



Severed Mineral Rights Policy and Procedures

RIM Handbook

What are severed mineral rights?

A severance is a separation of the ownership of the minerals from the ownership of the surface of the land. See the following link for more in depth information. http://files.dnr.state.mn.us/lands_minerals/mineralownership.pdf

How frequently are severed mineral interests found and in what parts of the state?

Mineral reservations can be found anywhere in Minnesota. However, BWSR has found that mineral reservations are more likely to occur in the central and northern part of the State. Although mineral reservations have been discovered in the southern part of the State, this occurs on a very infrequent basis.

Who might hold these rights?

Ownership of mineral rights range from private landowners to large companies or federal agencies. BWSR has reviewed documents noting ownership of mineral rights from the following entities; private landowners, corporations such as Conoco Phillips, insurance companies, the Bureau of Land Management, the State of MN, privately owned banks such as AgriBank of St. Paul, MN and finally lumber companies.

Why is it important for MN BWSR to address mineral reservations?

As part of protecting the State's interest in its conservation easements, mineral reservations must be addressed. It would be detrimental to an easement if a mining company exercised their rights to mine on a State conservation easement. Any restoration activities that may have occurred on the conservation easement would potentially be disturbed or completely destroyed. The best case scenario would be for the easement grantor to be in control of the mineral rights. This is because once they sign a conservation easement and it's recorded, the right to mine can no longer be exercised and therefore the conservation easement is protected.

Policy

It is the policy of the RIM program that landowners buy back mineral rights whenever possible. BWSR staff, working through Soil and Water Conservation Districts (SWCDs), will help guide landowners on the process of obtaining 100% interest in any mineral rights found within the easement area. Providing that those mineral reservations are post January 1, 1975 (refer to MN Statute 93.55). In cases where this is not possible, BWSR staff working through SWCDs, will instruct the landowner on how to resolve their particular situation.

The following are instructions on how to handle each type of reservation that may arise:

Mineral reservations noted prior to 1973:

If a mineral reservation appears as an exception on a title insurance commitment, and those rights were reserved prior to 1973, and if the owner of a mineral interest failed to file the Verified Statement required by section 93.52, before January 1, 1975, as to those interests, the mineral interest forfeited to the State of Minnesota (refer to MN Statute 93.55). BWSR accepts the risk associated with mineral rights owned by the State of MN because although the authorized agency in charge of the State held mineral rights (MN DNR) can still lease or sell those rights, BWSR is confident that two State agencies can work together to keep those rights with the State and to not exercise them within the conservation easement area. This is because both agencies have an interest in protecting a State investment, which is the conservation easement. In order to continue processing title work, it is required that the title agent add the following statement to these types of mineral reservation exceptions, "No Verified Statement regarding mineral interest pursuant to M.S.A. 93.52 appears of record." The addition of this statement helps to confirm that the minerals were not transferred to any other party, and are in fact held by the State of MN.

State held mineral rights:

If it is specifically stated in an exception on a title insurance commitment, that the State of MN owns the mineral rights within the easement area, MN BWSR can accept this risk and continue the processing of title work. No further work needs to be done. The same concept applies here as to the situation above whereas no verification statement regarding mineral interests was filed for reservations prior to 1975.

Severed minerals that cannot be re-purchased by easement grantor:

When severed mineral rights cannot be re-purchased by the easement grantor, the next option is to obtain a non-disturbance agreement with the mineral rights holder. To do this, the landowner must work either with the title agent who is familiar with the issue, or with their own attorney. The choice is the landowner's since this is a landowner responsibility and will be at their cost. BWSR can provide a sample non-disturbance agreement for the landowner to forward to the title agent or their attorney so that they can see and understand what it is that BWSR is seeking. It is important that once a non-disturbance agreement is drafted by the agent or attorney, that BWSR is forwarded a copy for the State's Attorney General to review and approve. Once that approval has taken place, the non-disturbance agreement can be signed, notarized and recorded.

MN BWSR has an established process when working to obtain a non-disturbance agreement from AgriBank of St. Paul, MN. AgriBank is a common holder of mineral reservations that appear within title insurance commitments received by BWSR. BWSR, AgriBank and the State's attorney general have worked together to draft a non-disturbance agreement that addresses the interests and needs of all parties.

Steps to be completed to obtain a non-disturbance agreement from AgriBank:

- 1) BWSR staff will send an e-mail to the Director of Minerals Management at AgriBank containing the RIM easement location information (Section, Township, Range and County) as well as attaching the document noted in title work that talks about their mineral reservation.
 - This is an important first step, as sometimes it's discovered that they do not hold any interest in the property. AgriBank has previously been known as the Farm Credit Bank of St. Paul, and also the Federal Land Bank of St. Paul. Through these transfers, mineral rights may or may not have been retained.
- 2) If AgriBank confirms the mineral reservations are held by them, BWSR staff shall call the SWCD office to discuss the findings and the need for a non-disturbance agreement. It will be important for the

SWCD staff to inform the landowner of the requirement for a non-disturbance agreement and its cost of \$1,000 because this cost will be the landowner's.

- 3) Once the SWCD staff have informed the landowner of the situation and the landowner agrees to proceed, BWSR staff can then request AgriBank draft the non-disturbance agreement. When doing so, AgriBank may ask for a copy of the fully executed RIM agreement the landowner and the State have signed, as evidence that we are capturing the correct grantors. Given that this document is not public information, BWSR staff must contact SWCD staff and ask that the SWCD staff obtain landowner permission to send this document to AgriBank. An e-mail forwarded from SWCD staff stating that the landowner has given permission is sufficient for BWSR to forward the RIM agreement. BWSR staff should print the e-mail and add it to the title file as evidence that the landowner gave their permission.
- 4) Once AgriBank has received the necessary information to draft a non-disturbance agreement, they should be directed by BWSR staff to draft the non-disturbance agreement and to send to BWSR for review and approval before they sign and notarize.
- 5) Upon BWSR's review and approval of the non-disturbance agreement, BWSR staff should then e-mail AgriBank and notify them that the non-disturbance agreement has been approved.
- 6) In order for AgriBank to release the document to BWSR for recording by the title agent, they need \$1,000.00 paid to them by the landowner. The \$1,000.00 fee is their standard fee to complete a non-disturbance agreement. AgriBank will notify BWSR of the need for the payment from the landowner via e-mail. BWSR staff should then forward AgriBank's contact information to the SWCD. The SWCD staff will work with the landowner to forward payment to AgriBank.
- 7) Once AgriBank receives the payment from the landowner, they will send the fully executed, original non-disturbance agreement to BWSR. BWSR staff shall hold the agreement for the Attorney General's final review upon his/her review of the title insurance commitment. If the AG approves the agreement and the title work, BWSR staff should then send the fully executed, original non-disturbance agreement in the mail to the SWCD as a package along with the easement for landowner signature and recording, as well as the request for the issuance of a title insurance policy.
- 8) Finally, it is important to notify the SWCD that BWSR needs a **copy** of the recorded non-disturbance agreement as well as AgriBank. The landowner should maintain the **original recorded** non-disturbance agreement for their records.

Inability to obtain a non-disturbance agreement resulting in a risk assessment:

When a non-disturbance agreement cannot be obtained then BWSR requires a risk assessment be completed by a qualified geologist. This situation has occurred in cases where minerals are reserved by the Bureau of Land Management (BLM). BLM will not sell mineral rights back to landowners and they will not complete a risk assessment for BWSR at no cost. Currently BWSR has been working with a Precambrian Geologist from the Minnesota Geological Survey at the University of Minnesota, St. Paul to obtain free risk assessments.

To request a mineral assessment from the geologist, it is important to e-mail the Section, Township, and Range information as well as the County of the reserved mineral reservations. With this information the geologist can

determine what minerals might be within the easement area and what risk it may or may not pose to BWSR. The assessment can take anywhere from a day to a few weeks.

Once an assessment is received, the assessment will come in the form of an e-mail, BWSR staff will review the assessment and make a recommendation to the Conservation Easement Section Manager to either accept the risk indicated within the assessment because there is little to no risk of mining, or to reject the risk indicated within the assessment because risk of mining is determined to be high.

MN BWSR has a form called the “Mineral Assessment Acceptance Form”, and is to be filled out by Easement staff and the Conservation Easement Section Manager, to document the risk of mining via information received from the geologist. Once this form is completed and signed by the Easement Section Manager, it will be placed in the file for documentation.

BWSR staff is unable to obtain a risk assessment from geologist at no cost:

The landowner is responsible for the cost to hire a geologist if an assessment of risk cannot be obtained for free. BWSR staff can help guide landowner’s through the SWCD staff, as to contact information for a qualified geologist.