

## MINERAL RIGHTS

### Office of Geological Survey

**Please note: This brochure is intended only to give a brief general description of mineral rights, and is not to be construed as legal advice. If you are involved in a mineral rights or mineral development matter, you may wish to contact an attorney.**

Michigan's abundant mineral resources make an important contribution to the prosperity of the state's citizens and industries. Among the states, Michigan ranks 17th in production of crude oil, 12th in natural gas and second in iron ore. Michigan also produces significant quantities of salt and brine extracts, sand, gravel, gypsum, and a host of other mineral products. In 2001, the estimated value of non-fuel mineral production was \$1.9 billion.

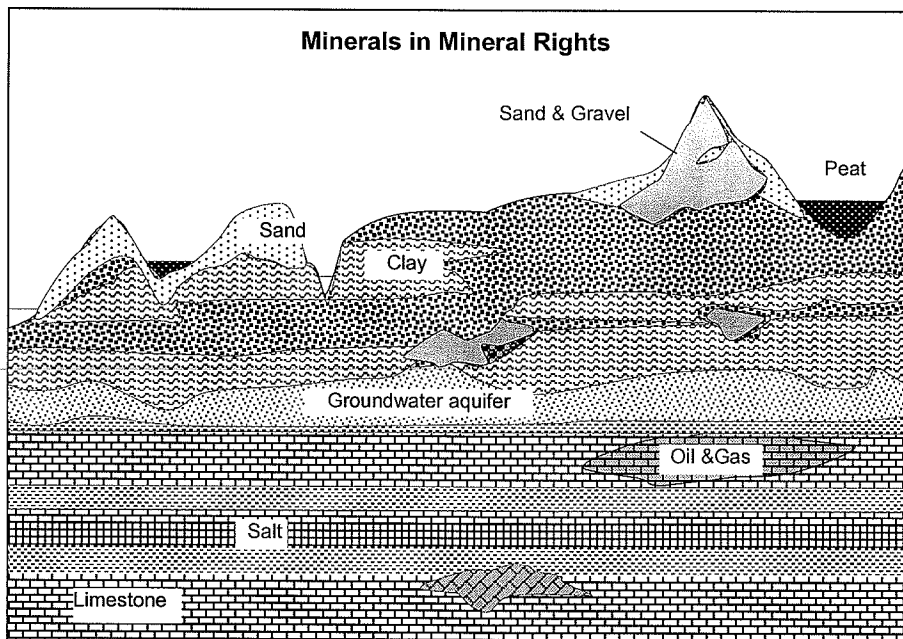
The rights to develop minerals in Michigan are based mainly on common law doctrines. These doctrines have evolved through interpretations of rights by the courts, and have their roots in the old English laws that we inherited. In some cases, the common law doctrines have been modified or clarified by statutes enacted by the Michigan legislature.

The Office of Geological Survey (OGS) of the Michigan Department of Environmental Quality (DEQ) regulates many aspects of mineral extraction activities to promote the conservation and efficient development of minerals. The OGS does this to protect the environment and public health and safety. However, the rights to develop minerals, and the purchase and sale of those rights, are private contractual matters that must be negotiated between the parties involved.

### What are "Mineral Rights?"

A mineral right is a right to extract a mineral from the earth or to receive payment, in the form of royalty, for the extraction of minerals. "Mineral" may have different meanings depending on the context, and there is no universal definition. However, "mineral" generally includes:

- Fossil fuels – oil, natural gas, and coal.
- Metals and metal-bearing ores – such as gold, copper, and iron.
- Non-metallic minerals and mineable rock products - such as limestone, gypsum, building stones and salt.
- May also include sand and gravel, peat, marl, etc.



### **Who Owns the Mineral Rights for a Parcel of Land?**

A mineral right is part of property rights and may be sold, transferred, or leased in a similar manner as other property rights. 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. Mineral rights may be sold or retained separately from the surface rights, in which case the mineral rights are said to be "severed." A person may own all of the mineral rights for a parcel or any fraction of the rights. A person may also own rights to only one kind of mineral, such as oil and gas, or to only one formation or depth interval. The ownership of the mineral rights in a parcel can usually be determined by examining the deed abstract for the property.

### **Who Can Develop the Minerals in a Parcel?**

A mineral owner may develop his or her own mineral deposit. However, this is seldom feasible because of the high cost of exploration and development. More commonly, a mineral owner leases his or her mineral rights to a mineral development company. By executing a lease, the mineral owner (the lessor) grants to the person or company who receives the lease (the lessee) the right to develop and produce minerals in the leased parcel. A lease is a private contract between the two parties, and can take a variety of forms. However, leases usually have certain common elements. The mineral owner is paid an amount of money - called a bonus - when the lease is signed. The lease generally provides for payment of a royalty to the mineral owner on any minerals produced from the parcel, and the manner in which royalty payments are to be made. Leases generally have a specific term, or duration. A lease may provide for a periodic rental payment to the mineral owner if no minerals are produced and no royalty payments are being made.

The owner or lessee of the mineral rights, whether severed or not, has the right to reasonable use of the land to extract minerals from the property. However, the owner of the surface rights to a parcel may be entitled to compensation for use of the land, such as for damage to crops or trees.

### **Can Severed Mineral Rights be Retained Indefinitely?**

Under Michigan's Dormant Minerals Act, severed oil or gas rights revert to the surface owner after twenty years, unless one of the following actions have occurred within the 20-year period:

- The severed interest is sold, leased, mortgaged, or transferred by recorded instrument.
- A drilling permit is issued.
- Oil or gas is actually produced or withdrawn from the severed holdings.
- The interest is utilized for underground gas storage operations; or
- A record claim of interest is filed with the county Register of Deeds.

The Dormant Minerals Act applies only to oil or gas rights, and not other mineral rights. The Act excludes interests owned by a governmental body.

### **Can Minerals be Produced Without the Agreement of a Mineral Owner?**

Michigan law has provisions to protect the rights of an owner or lessee of minerals in cases where not all owners of minerals in a tract agree on terms for development of the minerals. Where minerals in a parcel are owned by more than one person or company, the owner or owners of a majority mineral interest in the parcel (more than 50 percent of the oil and gas interests or 75 percent of other mineral interests) may obtain a court decree authorizing them to explore for and produce the minerals in the tract. Additional provisions apply to oil and gas. Michigan law provides for the establishment of drilling units - a tract of land with a specified size and shape upon which one well may be drilled. The part owner of oil and gas rights in a drilling unit may petition the Department of Environmental Quality to compel a non-consenting owner to participate in the development of the drilling unit (see our brochure entitled "Pooling of Properties for Oil and Gas Production"). In the case of either oil and gas or other minerals, the law provides for fair compensation to the non-consenting owner for their share of the minerals produced.

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