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# GISH LAW OFFICE

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## INTRODUCTION...

There are many interesting and complex legal issues and concerns that surround freehold mines & minerals interests.

The aim of this pamphlet is to provide some general information that may be of some use and interest to mines & minerals owners and to highlight some special considerations and current legal controversy.

## SAME BASIC OIL AND GAS TERMINOLOGY

The oil and gas industry is highly regulated in Alberta. There are many, many different statutes that affect interests in mines & minerals. The Alberta Energy and Utilities Board (EUB) is a quasi-judicial governmental body that is also the major regulatory body. Some of the goals of the EUB include conservation, prevention of waste, promotion of safe, efficient and environmentally responsible oil and gas field practices, and development in the public interest.

**Drilling Spacing Units (DSU)** – In general, the EUB allows 1 gas well per section of land and 1 oil well per quarter section of land.

**Pooling Agreement** – the object is to group, or “pool” adjoining lands together to form a DSU. Entry into a pooling agreement may be voluntary or compulsory.

**Unitization Agreement** – sometimes in the interest of efficiency, DSU’s will be combined or “unitized” to form an oil or gas field. Unitization is voluntary.

**Tract Allocation** - this represents each owner’s share in a pooling or unitization agreement.

Most freehold leases contain a clause that gives the oil and gas company the power and discretion to enter and exit from pooling and unitization agreements without the mines & minerals owner’s consent.

## THE NATURE OF AN OIL AND GAS LEASE

An oil and gas lease is properly construed as a **profit à prendre**: a right or privilege to go on another’s land and take away something of value from its soil or from the products of its soil (from Black’s Law Dictionary, 7<sup>th</sup> ed.). If you leased your house, you would expect your tenants to leave it in substantially the same state. In contrast, the essential object of an oil and gas lease essentially is to destroy the leased substances through exploitation.

Freehold leases tend to be written strongly in favour of the oil and gas company simply because the oil and gas company holds the power position. Most mines and minerals owners cannot exploit and realize the benefits of production and ownership without an oil and gas lease in place.

## STORAGE RIGHTS

Pursuant to a provision enacted in 1994 in the Alberta *Mines and Minerals Act*, the mineral owner also owns underground storage rights.

Oil and gas companies often store excess product in underground caverns. When transmission costs and consumer demands are high, the oil and gas company can take product out of “inventory,” sell it at a premium price and maximize profits.

The granting clause in a freehold often grants the oil and gas company storage rights without any additional royalty payment or rent.

## SPECIAL CONSIDERATIONS FOR RIPARIAN OWNERS

Riparian owners (those who own parcels of land adjacent to water) who also have rights to or ownership of mines and mineral should

be wary of a provision in the Alberta *Mines and Minerals Act*. The Crown, as owner of the beds and shores of water bodies, will not be held liable for damages if they receive royalties that rightfully belong to the riparian owner through mineral accretion (that is, where the bed and shore of the water body decreases, thereby increasing your land base). Nor will the oil and gas company be liable. This provision does not operate to protect the riparian owner if the mineral accretion operates in favour of the Crown (that is, where the bed and shore of the water body increases, thereby decreasing your land base). This problem can be avoided if riparian owners have recent plans of survey registered at the Land Titles Office.

Presently, however, there is controversy around the law of accretion and riparian rights in Alberta. It may not always be advisable to seek to have a new plan of survey registered. For this reason, and because of the potential longevity of an oil and gas lease, and also because lease payments and signing bonuses are based on acreage, it may be advisable to reserve riparian rights from an oil or gas lease, or alternatively, to allow for the possible contingency of mineral accretions that may occur in your favour.

### **WHO OWNS THE COAL BED METHANE (CBM)?**

Coal bed methane may be best known as the culprit that causes explosions in coal mining operations. In the past it has been characterized as a very dangerous nuisance. Nowadays, it is seen as a valuable resource. It is estimated that Alberta has some 250 trillion cubic feet of CBM in reserve (compare with natural gas at 54 trillion cubic feet). In Alberta, development and production of CBM as an energy resource is in its infancy.

Many titles in Alberta convey ownership of "ALL MINES AND MINERALS EXCEPT COAL..." It is unsettled law in Canada whether or not the owner of the coal also owns the CBM. There is a strong argument that the gas owner owns the CBM. As many freeholders are potential owners of the CBM, it is in their interest to prevent coal mining to stop the waste of CBM gas until this issue is settled.

### **INFORMATION CONTACTS**

The government of Alberta has a helpful publication entitled "Leasing Mineral Rights". Copies can be obtained by request to:

Publishing Branch  
Alberta Agriculture, Food and Rural Development  
7000 – 113 Street  
Edmonton, Alberta T6H 5T6  
Telephone: 780 427 0391 Fax: 780 422 8835  
Toll Free: 1 800 292 5697

**Copies can also be downloaded from their website:** [www1.agric.gov.ab.ca](http://www1.agric.gov.ab.ca)

Click on 'Directories,' then 'Books & Videos,' then 'Free Publications,' then 'Agricultural Economics.' Scroll down the headings to 'Farm Policy.' There you will find "Leasing Mineral Rights" available to download and print.

The Freehold Owners Association (FHOA) is a very good source of information for mines and minerals owners. FHOA is not-for-profit organization that is committed to providing freehold mines & minerals owners with current information and continuing education relating to mines & minerals interests. There is a \$25.00 annual fee for membership. The Freehold Owners Association may be contacted at:

The Freehold Owners Association  
1403 – 12<sup>th</sup> Street SW  
Calgary, Alberta T3C 1B3  
Telephone: 403 245 –4438  
Fax: 403 245 – 4420  
E-mail: [fhoa@shaw.ca](mailto:fhoa@shaw.ca)  
Website: [www.fhoa.ca](http://www.fhoa.ca)

## **IN CLOSING**

It is strongly recommended that freeholders seek professional advice before signing any oil and gas lease. An oil and gas lease has the potential to last a very, very long time – do not sign anything without being clear on the terms of the agreement. There is always room for negotiation.

This office can assist you in interpreting the terms of your oil and gas lease. We can recommend professional consultants who are immersed in the oil and gas industry, and ready and able to help you obtain the most favourable lease.

If you have other questions or concerns about your mines & minerals interests, please do not hesitate to contact us and set up an appointment.