Mineral Rights

Introduction

Ownership of mineral rights is a growing concern for private and public property owners in the western Upper Peninsula, as well as for citizens in general. Our region, with its belt of mineral deposits extending from Ontario across the UP and Wisconsin into Minnesota, has an unusual history of severing subsurface mineral rights from surface rights. Renewed efforts at widespread mineral exploitation creates concerns for surface property owners who need to know the rights and responsibilities of the respective owners or leasers of their subsurface minerals when these mineral rights have been severed from a land parcel.

This document is intended as a guide for those wanting to learn more about mineral rights:

- What are Mineral Rights?
- Who owns the mineral rights under my land?
- Are companies legally responsible for any damage that is done?
- Do I need to talk to an attorney?
- What concerns are there that may not currently be addressed by Michigan laws?

This document is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

What are Mineral Rights?

A mineral right is an interest in real property (land). It refers to an owner's interest in subsurface minerals on a specific piece of land and a right to extract those mineral from the earth or to receive payment, in the form of royalty, for the extraction of minerals.

The DEQ generally defines a "Mineral" as including the following:

- **fossil fuels** such as oil, coal and natural gas, **metals and their ore-bearing metals** such as gold, copper and iron**, non-metallic minerals and mineable rock products** such as limestone, gypsum, salt and building stone.

Mineral rights are distinct from "surface rights," or the right to the use of the surface of the land for residential, agricultural, recreational, commercial or other purposes. Resources like gravel, sand, peat, etc are not automatically considered minerals given that they generally form

part of the surface soil. However, these materials can be expressly included as part of a mineral right.

Who owns the mineral rights under my land?

Originally, in the United States, an owner's interest in land extended indefinitely upward to the sky and down to the center of the earth. This meant that the property owners had both "surface rights" and "mineral rights". This complete ownership interest became known as a "fee simple estate".

Property rights have been likened to a bundle of sticks with each stick representing a particular right to or benefit arising from the land. This owner has the "right" to sell, lease, gift or bequest part or all of these "rights" to others. A common example is a lease, where an owner retains ownership of land, but sells the right to occupy and use the land to a tenant for a period of time.

Like other property rights, a mineral right may be sold, transferred, or leased. It thus becomes separated from the surface rights. When this occurs, mineral rights are called "severed." Severance of minerals from property rights became widespread when commercial production of minerals became possible. This has had two effects. One is that most land owners do not own the minerals under their property, their ownership having passed to mining companies or other entities. The other is that determining the ownership of mineral rights has become very complicated because there is now a patchwork of owners.

The ownership of the mineral rights in a parcel can usually be determined by examining the deed abstract for the property. However, such a title review is not always an easy task and may require the use of an expert, a real estate attorney, title examiner or other professionals. For example, the right to explore and capture minerals (a working interest) may be leased to another party with the mineral rights owner only retaining a royalty interest (right of payment based on the amount of mineral extracted). Much more complex arrangements are not only possible but common.

Can I tell mining companies not to trespass on my land?

Generally, the mineral rights owner or leaseholder has the right to enter land and explore, produce, store and otherwise develop the mineral interest. The surface owner cannot interfere with this activity. However, the mineral interest developer is limited in their ability to interfere with the use of the surface estate, but this depends on the interest held by the mineral rights owner and the nature of the interference among other things. An unreasonable interference with the surface owner's use of the land may also constitute a nuisance. What constitutes an unreasonable interference is often unclear but seems to relate to the consequences suffered by

a landowner in regards to property, health, safety, etc. because of the duration or repetition of the related mining activity.

There is also a possibility that a working interest has been forfeited or a mineral interest abandoned. For example, under Michigan's Marketable Record Title Act and/or the Dormant Mineral Act, after 20 years a mineral lease may be considered abandoned if the mineral rights owner does not develop the interest, transfer the interest, or record a notice of interests with the register of deeds, among other things. The interest would then revert back to the surface owner.

Are companies legally responsible for any damage that is done to the surface landowner's land, buildings, animals, etc?

The owner to the surface rights to a parcel may be entitled to compensation for damage to the land, such as subsidence or damage to crops or trees. Difficulties may arise in proving causation and it may require showing that the mine operator acted negligently. It is in the surface owner's best interest to document the original condition of land before mining takes place.

Additionally, damage to the surface can show up much later for the surface owner. For example, land that has been mined under can show cracks and land subsidence (settlement) later. Also, underground aquifers that may supply the household with water can be compromised or disappear altogether, draining into deeper rock units. In this situation, compensation may be difficult or impossible to gain as the responsible mining company may be difficult to reach or defunct. In addition, the burden of proof may be on the surface owner, and proving why an aquifer has dried up may be very costly.

Do mine operators need to take precautions in order to limit harm to the environment?

While Michigan may not have the most environmentally protective set of mining regulations, mining is heavily regulated and they do face limits and consequences should they exceed those limits. Michigan environmental regulation is largely contained within the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) and the implementing regulations. For example, iron mining is regulated under part 631 of the NREPA, part 632 governs Nonferrous Metallic Mining and Reclamation, sand dunes mining appears in Part 632 and coal mining in part 635.

Additionally, discharges into waterways are governed under the Clean Water Act implemented by Michigan. Other rules govern developments near shorelines. Local zoning regulation applies in a number of instances. And additional federal rules might apply to mining operation, such as the Endangered Species Act protect certain species and the Resource Conservation and Recovery Act (RCRA) governs the management of hazardous wastes.

Do I need to talk to an attorney?

If you have mining operation or exploration occurring or being proposed we would highly recommend that you seek the advice of an attorney. Some lawyers provide initial consultations for free and you might also consider approaching environmental organizations with in-house attorneys. As can be seen even in the above, simplified overview of mining regulation in Michigan, this is a highly complex area of law. There are competing and unclear ownership interests, numerous procedural rules, different regulations of different types of minerals , differences between oil and gas and other mineral operation, and numerous other issues that make this area of law difficult or overwhelming for the non-specialist.

Topics not covered that may require a new law in Michigan: 1. Provide private surface owners the option to purchase and reunite severed minerals rights in alignment of their parcel before a sale or lease of the mineral rights to a third party. 2. Special rules to govern uranium mining since there are none at the present time.

Other sources of information

- http://geology.com/articles/mineral-rights.shtml#surfaceS
- http://www.michigan.gov/documents/deq/ogs-oilandgas-mineral-rights_257977_7.pdf
- http://envdeskbook.org/CH13/Ch13CommonLaw.htm#_Toc291770304

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