

REAL ESTATE SKILLS AND STRATEGIES

MINERAL ISSUES FOR THE CONSERVATION PRACTITIONER

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First Half of Presentation:

What is a Mineral Estate?

- *Presented by* Patrick Mitchell, Roseville, CA
 - Mining and land use attorney
 - Experience in mine permitting, mineral title issues, conservation easements and mitigation banks throughout CA

Second Half of Presentation:

What is the Value of a Mineral Estate?

- *Presented by* John Manes, Phoenix, AZ
 - Geologist and mineral appraiser
 - Experience in mineral appraisals throughout the US

WHAT IS A MINERAL RIGHT ANYWAY?

FEDERAL RULES

- Numerous Public Land Laws:
 - **Coal Lands Act of 1910** (limited to reservations for coal)
 - **Stock-Raising Homestead Act (SRHA) of 1916** (includes aggregate)
 - **Taylor Grazing Act of 1934** (as a general rule does not include aggregate)
 - **Indian Reorganization Act of 1934** (whether aggregate is included depends on the law of the state where the deposit is located)

WHAT IS A MINERAL RIGHT ANYWAY?

FEDERAL RULES (cont'd)

- U.S. Supreme Court:
 - *Amoco Production Company v. Southern Ute Indian Tribe*, 526 U.S. 865 (1999)
 - Interpreting the Coal Lands Act of 1910 to include only coal.
 - *Watt v. Western Nuclear, Inc.*, 462 U.S. 36 (1983)
 - A grant of land under the Stock-Raising Homestead Act of 1916 reserved to the U.S. the mineral rights, including aggregate.
 - *Burke v. Southern Pacific Railroad Company*, 234 U.S. 669 (1914)
 - Mineral reservations in federal grants to railroads include the minerals and surface estate.
 - *Northern Pacific Railway Company v. Soderberg*, 188 U.S. 526 (1903)
 - Lands valuable solely or chiefly for granite quarries are “mineral lands.”

WHAT IS A MINERAL RIGHT ANYWAY?

FEDERAL RULES (cont'd)

- Mineral reservations may or may not include aggregate
 - Depends on the applicable federal law
- You may not own everything that you think you do; that's why mineral title research/mineral due diligence is necessary
 - Horror stories in Los Angeles (11,000 acres) and San Diego (3,000 acres) counties (examples: SRHA + SLC)
- ▶ **Patrick G. Mitchell & Wendy L. Anderson (Bogdan), *Aggregate Mining: Acquisition of "Minerals," Mineral Reservations, and Other Mysteries*, Rocky Mountain Mineral Law Foundation Annual Institute, Chapter 12 (2001).**

WHAT IS A MINERAL RIGHT ANYWAY?

STATE RULES:

- State Lands Commission
 - School Sections, e.g. Section 36
 - Lands Under Navigable Rivers as of statehood 1850 (pre-dams)

DEFINITION OF MINERAL FOR STATE LANDS (INCLUDES AGGREGATE):

- *Cal Pub. Resources Code § 6407: Mineral deposits reserved to the state shall include all mineral deposits in lands belonging to, or which may become, the property of the state, including but not limited to, oil and gas, other gases including, but not limited to, nonhydrocarbon and geothermal gases, oil shale, coal, phosphate, alumina, silica, fossils of all geological ages, sodium, gold, silver, metals and their compounds, alkali, alkali earth, sand, clay, gravel, salts and mineral waters, uranium, trona, and geothermal resources.*

WHAT IS A MINERAL RIGHT ANYWAY?

- **PRIVATE MINERAL RESERVATION RULES**
- **PARTIES CAN SPECIFY; STATE AND FEDERAL GOVERNMENT APPROACHES DO NOT CONTROL**
 - *Bambauer v. Menjoulet* (1963) 214 Cal.App.2d 871, 875 (definition of mineral for state lands purposes “has no bearing whatever on the interpretation of deeds between private parties”)
- **IF NOT SPECIFIED, SAND AND GRAVEL ARE EXCLUDED IN CALIFORNIA (*Bambauer*) BUT MAY BE INCLUDED IN SOME OTHER WESTERN STATES:**
 - E.g., *Fisher v. Keweenaw Land Ass’n* (1963) 371 Mich. 575 (sand may be within mineral reservation).

WHAT IS A SPLIT ESTATE?

- **Real Property is a “Bundle of Sticks”**
 - Surface, mineral, water, conservation easement, etc.
- **Mineral Versus Surface Estate**
 - More accurately seen as mineral versus non-mineral estate
 - Mineral estate is typically the subset of what are considered “valuable minerals,” because most things subsurface are “minerals” of some type, but not part of the mineral estate
- **Can a split estate be reconnected?**
 - Yes, by acquisition
 - The sticks are “rebundled”
- **Acquiring the mineral estate can further conservation efforts (e.g. Monterey County surface in conservation easement but not 5,000-acre mineral estate)**

WHAT IS A DOMINANT MINERAL ESTATE?

- **“Dominant mineral estate” means that the mineral estate is dominant over the surface estate**
 - i.e., the surface can be impacted or destroyed to mine for minerals
 - *Bourdieu v. Seaboard Oil Corp. of Delaware* (1940) 38 Cal.App.2d 11, 17
 - California gold rush of 1848-1875
- **The reasonable accommodation doctrine**
 - First adopted by Texas in *Getty Oil Company v. Jones*, 470 S.W.2d 618 (Tex. 1971)
 - Works well for oil wells but does not work well for open pit mines

HOW DO YOU APPROACH CONSERVATION EASEMENTS WHEN YOU CANNOT ACQUIRE THE MINERAL ESTATE?

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- **Remoteness Opinion**

- Why do we need them?
 - In some areas, the mineral rights are not for sale (not for sale)
 - In some areas, the mineral rights are seriously fractionalized (too many owners)
 - In some areas, the odds of mineral development are very low, but the owner of the mineral estate wants too high of a price (price too high)
- Conducted by geologists
- Conducted for various minerals, e.g. oil, aggregate, *etc.*

- **Negotiation**

- In e.g., oil country:
 - Negotiate well pad areas, or have a floating disturbed acreage allowance
 - Deduct from overall easement value (e.g. 10% of acreage max can be disturbed)

CONCLUSION

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- What you don't know can hurt you!

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