approved operating permit or SMES from MT DEQ does not authorize removal of mineral materials from lands with federally owned minerals. These materials are available by purchase only from the BLM. Please contact your local BLM office for more information concerning this program.

## What should you do if you may have or are removing and/or selling minerals that belong to the United States?

**Stop immediately.** The extraction, severance, or removal of mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by permit or sale, is an act of trespass. Trespassers may be liable for damages to the United States and may be subject to prosecution for such unlawful acts. A trespass may be:

- An Innocent Trespass, which refers to taking of mineral materials inadvertently and in good faith under a genuinely mistaken belief of a right to so extract the mineral, or
- A Willful Trespass, which refers to a trespass done deliberately, intentionally, or willfully with knowledge that it was in violation of law.

If you are unsure or have questions, please contact your local BLM office for assistance.

## MT/Dakotas BLM Offices and Phone Numbers

Montana State Office  
(406) 896-5004

Billings Field Office  
(406) 896-5013

Butte Field Office  
(406) 533-7600

Dillon Field Office  
(406) 683-2337

Glasgow Field Station  
(406) 228-3750

Havre Field Station  
(406) 265-5891

Lewistown Field Office  
(406) 538-1900

Malta Field Office  
(406) 654-5100

Miles City Field Office  
(406) 233-2800

Missoula Field Office  
(406) 329-3914

North Dakota Field Office  
(701) 227-7700

South Dakota Field Office  
(605) 892-7000