

Mineral Rights Ownership in Minnesota

One in a series of Fact Sheets

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Landowners and potential landowners often inquire regarding how to determine the ownership of mineral rights. This handout discusses a few aspects of such ownership and the severed mineral interests law.

Although federal, state and local governments own or control some surface and mineral interests in Minnesota, the vast amount of both interests remain privately held. Unlike governments of many foreign nations, state and local governments have no inherent sovereign claim to all the minerals in their jurisdictions.

Private ownership of real estate is traceable to grants or patents of public land to individuals or other private entities by the federal or state governments. Unless minerals were reserved by the granting authority, they were included in original government grants.

If a landowner determines that the mineral rights were granted from the government, it is then necessary to determine if there has ever been a "severance" of those rights during the private ownership of the property. A severance is a separation of the ownership of the minerals from the ownership of the surface of the land.

There are numerous ways in which a severance may occur. Most commonly, mineral interests are retained upon sale of the land through language in the deed of conveyance reserving specified mineral rights to the seller. Less frequently, surface rights are retained by the landowner and only underlying mineral rights are transferred. The mineral rights could also be sold, donated or lost through tax forfeiture to a government body. In order to clearly determine if a severance has occurred, the landowner should consult an attorney for a thorough examination of title to the property.

The mineral interest covered by a severance is controlled by the language of the deed severing the mineral ownership from the surface ownership. Occasionally the language of the deed is ambiguous with respect to a particular material. For example, if "all valuable minerals" are reserved, it is relatively clear that iron ore, copper or silver would be included in the reservation, while it is less clear whether ordinary clay, sand, gravel, or limestone would be subject to that reservation. In resolving this type of situation, the courts

will try to determine what the parties intended when the mineral interests were severed from the surface interests.

The rights associated with mineral interests ownership are also affected by the severance deed. Although the issue has never been addressed by the Minnesota Supreme Court, the general rule that has developed in other parts of the country is that unless otherwise stated in the severance deed, the mineral estate carries with it the right to use so much of the surface as may be reasonably necessary to reach and remove the minerals. Under this rule, if there is no contrary language in the severance deed, the mineral owner has a right of entry or access to explore for and mine minerals beneath the surface of the land. Leases of state owned minerals require that a surface owner be compensated for any damages to the surface which arise from mining activities of the holder of the state mineral lease.

Once severed, mineral rights become a type of real property that may be sold or inherited, in the same manner as other real estate, independently of the ownership of the surface of the land. Over the years the ownership of severed minerals has often become very obscure and fractionalized. Some interests remaining in families for several generations have been divided among so many descendants of the original party to the severance that their fractional interests have become extremely small.

The prohibitive expense of title searches necessary to determine ownership of these fractional interests made taxation difficult. Taxing authorities were also frustrated in their attempts to tax severed mineral interests because of the difficulty of assigning taxable values to those interests. Since the market value of minerals actually occurring on any specific mineral interest tract is usually only determined by expensive exploration, very few severed mineral interests were taxed on the basis of minerals known to exist on that tract of land. As a result, severed mineral interests became a class of real property that, for practical purposes, were not taxed even though the value of the minerals sometimes exceeded the surface value of the

land. Owners of valuable mineral interests were able to sell their properties, reserving the minerals to themselves, and thus avoid the tax on valuable real property interests.

The Minnesota Legislature addressed these issues through the Severed Mineral Interests Law.¹ This law requires the owners of severed mineral interests to register their interests by filing a severed minerals interests statement with the office of the county recorder or, if registered property, in the registrar of titles' office of the county in which the interests are located. Such statements were to have been filed before January 1, 1975, for interests owned on or before December 31, 1973, or within one year after acquiring such interests thereafter. Effective for taxing years beginning January 1, 1975, mineral interests are assessed a tax.² The current annual rate is \$0.40 per acre or portion of an acre.³ For fractional undivided mineral interests, the tax per acre or portion thereof is multiplied by the particular fractional interest. The minimum annual tax on any mineral interest is \$3.20.

If the mineral interests owner does not file the severed mineral interests statement within the time deadline provided by law, the mineral interest will forfeit to the state after notice and opportunity for hearing.⁴ The

Commissioner of Natural Resources notifies the last owner of record on file in the county recorder's or registrar of titles' office of a hearing in which the court will be requested to enter an order adjudging absolute forfeiture of the mineral interest to the state.

The owner, to avoid forfeiture, must prove to the court that the severed mineral interests taxes were timely paid and that the county records specified the true ownership or, in the alternative, that procedures affecting the title of the interest had been timely initiated and pursued by the true owner during the time when the interest should have been registered. In the event of forfeiture, a person claiming an ownership interest before forfeiture and found by the court to own such interest at the time of forfeiture may recover the fair market value of the interest either as an alternative claim at the absolute forfeiture hearing or in a separate action commenced within six years after forfeiture.

A landowner might determine, through an examination of title to the property, that there has been a severance of the mineral rights and another party has valid title to those rights. If a landowner wants to acquire those rights, he/she could approach that party to see if they want to lease or sell. A landowner should consult an attorney and perhaps a geologist for this type of transaction.

If the State of Minnesota owns the mineral rights to any land, state laws prohibit the sale of those rights. If the state owned mineral lands are believed to have mineral potential, they may be leased at public sale, or in certain cases, by negotiation. In 1988, the severed minerals interest law was amended to authorize the Commissioner of Natural Resources to lease severed mineral interests that were not registered or timely registered.⁵ State lessees are allowed to conduct exploration activities, but they are not allowed to mine the property until the severed mineral interest forfeiture proceedings are completed.

¹ This law was originally enacted in 1969 and was amended in 1973, 1979, 1988 and 1994. The severed mineral interests registration provisions are presently coded in Minn. Stat., sec. 93.52-.58. The taxing provisions are presently coded in Minn. Stat., sec. 273.165, 272.039, and 272.04, subd. 1.

² This tax was ruled constitutional by the Minnesota Supreme Court in its decision in the case of Contos, U.S. Steel Corp., et al. v. Herbst, et al., 278 N.W.2d 732 (MN 1979); rehearing denied March 13, 1979; appeal dismissed October 30, 1979, 100 U.S. Sup. Ct. 24.

³ Prior to this tax being amended by Session Laws 1994, Ch. 487, the tax was \$0.25 per acres or portion of an acre, with the minimum annual tax on any mineral interest being \$2.00.

⁴ The Minnesota Supreme Court, in Contos, U.S. Steel Corp., et al. v. Herbst, et al., cited in footnote 2, also upheld the forfeiture penalty for failure to timely file a statement of severed mineral ownership, but held that the procedures attending the forfeiture provisions for failure to timely register a severed mineral interest violated constitutional requirements of due process because the notice

provisions were inadequate and the mineral owner was denied the opportunity for a hearing prior to forfeiture. The severed mineral interests law was amended in 1979 to comply with the Minnesota Supreme Court's decision.

⁵ Minn. Stat., sec. 93.55, subsd. 1, 1a and 3.