

State Comparison of Dormant Minerals – Statutory Language

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1. Extinguishment of Unused Mineral Rights Authorized/ Abandoned

Washington - 78-22.010

Any mineral interest, if unused for a period of twenty years, may be extinguished by the surface owner as set forth in RCW [78.22.050](#) and [78.22.060](#).

South Dakota - 43-30A-2

A mineral interest is abandoned if it has not been used for a period of twenty-three years or more. Title to an abandoned mineral interest vests in the owner of the surface estate in the land in, or under, which the mineral interest is located on the date of abandonment.

(Comments of David L. Ganje -Straightforward explanation that the surface owner gets title to the interest if it is unused for 23 years.)

Oregon – 517.180.1

(1) An owner of land in which another person holds a mineral interest, may extinguish the holder's interest by publishing notice and submitting an affidavit of publication for recording as described in subsections (4) to (9) of this section, unless:

(a) Within the last 30 years, the holder of the mineral interest has submitted a statement of claim for recording in the manner set out in subsection (3) of this section;
or

(b) The holder of the mineral interest acquired the mineral interest within the previous 30 years.

Nebraska 57-229.

A severed mineral interest shall be abandoned unless the record owner of such mineral interest has within the twenty-three years immediately prior to the filing of the action provided for in sections 57-228 to 57-231, exercised publicly the right of ownership by (1) acquiring, selling, leasing, pooling, utilizing, mortgaging, encumbering, or transferring such interest or any part thereof by an instrument which is properly recorded in the county where the land from which such interest was severed is located; or (2) drilling or mining for, removing, producing, or withdrawing minerals from under the lands or using the geological formations, or spaces or cavities below the surface of the lands for any purpose consistent with the rights conveyed or reserved in the deed or other instrument which creates the severed mineral interest; or (3) recording a verified claim of interest in the county where the lands from which such interest is severed are located. Such a claim of interest shall describe the land and the nature of the interest claimed, shall properly identify the deed or other instrument under which the interest is claimed, shall give the name and address of the person or persons claiming the interest, and shall state that such person or persons claim the interest and do not intend to abandon the same. The interest of any such owner shall be extended for a period of twenty-three years from the date of any such acts; *Provided*, that the provisions of this section shall not apply to mineral interests of which the State of Nebraska or any of its political subdivisions is the record owner.

Kansas - 55-1602

An interest in coal, oil, gas or other minerals, if unused for a period of 20 years, shall lapse, unless a statement of claim is filed in accordance with K.S.A. 55-1604, and the ownership shall revert to the current surface owner.

California - 883.210

The owner of real property subject to a mineral right may bring an action to terminate the mineral right pursuant to this article if the mineral right is dormant.

California - 883.220

For the purpose of this article, a mineral right is dormant if all of the following conditions are satisfied for a period of 20 years immediately preceding commencement of the action to terminate the mineral right:

(a) There is no production of the minerals and no exploration, drilling, mining, development, or other operations that affect the minerals, whether on or below the surface of the real property or on other property, whether or not unitized or pooled with the real property.

(b) No separate property tax assessment is made of the mineral right or, if made, no taxes are paid on the assessment.

(c) No instrument creating, reserving, transferring, or otherwise evidencing the mineral right is recorded.

Ohio – 5301.56

(B) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of

the surface of the lands subject to the interest if the requirements established in division (E) of this section are satisfied and none of the following applies:

(1) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section [5301.53](#) of the Revised Code. However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that are not in coal may be deemed abandoned and vest in the owner of the surface of the lands subject to the interest.

(2) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section [5301.53](#) of the Revised Code.

(3) Within the twenty years immediately preceding the date on which notice is served or published under division

(E) of this section, one or more of the following has occurred:

(a) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.

(b) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections [1509.26](#) to [1509.28](#) of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(c) The mineral interest has been used in underground gas storage operations by the holder.

(d) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section [5301.252](#) of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(e) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section.

(f) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

2. "Mineral Interest" Defined

Washington – 78.22.020

A mineral interest means the interest which is created by an instrument transferring, either by grant, assignment, or reservation, or otherwise an interest, of any kind, in any subsurface mineral.

South Dakota - 43-30A-1

In this chapter, unless context otherwise requires, the term, "mineral interest," includes any interest in oil, gas, coal, clay, gravel, uranium, and all other minerals of any kind and nature, whether created by grant, assignment, exception, reservation, or otherwise, owned by a person other than the owner of the surface estate.

(Comments of David L. Ganje - Broad range of materials covered with the catch all "of any kind and nature." Also notice that the term "interest" is used which can mean outright ownership, leases, or other real property arrangements.)

North Dakota - 38-18.1-01

In this chapter, unless context or subject matter otherwise requires, "mineral interest" includes any interest in oil, gas, coal, clay, gravel, uranium, and all other minerals of any kind and nature, whether created by grant, assignment, reservation, or otherwise owned by a person other than the owner of the surface estate.

Oregon – 517.180.2

(2) For the purposes of this section:

(a) "Mineral interest" includes any interest that is created by an instrument transferring, either by grant, assignment, reservation or otherwise, an interest of any kind in coal, oil, gas or other minerals and geothermal resources, except an interest vested in the United States, the State of Oregon or a political subdivision of the State of Oregon. A mineral interest does not include an interest in sand or gravel.

(b) "Owner of land" includes a vested fee simple owner or a contract purchaser.

Kansas - 55-1601

As used in this act, "mineral interest" means an interest created by an instrument transferring, by grant, assignment, reservation or otherwise, an interest of any kind in coal, oil, gas or other minerals.

Ohio – 5301.56

(A) As used in this section:

(1) "Holder" means the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) "Drilling or mining permit" means a permit issued under Chapter 1509., 1513., or 1514. of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(3) "Mineral interest" means a fee interest in at least one mineral regardless of how the interest is created and of the form of the interest, which may be absolute or fractional or divided or undivided.

(4) "Mineral" means gas, oil, coal, coalbed methane gas, other gaseous, liquid, and solid hydrocarbons, sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or another material or substance of commercial value that is excavated in a solid state from natural deposits on or in the earth.

(5) "Owner of the surface of the lands subject to the interest" includes the owner's successors and assignees.

3. Acts Constituting Use of Mineral Interest/ When Mineral Interest Deemed to Be Used

Washington – 78.22.030

A mineral interest is used if:

- (1) Any minerals produced have been in connection with the mineral interest;
- (2) Operations for injection, withdrawal, storage or disposal of water, gas, or other fluid substances have been conducted in connection with the mineral interest;
- (3) Rents or royalties have been paid for the purpose of delaying or enjoying the use or exercise of the mineral interest;
- (4) The use or the exercise of the mineral interest has been carried out on any tract with which the mineral interest may be unitized or pooled for production purposes;
- (5) In the case of coal or other solid minerals, minerals have been produced from a common vein or seam;
- (6) Taxes have been paid on such mineral interest;
- (7) Any use pursuant to or authorized by the instrument creating such mineral interest has been taken;
- (8) A sale, lease, mortgage, or other transfer of the mineral interest has been recorded in the county auditor's office in the county in which the land affected by the mineral interest is located prior to the end of the twenty-year period set forth in RCW [78.22.010](#) or within two years after June 7, 1984, whichever is later; or
- (9) A statement of claim has been filed by the owner of the mineral interest in the manner set forth in RCW [78.22.040](#) or [78.22.060](#).

South Dakota - 43-30A-3

A mineral interest is used if:

- (1) Minerals are produced by or with the express permission of the record owner of the mineral interest;
- (2) Operations are conducted for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances to produce or enhance the production of minerals by or with the express permission of the record holder of the mineral interest;
- (3) For solid minerals, there is production from a common vein or seam by or with the express permission of the record owner of the mineral interest;
- (4) Any valid conveyance, lease, mortgage, assignment, probate distribution, termination of joint tenancy interest affidavit, termination of life estate affidavit, transfer on death deed, or any judgment or decree that makes specific reference to the record owner's mineral interest is recorded within the last twenty-three years in the office of the register of deeds for the county in which the mineral interest is located;
- (5) The mineral interest is subject to an agreement to pool or unitize;
- (6) A statement of claim is recorded in compliance with § [43-30A-4](#); or
- (7) A proper instrument describing the mineral interest has been recorded prior to an affidavit recorded under prior law pursuant to § [43-30-7](#), in the office of the register of deeds for the county in which the mineral interest is located.

(Comments from David L. Ganje -This is a broad range of possible ways for the mineral interest holder to prove "use." The legislature seems to be conservative in deeming an interest to be abandoned. Almost anything in that 23-year period can be counted as use and thus disqualify the surface owner's abandonment claim.)

North Dakota - 38-18.1-03

1. A mineral interest is deemed to be used when:

- a. There are any minerals produced under that interest.
- b. Operations are being conducted thereon for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances.

- c. In the case of solid minerals, there is production from a common vein or seam by the owners of such mineral interest.
 - d. The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located.
 - e. The mineral interest on any tract is subject to an order or an agreement to pool or unitize, recorded in the office of the recorder in the county in which the mineral interest is located.
 - f. A proper statement of claim is recorded as provided by section 38-18.1-04.
2. The payment of royalties, bonus payments, or any other payment to a named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account on behalf of a person who cannot be located does not satisfy the requirements of this section and the mineral interest is not deemed to be used for purposes of this section. Interest on such account must be credited to the account and may not be used for any other purpose. A named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account that has been in existence for three years is deemed to be abandoned property and must be treated as abandoned property under chapter 47-30.2. A lease given by a trustee remains valid.

Kansas - 55-1603

- (a) A mineral interest shall be considered to be used when:
 - (1) There are any minerals produced under the interest;
 - (2) operations are being conducted on the interest for injection, withdrawal, storage or disposal of water, gas or other fluid substances;
 - (3) rentals or royalties are being paid by the owner of the interest for the purpose of delaying or enjoying the use or exercise of the mineral rights;
 - (4) the use or exercise of the mineral rights is being carried out on a tract with which the mineral interest may be unitized or pooled for production purposes;
 - (5) in the case of coal or other solid minerals, there is production from a common vein or seam by the owners of the mineral interests; or
 - (6) taxes are paid on the mineral interest by its owner.
- (b) Any use pursuant to or authorized by the instrument creating the mineral interest shall be effective to continue in force all rights granted by the instrument.

4. Statement of Claim—Contents—Fees—Filing

Washington – 78.22.040

The statement of claim referred to in RCW [78.22.030](#)(9) shall be filed by the current owner of the mineral interest prior to the end of the twenty-year period set forth in RCW [78.22.010](#) or within two years after June 7, 1984, whichever is later. The statement of claim shall contain the name and address of the current owner of such interest, and the name of the original holder of the mineral interest substantially as that name is shown on the instrument that originally created the mineral interest and shall be accompanied by payment of the fees provided in RCW [36.18.010](#).

The statement of claim shall be filed in the county auditor's office in the county in which such land affected by the mineral interest is located.

South Dakota - 43-30A-4

A statement of claim shall:

- (1) Be recorded for the record owner of the mineral interest prior to the end of the twenty-three-year period set forth in § [43-30A-2](#). A joint tenant, but not a tenant in common, may record a claim on behalf of himself and other joint tenants;
- (2) Contain the name and mailing address of the record owner of the mineral interest and a legal description of the land on or under which the mineral interest is located; and
- (3) Be recorded in the office of the register of deeds for the county in which the mineral interest is located.

A mineral interest is in use on the date of recording if the recording is made within the time provided by this section.

(Comments from David L. Ganje - If a statement of claim has not been made in the county office within 23 years in accordance with this section, the mineral interest is abandoned.)

North Dakota - 38-18.1-02

Any mineral interest is, if unused for a period of twenty years immediately preceding the first publication of the notice required by section 38-18.1-06, deemed to be abandoned, unless a statement of claim is recorded in accordance with section 38-18.1-04. Title to the abandoned mineral interest vests in the owner or owners of the surface estate in the land in or under which the mineral interest is located on the date of abandonment. The owner of the surface estate in the land in or under which the mineral interest is located on the date of abandonment may record a statement of succession in interest indicating that the owner has succeeded to ownership of the minerals under this chapter.

North Dakota - 38-18.1-04

The statement of claim provided for in section 38-18.1-02 must:

1. Be recorded by the owner of the mineral interest or the owner's representative prior to the end of the twenty-year period set forth in section 38-18.1-02. A joint tenant, but not a tenant in common, may record a claim on behalf of oneself and other joint tenants.
2. Contain the name and address of the owner of the mineral interest, and a legal description of the land on, or under which, the mineral interest is located as well as the type of mineral interest involved.
3. Be recorded in the office of the recorder in the county in which the mineral interest is located. The mineral interest is deemed to be in use at the date of recording, if the recording is made within the time provided by this section. A statement of claim filed after July 31, 2009, by a person other than the owner of record of the mineral interest is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims.

Oregon – 517.180.3

(3) The statement of claim referred to in subsection (1) of this section shall be submitted for recording in the office of the clerk of the county in which the land affected by the mineral interest is located and shall contain:

- (a) The name and address of the holder of the mineral interest as that name is shown in the instrument that created the original mineral interest; **and**
- (b) The name and address of the current holder of the mineral interest.

Kansas - 55-1604.

(a) A statement of claim may be filed by the owner of a mineral interest prior to the end of the twenty-year period specified by K.S.A. 55-1602 or within three years after the effective date of this act, whichever is later. The statement shall contain the name and address of the owner of the mineral interest and a description of the land on or under which the mineral interest is located. The statement of claim shall be filed in the office of the register of deeds of the county in which the land is located. Upon the filing of the statement of claim within the time provided, it shall be considered that the mineral interest was being used on the date the statement of claim was filed.

(b) Failure to file a statement of claim within the time prescribed by subsection (a) shall not cause a mineral interest to be extinguished if the owner of the mineral interest filed the statement of claim within 60 days after (1) publication of notice as prescribed by K.S.A. 55-1605, if such notice is published or (2) within 60 days after receiving actual knowledge that the mineral interest had lapsed, if such notice is not published.

Kansas - 5-1605

Upon the lapse of a mineral interest under K.S.A. 55-1602, any person who will succeed to the ownership of the interest shall give notice of the lapse of the mineral interest by publishing notice of the lapse in a newspaper of general circulation in the county in which the land subject to the mineral interest is located, and, if the address of the owner of the mineral interest is shown of record or can be determined upon reasonable inquiry, by mailing a copy of the notice by restricted mail to the owner of the mineral interest within 10 days after publication. The notice shall state the name of the owner of the mineral interest, as shown of record; a description of the land subject to the mineral interest; and the name of the person giving the notice. If a copy of the notice, together with an affidavit of its publication and service, is promptly filed in the office of the register of deeds of the county where land subject to the interest is located, the record of the filing shall be prima facie evidence in any legal proceedings that the notice was given.

Kansas - 55-1606

Upon the filing of a statement of claim as provided in K.S.A. 55-1604 or the filing of proof of service of notice as provided in K.S.A. 55-1605, the register of deeds shall record the filing in a book to be kept for that purpose and shall indicate by marginal notation on the instrument creating the original mineral interest the filing of the statement of claim or affidavit of publication and service of notice.

5. Extinguishment of Mineral Interest—Procedure

Washington – 78.22.050

(1) After the later of the expiration of the twenty-year period set forth in RCW [78.22.010](#) or two years after June 7, 1984, the surface owner may extinguish the mineral interest held by another person and acquire ownership of that interest by providing sixty days notice of intention to file a claim of abandonment and extinguishment of the mineral interest upon the current mineral interest owner. Notice shall be served by personal service or by mailing the notice by registered mail to the last known address of the current mineral interest owner. The county treasurer shall supply the name and address of the current mineral interest owner as they appear on the county property tax records to the surface owner without charge. If the current mineral interest owner is unknown to the county treasurer, and the current mineral interest owner cannot be determined after

due diligence, the surface owner may serve the notice upon the current mineral interest owner by publishing the notice at least once each week for three consecutive weeks in a newspaper of general circulation published in the county in which the property interest is located, and if there is no newspaper of general circulation in the county, then in a newspaper of general circulation published in an adjoining county, and if there is no such newspaper in an adjoining county, then in a newspaper of general circulation published at the capital of the state.

(2) The notice of intention to file a claim of abandonment and extinguishment shall contain:

(a) The name and address, if known, of the holder of the mineral interest, as shown of record;

(b) A reference to the instrument originally creating the mineral interest, including where it is recorded;

(c) A description of the lands affected by the mineral interest;

(d) The name and address of the person giving notice;

(e) The date of the first publication of the notice if notice is by publication; and

(f) A statement that a claim of abandonment and extinguishment of the mineral interest will be filed upon the expiration of a period of sixty days after the date of the last publication or the date service was perfected by personal service or registered mail on the current mineral interest owner, unless the current mineral interest owner files a statement of claim of mineral interest in the form prescribed in RCW [78.22.040](#).

(3) A copy of the notice of intention to file a claim of abandonment and extinguishment and an affidavit of publication shall be submitted to the county auditor within fifteen days after the date of the last publication or the date service was perfected by personal service or registered mail on the current mineral interest owner.

(4) The affidavit of publication shall contain either:

(a) A statement that a copy of the notice has been personally served upon or mailed to the owner of the current mineral interest and the address to which it was mailed; or

(b) If a copy of the notice was not mailed, a detailed description, including dates, of the efforts made to determine with due diligence the address of the current owner of the mineral interest.

Oregon – 517.180.4

(4) To extinguish the mineral interest held by another person, and acquire ownership of that interest, the owner of the land shall publish notice of the lapse of the mineral interest at least once each week for three consecutive weeks in a newspaper of general circulation in the county in which the lands affected by the mineral interest are located. If the address of the mineral interest holder is known or can be determined by due diligence, the notice shall also be mailed by the owner of the land to the holder of the mineral interest before the first publication.

6. Presumption of Extinguishment—Conditions—Statement of Claim—Filing, Recording, Indexing/ Perfecting Title in Surface Owner

Washington – 78.22.060

Upon payment of fees provided in RCW [36.18.010](#), and if the surface owner files the claim of abandonment and extinguishment, together with a copy of the notice and the affidavit of publication, as required in RCW [78.22.050](#), in the county auditor's office

for the county where such interest is located then the mineral interest shall be conclusively presumed to be extinguished.

If a statement of claim of mineral interest is filed by the current mineral interest owner within the sixty-day period provided in RCW [78.22.050](#), together with payment of fees provided in RCW [36.18.010](#), the county auditor shall record, index, and make special notation in the index of the filing.

South Dakota - 43-30A-4

A statement of claim shall:

- (1) Be recorded for the record owner of the mineral interest prior to the end of the twenty-three-year period set forth in § [43-30A-2](#). A joint tenant, but not a tenant in common, may record a claim on behalf of himself and other joint tenants;
- (2) Contain the name and mailing address of the record owner of the mineral interest and a legal description of the land on or under which the mineral interest is located; and
- (3) Be recorded in the office of the register of deeds for the county in which the mineral interest is located.

A mineral interest is in use on the date of recording if the recording is made within the time provided by this section.

(Comment from David L. Ganje-If a statement of claim has not been made in the county office within 23 years in accordance with this section, the mineral interest is abandoned.)

North Dakota - 38-18.1-06.1

1. Upon completion of the procedure provided in section 38-18.1-06, the owner or owners of the surface estate may maintain an action in district court in the county in which the minerals are located and obtain a judgment in quiet title in the owner or owners of the surface estate. This action must be brought in the same manner and is subject to the same procedure as an action to quiet title pursuant to chapter 32-17.
2. In an action brought under this section, the owner or owners of the surface estate shall submit evidence to the district court establishing that all procedures required by this chapter were properly completed and that a reasonable inquiry as defined by subsection 6 of section 38-18.1-06 was conducted. If the district court finds that the surface owner has complied with all procedures of the chapter and has conducted a reasonable inquiry, the district court shall issue its findings of fact, conclusions of law, and enter judgment perfecting title to the mineral interest in the owner or owners of the surface estate.
3. A judgment obtained by the owner or owners of the surface estate in compliance with this section is deemed conclusive except for fraud, misrepresentation, or other misconduct.
4. A mineral lessee that obtains a lease from the owner of the surface estate, which owner has obtained a judgment to minerals pursuant to this section, is deemed a bona fide purchaser and its lease remains effective in the event the judgment is subsequently vacated for any reason. Further, the lessee is not liable to any third party for lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated.
5. Absent fraud or misrepresentation, the owner or owners of the surface estate which obtain a judgment under this section and lease minerals to a lessee are entitled to retain

all lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated.

Oregon – 517.180.8 & 9

(8) If the owner of the land affected by the mineral interest gives notice as required in subsection (4) of this section and submits a copy of the notice and the affidavit of publication for recording as required by subsection (6) of this section, the mineral interest of the holder shall be extinguished and become the property of the owner of the lands, unless the holder of the mineral interest submits a statement of claim to the county clerk within 60 days after the date of the last publication of the notice.

(9) Upon receipt, the clerk of the county shall record a statement of claim or a notice and affidavit of publication of notice in the Mineral and Mining Record. When possible, the clerk shall also indicate by marginal notation on the instrument creating the original mineral interest the recording of the statement of claim or notice and affidavit of publication of notice. The clerk of the county shall record a statement of claim by cross-referencing in the Mineral and Mining Record the name of the current holder of the mineral interest and the name of the original holder of the mineral interest as set out in the statement of claim.

California - 883.240.

(a) An action to terminate a mineral right pursuant to this article shall be brought in the superior court of the county in which the real property subject to the mineral right is located.

(b) The action shall be brought in the same manner and shall be subject to the same procedure as an action to quiet title pursuant to Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure, to the extent applicable.

Ohio – 5301-56

(E) Before a mineral interest becomes vested under division (B) of this section in the owner of the surface of the lands subject to the interest, the owner of the surface of the lands subject to the interest shall do both of the following:

(1) Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned. If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each county in which the land that is subject to the interest is located. The notice shall contain all of the information specified in division (F) of this section.

(2) At least thirty, but not later than sixty days after the date on which the notice required under division (E)(1) of this section is served or published, as applicable, file in the office of the county recorder of each county in which the surface of the land that is subject to the interest is located an affidavit of abandonment that contains all of the information specified in division (G) of this section.

Ohio – 5301.56

(G) An affidavit of abandonment shall contain all of the following:

(1) A statement that the person filing the affidavit is the owner of the surface of the lands subject to the interest;

- (2) The volume and page number of the recorded instrument on which the mineral interest is based;
- (3) A statement that the mineral interest has been abandoned pursuant to division (B) of this section;
- (4) A recitation of the facts constituting the abandonment;
- (5) A statement that notice was served on each holder or each holder's successors or assignees or published in accordance with division (E) of this section.

6. Circumstances in Which Failure to Record Statement Does Not Cause Abandonment

South Dakota - 43-30A-5

Failure to record the statement of claim within the time period provided in § [43-30A-4](#) does not cause a mineral interest to be abandoned if the record owner of the mineral interest records a statement of claim pursuant to § [43-30A-4](#) within sixty days after completion of the publication of the notice of lapse pursuant to § [43-30A-6](#).

(Comments from David L. Ganje -Ways that the mineral interest owner can preserve their claim. Notice that there is still a broad range of possibilities allowing for the interest holder to retain their rights. They have 60 days after publication to file a statement of claim.)

North Dakota - 38-18.1-05

Failure to record the statement of claim within the time period provided in section 38-18.1-04 will not cause a mineral interest to be extinguished if:

1. The owner of record of the mineral interest satisfies either one of the following requirements within sixty days after first publication of the notice provided for in section 38-18.1-06:
 - a. Files with the county recorder a statement of claim as required in section 38-18.1-04; or
 - b. Files with the county recorder documentation that at least one of the activities under subsection 1 of section 38-18.1-03 took place during the twenty-year period immediately preceding the first publication of notice.
2. A person other than the owner of record of the mineral interest files with the county recorder within sixty days after first publication of the notice provided for in section 38-18.1-06 an affidavit under oath or a declaration under oath which includes an explanation of the factual and legal basis for the person's assertion of title to the mineral interest. This explanation must be accompanied by documentation supporting the assertion or an explanation why documentation is unavailable.

Nebraska - 57-231

Mineral interests; severed; limitation of action.

In any action filed within two years after October 23, 1967, the owner of a severed mineral interest may enter his appearance and assert his interest therein, and he shall be deemed thereby to have timely and publicly exercised his right of ownership.

Nebraska - 57-228.

Mineral interest; severed; termination; suit in equity; defendants.

Any owner or owners of the surface of real estate from which a mineral interest has been severed, on behalf of himself and any other owners of such interest in the surface, may sue in equity in the county where such real estate, or some part thereof, is located, praying for the termination and extinguishment of such severed mineral interest and cancellation of the same of record, naming as parties defendant therein all persons having or appearing to have any interest in such severed mineral interest, and if such parties defendant are not known and cannot be ascertained, they may be proceeded against as unknown defendants under the provisions of Chapter 25, article 3.

California - 883.230

(a) An owner of a mineral right may at any time record a notice of intent to preserve the mineral right.

(b) In lieu of the statement of the character of the interest claimed and the record location of the documents creating or evidencing the mineral rights claimed as otherwise required by paragraph (2) of subdivision (b) of Section 880.330 and in lieu of the legal description of the real property in which the interest is claimed as otherwise required by paragraph (3) of subdivision (b) of Section 880.330 and notwithstanding the provisions of Section 880.340 or any other provision in this title, a notice of intent to preserve a mineral right may refer generally and without specificity to any or all mineral rights claimed by claimant in any real property situated in the county.

(c) A mineral right is not dormant for the purpose of this article if:

(1) A notice of intent to preserve the mineral right is recorded within 20 years immediately preceding commencement of the action to terminate the mineral right.

(2) A notice of intent to preserve the mineral right is recorded pursuant to Section 883.250 after commencement of the action to terminate the mineral right.

California 883.250

In an action to terminate a mineral right pursuant to this article, the court shall permit the owner of the mineral right to record a late notice of intent to preserve the mineral right as a condition of dismissal of the action, upon payment into court for the benefit of the owner of the real property the litigation expenses attributable to the mineral right or portion thereof as to which the notice is recorded. As used in this section, the term "litigation expenses" means recoverable costs and expenses reasonably and necessarily incurred in preparation for the action, including a reasonable attorney's fee.

Ohio – 5301.56

(C)(1) A claim to preserve a mineral interest from being deemed abandoned under division (B) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be recorded in accordance with division (H) of this section and sections [317.18](#) to [317.20](#) and [5301.52](#) of the Revised Code, and shall consist of a notice that does all of the following:

(a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;

(b) Otherwise complies with section [5301.52](#) of the Revised Code;

(c) States that the holder does not intend to abandon, but instead to preserve, the holder's rights in the mineral interest.

(2) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

(3) Any holder of an interest for use in underground gas storage operations may preserve the holder's interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

Ohio – 5301.56

(H)(1) If a holder or a holder's successors or assignees claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned, the holder or the holder's successors or assignees, not later than sixty days after the date on which the notice was served or published, as applicable, shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located one of the following:

(a) A claim to preserve the mineral interest in accordance with division (C) of this section;

(b) An affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section. The holder or the holder's successors or assignees shall notify the person who served or published the notice under division (E) of this section of the filing under this division.

(2) If a holder or a holder's successors or assignees who claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned fails to file a claim to preserve the mineral interest, files such a claim more than sixty days after the date on which the notice was served or published under division (E) of this section, fails to file an affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section, or files such an affidavit more than sixty days after the date on which the notice was served or published under that division, the owner of the surface of the lands subject to the interest who is seeking to have the interest deemed abandoned and vested in the owner shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located a notice of failure to file. The notice shall contain all of the following:

(a) A statement that the person filing the notice is the owner of the surface of the lands subject to the mineral interest;

(b) A description of the surface of the land that is subject to the mineral interest;

(c) The statement: "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ____, page ____" Immediately after the notice of failure to file a mineral interest is recorded, the mineral interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder or the former holder's successors or assignees against the owner of the surface of the lands formerly subject to the interest.

However, the abandonment and vesting of a mineral interest pursuant to divisions (E) to (I) of this section only shall be effective as to the property of the owner that filed the affidavit of abandonment under division (E) of this section.

(l) For purposes of a recording under this section, a county recorder shall charge the fee established under section [317.32](#) of the Revised Code.

7. Statement of Claim—Notice and Affidavit of Publication—Auditor's Duties

Washington – 78.22.070

Upon receipt, the county auditor shall record a statement of claim or a notice and affidavit of publication in the dormant mineral interest index. When possible, the auditor shall also indicate by marginal notation on the instrument originally creating the mineral interest the recording of the statement of claim or notice and affidavit of publication. The county auditor shall record a statement of claim by cross-referencing in the dormant mineral interest index the name of the current owner of the mineral interest and the name of the original holder of the mineral interest as set out in the statement of claim.

South Dakota - 43-30A-6

In order to succeed to the ownership of an abandoned mineral interest, a surface owner shall give notice of the lapse of the mineral interest by publication. The publication shall be made once each week for three weeks in the official newspaper of the county in which the mineral interest is located. Notice shall also be given by mailing a copy of the notice by registered or certified mail to the record owner of the mineral interest at the record owner's address of record no later than ten days after the last publication.

The surface owner may rely upon the record mineral owner's last address of record in the office of county register of deeds in which the mineral interest is located. It is the record mineral owner's obligation to maintain an address of record in the office of the register of deeds in the county in which their mineral interest is located. Failure to maintain an address of record is a waiver by the record mineral owner of the requirement to mail a copy of the notice of lapse to the record mineral owner.

The notice shall state the name of the record owner of the mineral interest, the legal description of the land on or under which the mineral interest involved is located, and the name of the person giving the notice.

Recording a copy of the notice and an affidavit of its publication and any mailing in the office of the register of deeds for the county in which the mineral interest is located, is prima facie evidence that the notice has been properly given.

(Comment from David L. Ganje - The surface owner can obtain the interest by publishing an ad in the county newspaper where the interest is recorded. Mailing a notice is also required, but this might not reach the owner for a variety of reasons (they might have moved or might be deceased).

North Dakota - 38-18.1-06

1. The owner or owners of the surface estate in the land in or under which the mineral interest is located intending to succeed to the ownership of a mineral interest upon its lapse shall give notice of the lapse of the mineral interest by publication.
2. The publication provided for in subsection 1 must be made once each week for three weeks in the official county newspaper of the county in which the mineral interest is located; however, if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry as defined in subsection 6, notice must also be

made by mailing a copy of the notice to the owner of the mineral interest within ten days after the last publication is made.

3. The notice must state:

- a. The name of the record owner of the mineral interest;
- b. A description of the land on which the mineral interest involved is located; and
- c. The name of the owner or owners of the surface estate in the land in or under which the mineral interest is located giving the notice.

4. A copy of the notice and an affidavit of service of the notice must be recorded in the office of the recorder of the county in which the mineral interest is located and constitutes prima facie evidence in any legal proceedings that such notice has been given.

5. The owner or owners of the surface estate in the land in or under which the mineral interest is located who succeeds to the ownership of a mineral interest upon its lapse under this chapter is entitled to record a statement of succession in interest indicating that that owner or owners of the surface estate in the land in or under which the mineral interest is located has succeeded to the ownership of the mineral interest.

6. To constitute a reasonable inquiry as provided in subsection 2, the owner or owners of the surface estate or the owner's authorized agent must conduct a search of:

- a. The county recorder's records for the existence of any uses as defined in section

- 38-18.1-03 by the owner of the mineral interest;

- 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 the owner of the mineral interest, if deceased; 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. The owner or owners of the surface estate are not required to conduct internet searches on private fee internet databases.

Oregon – 517.180.5 & 6 & 7

(5)The notice required in subsection (4) of this section shall include:

(a)The name of the holder of the mineral interest, as shown of record; (b)A reference to the instrument creating the original mineral interest, including where it is recorded; (c)A description of the lands affected by the mineral interest; (d)The name and address of the person giving the notice; (e)The date of first publication of the notice; and (f)A statement that the holder of the mineral interest must submit a statement of claim to the county clerk within 60 days after the date of the last publication or the mineral interest of the holder may be extinguished.

(6) A copy of the notice and an affidavit of publication of the notice, as described in subsection (7) of this section, shall be submitted to the county clerk within 15 days after the date of the last publication of the notice in the office of the clerk of the county where the lands affected by the mineral interest are located.

(7) The affidavit of publication shall contain either: (a) A statement that a copy of the notice was mailed to the holder of the mineral interest and the address to which it was mailed; **or** (b) If no copy of the notice was mailed, a detailed description, including dates, of the efforts made to determine with due diligence the address of the holder of the mineral interest.

Ohio – 5301.56

(F) The notice required under division (E)(1) of this section shall contain all of the following:

- (1) The name of each holder and the holder's successors and assignees, as applicable;
- (2) A description of the surface of the land that is subject to the mineral interest. The description shall include the volume and page number of the recorded deed or other recorded instrument under which the owner of the surface of the lands claims title or otherwise satisfies the requirements established in division (A)(3) of section [5301.52](#) of the Revised Code.
- (3) A description of the mineral interest to be abandoned. The description shall include the volume and page number of the recorded instrument on which the mineral interest is based.
- (4) A statement attesting that nothing specified in division (B)(3) of this section has occurred within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section;
- (5) A statement of the intent of the owner of the surface of the lands subject to the mineral interest to file in the office of the county recorder an affidavit of abandonment at least thirty, but not later than sixty days after the date on which notice is served or published, as applicable.

8. Exemptions From Claim of Abandonment and Extinguishment/ Government Owned Interests Exempt

Washington – 78.22.080

Mineral interests retained or owned by any public entity or mineral interests resulting from land exchanges between public and private owners shall not be subject to a claim of abandonment and extinguishment.

South Dakota 43-30A-8

This chapter does not apply to any mineral interest owned by any governmental body or agency thereof.

(Comments from David L. Ganje - -Provisions can be waived after the 23 year period and any government mineral interests cannot be claimed by deeming the interests abandoned.)

North Dakota 38-18.1-08. Applicability

This chapter does not apply to any mineral interest owned by any governmental body or agency thereof and this chapter is both prospective and retrospective in its application.

Ohio – 5301.56

- (D)(1) A mineral interest may be preserved indefinitely from being deemed abandoned under division (B) of this section by the occurrence of any of the circumstances described in division (B)(3) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.
- (2) The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section [5301.332](#) of the Revised Code.

9. Waiver Prohibited/ Waiver of Provisions

Washington – 78.22.080

The provisions of this chapter may not be waived at any time prior to the expiration of the twenty-year period under RCW [78.22.010](#).

South Dakota 43-30A-7

The provisions of this chapter may not be waived until the expiration of the twenty-three-year period provided in § [43-30A-2](#).

North Dakota - 38-18.1-07

The provisions of this chapter may not be waived at any time prior to the expiration of the twenty-year period provided in section 38-18.1-02.

Oregon – 517.180.10

(10) The provisions of this section may not be waived at any time. [1983 c.421 §2; 1997 c.819 §10; 1999 c.654 §31]

Nebraska - 57-230.

Mineral interests; severed; abandoned; judgment.

If the court shall find that the severed mineral interest has been abandoned, it shall enter judgment terminating and extinguishing it, canceling it of record, and vesting the title thereto in the owner or owners of the interest in the surface from which it was originally severed in the proportions in which they own such interest in the surface.

Kansas - 55-1607

The provisions of this act may not be waived at any time prior to the expiration of the twenty-year period provided in K.S.A. 55-1602.

California - 883.260

A mineral right terminated pursuant to this article is unenforceable and is deemed to have expired. A court order terminating a mineral right pursuant to this article is equivalent for all purposes to a conveyance of the mineral right to the owner of the real property.

California - 883.270

Subject to Section 880.370 (grace period for recording notice), this article applies to all mineral rights, whether executed or recorded before, on, or after January 1, 1985.

10. Prospective and Retrospective Application

South Dakota - 43-30A-9

This chapter is both prospective and retrospective in its application.

11. Water Rights Unaffected

South Dakota - 43-30A-10

The enactment of this chapter shall not be construed as creating any right to water or the use thereof nor as affecting any existing legislation with respect to water or water rights, except as expressly may be provided herein, nor shall anything herein contained affect or be construed as affecting vested water rights.

(Comments from David L. Ganje -Even though water rights weren't specifically mentioned, the legislature wanted to make sure that nothing in this act was construed to deal with water.)