



2009 Statutory Changes for Oil and Gas in North Dakota

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This year, the Sixty-first Legislative Assembly of North Dakota passed a number of oil and gas-related bills and amendments to existing mineral ownership statutes. A new Chapter 35-07 establishes that prior to payment of proceeds, oil and gas interest owners have a continuing security interest in and a lien upon severed oil and gas or the proceeds from the sale thereof. The statute outlines the requirements for notice to any party against whom a lien is filed as well as the procedures for perfection, continuation and enforcement of the lien.

With regard to oil and gas operations, Section 38-08-08(1) now provides oil and gas operators the option of using a 16% fixed acreage weighted-average royalty interest for any unleased, separately owned, mineral interest in a spacing unit pooled after July 31, 2009. Effective August 1, 2009, amended Section 47-16-39.1 provides operators who fail to pay royalties to unleased mineral owners within 150 days of production are required to pay 18% interest on those royalties.

Subsection 9 of Section 57-51.1-03 was amended, as an emergency measure, to activate the oil extraction tax rate reduction for horizontal wells ("horizontal tax holiday") when the West Texas Intermediate average price for crude oil, less \$2.50, falls below \$55 for one month. As provided in the subsection, after April 30, 2009, the revised statute provides that during the first 18 months after completion of drilling of a horizontal well, the lesser of the first 75,000 barrels of oil or the first \$4,500,000 of gross value at the well, is subject to a reduced tax rate of two percent of the gross value at the well. The horizontal tax holiday deactivates on the first day of the following month in which the average price of a barrel of crude oil exceeds \$70. The provision is effective for taxable events occurring only through June 30, 2012.

Regarding mineral ownership, North Dakota's Dormant Mineral Act (Chapter 38-18.1) saw a number of changes. A new provision in Section 38-18.1-05 allows a party, other than the record owner of purportedly lapsed minerals, to preserve the record ownership, by recording an affidavit which asserts the factual and legal basis for the record ownership. As provided in Section 38-18.1-06, this must be done within sixty days after first publication of notice that the minerals have lapsed.

Under amended Section 38-18.1-06, any claimant intending to succeed to purportedly lapsed minerals must be "an owner in the surface estate in the land in or under which the mineral interest is located" with the added requirement in subsection (6) for any such claimant, in order to meet the requirement of "reasonable inquiry" into the record mineral owner's address, to search (a) the county records for the existence of any uses, as defined in section 38-18.1-03, by the record mineral interest owner; (b) the clerk of court's records for the existence of any judgments, liens, or probate records which identify the owner of the mineral interest; (c) the social security death index for the last-known residence of any deceased owner of the mineral interest; and (d) one or more public internet databases to locate or identify the owner of the mineral interest or any known heirs of the owner. There are no statutory obligations for a claimant to conduct internet searches on private fee internet databases.

Chapter 38-18.1 adds a new section addressing the procedures for perfecting title in a surface claimant of purportedly lapsed interests, which requires bringing an action in district court in the county in which the minerals are located to obtain a judgment in quiet title in the owner or owners of the surface estate. This action shall be brought in the same manner and subject to the same procedures as an action to quiet title pursuant to Chapter 32-17. With regard to possibly lapsed mineral interests, House Concurrent Resolution No. 3045 directs the Legislative Council to study severed and abandoned (lapsed) mineral rights for the purpose of reducing the discount for oil produced in North Dakota, to report its findings, recommendations and requirements for legislation to address shortcomings in the current statutory provisions for re-vesting lapsed mineral interests, to the Sixty-second Legislative Assembly.

Among the many other energy-related statutory changes in 2009, amendments to Sections 57-39.2-04.2 and 57-40.2-04.2 allow tax exemptions for wind-powered facilities, while amendments to Chapter 17-04 address wind power development and wind energy leases. Amendments to Sections 49-22-

03, 54-44.4-02, 54-60.1-01, and Chapter 54-63 provide for the study and development of wind and other renewable energy resources. Chapter 38-11.2 protects surface owners from damage resulting from development of subsurface minerals other than oil and gas, and new Chapter 38-22 establishes policies for carbon sequestration activities, with a tax exemption under amended Section 57-51.1-03 for extracted oil from tertiary recovery using carbon dioxide. See article, [Montana and North Dakota Pass Carbon Storage Laws](#) for a discussion of North Dakota's pore space act relating to subsurface carbon dioxide storage, Chapter 47-31, effective April 9, 2009.

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