MINERAL RIGHTS OWNERSHIP IN MINNESOTA

FREQUENTLY ASKED QUESTIONS

Who owns the mineral rights to land in Minnesota?

The majority of mineral rights in Minnesota are owned by corporations and individuals. Some of the larger owners tie back to the early railroads, timber companies, and land and mineral speculators.

The State of Minnesota is the largest single mineral rights owner, holding about 24% of the mineral rights. The State owns mineral rights throughout the state, but ownership is concentrated north from Mille Lacs Lake in both northeastern and northwestern Minnesota.

The United States owns about 7% of the mineral rights in Minnesota. (This percentage excludes the lands held by the federal government in trust for individual Indian tribes.) Most of the federally-owned mineral rights are in the Superior and Chippewa National Forests.

In the early years of statehood, both the federal government and the state government included the mineral rights in their conveyance of land. This means that people who homesteaded the land, the railroads that received grants of the public land, and the people and companies that purchased land from the federal and state governments owned both the surface and mineral rights.

Do I own the mineral rights to my property?

This question is not always easy to answer. It will be necessary to check the title to your property to determine if the mineral rights were included with the conveyance of ownership from the federal or state government and then whether there has been any severance of those mineral rights from the surface interest.

A starting place is to review the title opinion or abstract of title prepared at the time you purchased the property. A few cautions:

- not all title opinions or abstracts of title cover mineral ownership; the title opinion or abstract should say whether it excludes mineral ownership;
- some title work only looks back 40 years due to the marketable title act, but severed mineral rights ownership is not subject to the marketable title act and the mineral title needs to be traced back to the original federal grant or conveyance; and
- some deeds of conveyance include standard language such as "subject to mineral rights owned by the State of Minnesota", but that doesn't mean that title work was done to identify whether the mineral rights are actually owned by the state.

If you do not have a title opinion or abstract of title that covers the mineral ownership from the time of the original conveyance of the property from the federal government, you will need to review all documents of record in the county recorder's office. A real estate attorney can be hired to conduct this review for you; be sure to identify that you want to know about mineral ownership.

What is severance of mineral rights?

A severance is a separation of the ownership of the mineral rights from the ownership of the surface. The Minnesota Supreme Court has recognized that mineral rights can legally be owned separate from the surface rights.ⁱⁱ

There are several ways in which a severance may happen. Most commonly, mineral rights are retained (reserved) upon sale of the land. Language is included in the deed of conveyance reserving the mineral rights to the seller. Another method is for the mineral rights to be severed by a conveyance of the mineral rights. The railroads, timber companies and land speculators would often keep the surface and transfer the mineral rights to another corporate entity. Once the timber companies removed the timber or a decision was made not to retain the property, they often stopped paying property taxes and let the surface forfeit to the state, but their separate corporate entity retained the minerals for future speculation. Another method is for the mineral rights to forfeit with the surface to the state for non-payment of the taxes, with the state subsequently reserving the minerals upon sale of the surface.

In 1889, the Minnesota Legislature authorized the State to reserve mineral rights when certain state lands were sold in the counties of Cook, Lake and St. Louis. This was due to the discovery of iron ore. In 1901, it became mandatory that the State reserve the mineral rights upon the sale of any land the State acquired due to an act of the U.S. Congress, except for lands granted to aid in the construction of railroads. The policy of reserving mineral rights was subsequently extended to almost all other land owned by the state, including tax forfeited lands.

Severance of mineral rights from the surface estate is very common in northern Minnesota due to tax forfeitures, the grants of lands to the railroads, timber development, and the early years of mineral speculation. It is less common to find severance of minerals in southern Minnesota and the Twin Cities metropolitan area.

What minerals are covered in a severance?

The minerals covered by a severance are determined by the language of the deed severing the mineral ownership from the surface ownership. Sometimes the language of the deed is ambiguous. For example, if the language reserves "all valuable minerals", it is relatively clear that iron ore, copper and gold would be included in the reservation, but it is less clear that limestone or clay are included in the reservation.

If the courts are asked to determine which minerals are covered in a reservation, the Minnesota courts will try to determine what the parties intended at the time the mineral interests were severed from the surface interest. Unless there is language in the severance, there is no elevation or depth limit for the mineral reservation; the minerals can be on the surface or underground.

The Department of Natural Resources staff is often asked whether the state's mineral reservation includes sand and gravel. The answer is that ordinary sand and gravel used for construction purposes is

not included in the standard mineral reservation of "all mineral and water power rights as provided by law" that is found in the state deed conveying the surface of tax forfeited land. There are exceptions, such as when the state acquired ownership through forfeiture of the privately-owned severed minerals interest and the severance language specifically included sand and gravel.

What is the severed minerals interest law?

Severed mineral rights may be sold or inherited in the same manner as other real estate, independent of the ownership of the surface of the land. Over the decades, the ownership had often become very obscure and fractionalized. Some mineral interests remaining in families for several generations had been divided among so many descendants of the original party to the severance that their fractional interests had become very small.

The cost of title searches needed to determine ownership of mineral interests made taxation difficult. Taxing authorities were also frustrated in their attempts to tax severed mineral interests because of the difficulty of assigning values to those interests. Since the market value of minerals is usually only determined by expensive exploration, very few severed mineral interests were taxed as their value was not known. As a result, severed mineral interests became a class of real property that, for practical purposes, was not taxed even though the value of the minerals sometimes probably exceeded the value of the surface.

The Minnesota Legislature addressed these issues through the Severed Minerals Interest Law. ^{vi} This law requires the owners of severed mineral interests to register their interests by filing a severed minerals interest statement. The statement is filed in the office of the county recorder, or, if registered property, in the registrar of titles' office. The severed mineral interests are now taxed at \$.40 per acre per year, unless valued under other laws or exempt from taxation under other laws. ^{vii} If the taxes are not paid, the severed minerals interest will forfeit to the state and be held in trust for the taxing districts.

A title caution: not all parties who filed a severed minerals interest statement actually owned the mineral rights. Even if a severed minerals interest statement is found in the county records, there is still the need to check the title to determine if that party actually owns the mineral rights.

What happens if a statement of severed minerals interest is not filed?

If the severed minerals interest owner does not file the severed mineral interest statement within the time deadline provided by law, the mineral interest will forfeit to the state after notice and opportunity for hearing. Viii The Commissioner of Natural Resources notifies the last owner of record on file in the county offices of a hearing. The Minnesota district court is asked to issue an order adjudging absolute forfeiture of the mineral interest to the state.

The defense to a court action is that the severed minerals interest taxes were timely paid and that the county records specified the true ownership at the time the statement should have been filed. The owner may also show that the procedures affecting the title had been timely initiated and were being pursued by the true owner at the time the statement should have been filed.

Another title caution: many owners of severed minerals rights did not file a severed minerals interest statement. Until the State brings a forfeiture action to determine title has forfeited to the State, they may have a claim of record, but most likely not a claim that can be defended when challenged.

What are the rights of the surface owner? What are the rights of the severed minerals owner?

Severed mineral interest ownership is not new to Minnesota. The iron ore and taconite industry work with surface owners to acquire the lands that are needed for its mining operations. The companies currently exploring for non-ferrous minerals in Minnesota work with surface owners to conduct mineral exploration.

With over a hundred years of mining in Minnesota, the legal rights of a severed minerals owner versus a surface owner has never needed to be addressed by the Minnesota courts. The general rule that has developed in other parts of the country is that unless otherwise stated in the severance deed, the mineral rights interest carries with it the right to use so much of the surface as may be reasonably necessary to reach and remove the minerals, being responsible for damages to the surface owner.

A surface owner should also review all the language of the severance deed. Many of the private severances included rights to repurchase the surface. If this type of clause is identified in a title review, it is suggested that the issue be discussed with an attorney on whether rights should be bought from the mineral owner or if the repurchase rights are extinguished under state real estate law.

If someone else owns the mineral rights, may I buy those rights?

Minerals rights may be purchased and sold by private parties. If a surface owner wants to buy the mineral rights, they can approach that party to see if they want to sell.

A surface owner should consult an attorney and a geologist before purchasing mineral rights. Deposits of economic size are very rare. The surface owner should look at the mineral potential for the property, including the likelihood of there being valuable minerals on site. Before buying mineral rights, the surface owner should also consider the likelihood of any minerals being developed. Environmental issues, permitting concerns and the value for mineral prices are just some of the reasons that a mineral deposit, even if found, might not be developed into a mine.

If the State of Minnesota owns the mineral rights, state laws do not allow the sale of those mineral rights. If the State enters into a land exchange, the state's Constitution requires that mineral rights be reserved as part of the exchange.

What are the rights of the State of Minnesota when leasing severed minerals?

State-owned severed minerals may be leased through public sale, or in certain cases, by negotiation. The Department of Natural Resources is providing notice to surface owners when it has a bid for a mineral lease of the state's severed minerals. The state's non-ferrous metallic minerals lease provides that the lessee must provide written notice to the surface owner at least 20 days in advance of surface activities and the notice must described the planned activities.

The severed minerals interest law authorizes the commissioner of natural resources to lease severed minerals that were not registered or timely registered. The state lessee would be able to conduct exploration activities, but they are not allowed to mine the property until the severed minerals interest forfeiture proceeding was completed.

Who receives the revenue from the mining of minerals?

In most instances, the mineral rights owner receives the rental and royalty payments made under a mineral lease. If a corporation or individual owns the mineral rights, they will receive the mineral lease payments. In some cases, there are prior agreements in the chain of title under which an earlier owner receives some of the payments, such as an overriding royalty interest payment.

If the United State owns the mineral rights, the revenue is primarily distributed to the United States Treasury with a small portion distributed to the state for schools, roads and public buildings.

If the State of Minnesota is the owner of the mineral rights, the revenue will be distributed based on the classification of the land and how it came into state ownership. Revenue on the school trust lands goes to the Permanent School Fund from which interest and dividends are distributed to the school districts throughout the state. Revenue on university lands goes to the Permanent University Fund from which interest and dividends are distributed for scholarships for students at the University of Minnesota, mineral research at the University, and scholarships and funding for a mining engineering program. Revenue from tax forfeited lands is distributed to the county, school district and township or city in which the leased lands are located.

Minnesota Department of Natural Resources
Division of Lands and Minerals
500 Lafayette Road
St. Paul, MN 55155-4045
651-259-5959
June 14, 2016

¹ See <u>Public Land and Mineral Ownership in Minnesota: A Guide for Teachers</u>, (DNR, January 2016) for a map of the state mineral ownership. The publication is found on the <u>DNR website</u>.

^{II} Carlson v. Minnesota Land and Colonization Co., 129 N.W. 768 (MN 1911); Buck v. Walker, 132 N.W. 205 (MN 1911).

iii Minn. Stat., sec. 93.01.

iv Vang v. Mount, 220 N.W. 2d 498 (MN 1974).

^v Resler v. Rogers, 139 N.W. 2d 379 (MN 1965); Attorney General's Opinion 311-J, August 13, 1946.

vi The Severed Minerals Interest Law was first enacted in 1969 and was amended in 1973, 1979, 1988 and 1994. The severed minerals interest registration provisions are presently found in Minn. Stat., sec. 93.52-.58. The tax provisions are presently found in Minn. Stat., secs. 273.165, 272.039 and 272.04, subd. 1.

vii The tax was ruled constitutional by the Minnesota Supreme Court in 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.

viii The Minnesota Supreme Court, in Contos, U.S. Steel Corp., et.al. v. Herbst et.al., cited in footnote 3, also upheld the forfeiture penalty for failure to timely file a statement of severed minerals ownership, but held that the procedures attending the forfeiture provisions for failure to timely register a severed minerals interest violated constitutional requirements of due process. The severed minerals interest law was amended in 1979 to address the due process requirements.

ix Minn. Stat., sec. 93.55, subds. 1, 1a and 3.