#H-408

NS13b
10/26/87

Memorandum 87-83

Subject: Study H-408 - Uniform Dormant Mineral Interests Act (Comments on Tentative Recommendation)

The Commission distributed for comment a tentative recommendation proposing adoption in California of the Uniform Dormant Mineral Interests Act to replace the existing California statute on termination of dormant mineral rights (Civil Code Sections 883.110-883.270). The Uniform Act is based on the California statute but is more carefully worked out.

The Commission's concept was that if the Uniform Act was generally approved by interested persons and enactment of the Uniform Act would not involve substantial Commission or staff resources, the Commission would propose its enactment. Unfortunately, the comments on the tentative recommendation are not conclusive. We received only 6 letters commenting on the recommendation (plus Henry Angerbauer's approval). Of the letters commenting on specific aspects of the recommendation, the following results emerge:

(1) Two letters from title insurers note general approval subject to a number of clarifications. See Exhibits 5 (Forms and Practices Special Committee of the California Land Title Association) and 6 (John C. Hoag, Ticor Title Insurance).

(2) One letter from a public utility company suggested that mineral interests owned by gas and electric public utilities be exempted from termination under the statute. See Exhibit 2 (Howard V. Golub, Pacific Gas and Electric Company).

(3) One letter from a lawyer argues that the law does not go nearly far enough in enabling termination of dormant mineral interests. See Exhibit 3 (Leslie E. Kell, Carmel).

(4) One letter from an oil company argues that the law goes too far in enabling termination of dormant mineral interests, and that the Uniform Act is worse than existing California law in creating problems and ambiguities that do not exist now. "We urge the Commission to reconsider any preliminary decision to support the introduction of the

Uniform Act and to carefully review the other alternatives available to correct any perceived problems in the current California law on dormant mineral interests." See Exhibit 4 (J.L. Reid, Shell Western E&P Co.).

The specific comments made in these letters are analyzed following the provisions of the statute to which they relate. However, the tenor of the letters raises the larger issue of whether this is a matter the Commission wishes to pursue further, or to let drop.

The staff notes that during 1987, the first year of the Uniform Act, it was enacted in Connecticut and Washington.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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August 12, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 93403-4739

Gentlemen:

I approve the Tentative Recommendation relating to Uniform Dormant Mineral Interests Act, dated July 1987.

Very truly yours,

CHARLES E. OGLE

CEO:ml

PACIFIC GAS AND ELECTRIC COMPANY

PG&E

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ROBERT R. RICKETT
ATTORNEY AT LAW

August 11, 1987

Arthur K. Marshall, Chairperson
California Law Revision Commission
4000 Middlefield Rd., Suite D-2
Palo Alto, CA 94303-4739

Re: Uniform Dormant Mineral Interests Act

Dear Mr. Marshall:

We have reviewed the Commission's proposed recommendation regarding the Uniform Dormant Mineral Interests Act. We would note that while the Act exempts from its application mineral interests owned by the United States, an Indian tribe, the State of California, or an agency or political subdivision of this state, it would appear to apply to public utilities such as this Company. We believe it would be appropriate to add electric and gas utilities subject to regulation by the California Public Utilities Commission to the list of exclusions.

This Company operates several underground gas storage reservoirs within the state. To insure the integrity of these storage reservoirs, the Company has acquired over the years a number of mineral interests on tracts in the immediate vicinity of these reservoirs. By holding these mineral interests the Company can assure that no drilling will occur on the periphery of the reservoirs that might cause migration of stored gas from the reservoirs to these surrounding tracts.

Because the tracts are held as a buffer zone, no exploration or production activity takes place. Under the provisions of the Uniform Dormant Mineral Interests Act, these mineral interests holdings would be deemed dormant and can be

preserved only by the filing of appropriate notice. By adding electric and gas corporations to the list of exclusions, this Company and its sister utilities in the State of California would be relieved of this filing obligation. Not only would this save a certain amount of administrative expense, but it would avoid the problems that can be created if such notices are inadvertently misfiled or not filed. This is particularly important in view of the proposed change in the Act that would eliminate the ability to restore the utility's title after 40 years of inactivity.

We note that the same reasons given for excluding governmental agencies from the application of the Act apply equally to gas and electric utilities and extending the exclusion to such utilities is consistent with the expressed policy of the Act.

We thank you for the opportunity to comment on your tentative recommendations and trust you will find our suggestion a worthy one. If you desire to discuss this matter further, Mr. Robert R. Rickett of this Company may be reached at 415/972-6667.

Very truly yours,

Howard V. Golub

RRRickett:rc

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September 11, 1987

California Land Law Review Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation relating to
Uniform Dormant Mineral Interests Act

Ladies and Gentlemen,

We appreciate this opportunity to express our views upon your proposals to amend California's version of the Uniform Dormant Mineral Interests Act. We firmly support the process of removing unreasonable restraints upon alienation by statute, and encouraging the full use and development of surface and subsurface real property interests. We do not feel that the existing statutes accomplish these objectives. We see two principal problems with the existing Act as it applies to mineral interests.

First, the description of the type of operations which will prevent an interest from becoming "dormant" is unnecessarily broad and ambiguous. What are "operations that effect the minerals"? Why should surface and subsurface operations "on other property", (whether or not unitized or pooled with subject property) continue an otherwise dormant mineral interest on the subject property? These uncertainties and ambiguities make it extremely difficult for and oil and gas lessee desiring to drill or develop the property to determine whether the inactive mineral interest is in fact dormant; they also defeat the statutory objective of promoting marketable titles.

We see no reason why, in the absence of actual production upon a parcel or a unitized (or pooled area which includes at least a portion of a parcel,) the statute should not require actual drilling or development operations be conducted in order to preserve an inactive mineral interest. These are facts which could be readily determined by an oil and gas operator. In the absence of such production or actual drilling and development during the twenty year statutory period, the mineral interest should be deemed dormant.

Secondly, the existing statutory provisions actually add to the existing dormant mineral interest problem by creating a new term or habendum clause type interest in the mineral owner. This new statutory interest is in the nature of a mineral interest for twenty years and so long thereafter as someone files an action to terminate an inactive mineral interest. By merely paying the costs of litigation or a proportionate share thereof, in the case of a fractional interest, the mineral claimant can cause dismissal of the quiet title action or other proceeding to terminate his mineral interest. The mineral claimant can do this at any time, including an indefinite period beyond the intended twenty year statutory limitation.

This right of a mineral claimant to defeat the statute is completely contrary to the objectives of the Act. There should be some absolute time limitation upon the mineral claimant's assertion of rights under an inactive mineral interest. It is submitted that the forty year time period in your July, 1987 proposed amendments is excessive. A twenty-five year limitation period is more reasonable. Surely a mineral interest owner who has neither caused his mineral interest to be produced or developed with such period of time or even bothered to record the prescribed statutory notice, does not deserve further statutory protection of his interest.

It is our opinion that with these amendments, California's version of the Uniform Dormant Mineral Interests Act will better accomplish it's stated statutory purposes and will indeed facilitate the fullest development and enjoyment of our valuable natural resources.

Very truly yours,

Leslie E. Kell

LK:dpmLl

Shell Oil Company

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Legal - E&P West Coast U.S.

September 14, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94343-4739

SUBJECT: UNIFORM DORMANT MINERAL INTERESTS ACT

Ladies and Gentlemen:

This letter is submitted in behalf of Shell Western E&P Inc. (SWEPI), a subsidiary of Shell Oil Company, in response to the Commission's Tentative Recommendation dated July 24, 1987, relating to the subject act. SWEPI owns and leases significant surface and mineral interests throughout the State of California and conducts a large oil and gas exploration and production operation that is dependent upon its real property rights. As such, SWEPI has an ongoing interest in any legislative action that concerns issues related to California land and mineral titles and the holding of oil and gas rights and interests in such lands.

SWEPI is strongly opposed to the adoption of the Uniform Act as set forth in the Commission's recommendation. While the proposed act may be regarded as "uniform," it is not a "model" act. It is poorly drafted, filled with imprecise and ambiguous language, and raises far more questions than it answers. SWEPI does not dispute the fact that the present dormant minerals statute could be beneficially amended, but the Uniform Act is not the solution. The proposed changes will not prove to be "clarifying improvements" to the present statute; instead, these changes will serve only as a source of litigation in search of a judicial interpretation of language that is unnecessarily lacking in clarity and precision.

SWEPI has not had sufficient time to study the Uniform Act thoroughly and thus cannot submit at this time detailed comments that analyze all the problems presented by the proposed legislation. The following comments are those that are readily apparent from an initial review:

1. SWEPI has no objection to the proposed statement of public policy, in § 883.010, to "encourage" marketability and to "mitigate" the adverse effect of dormant mineral interests. The concern is that the proposed act goes far beyond the statement of policy. Any attempt to employ a conclusive presumption of abandonment, as does the Uniform Act, is more than mere mitigation of adverse title effects - it is an attempt to eliminate them summarily. This approach goes beyond encouraging

marketability and attempts to insure it, at least insofar as dormant mineral interests are concerned.

2. The Uniform Act reduces the number of people who can use the act to fulfill the declared public policy. The present law permits the "owner of real property" to bring an action to terminate a dormant mineral right, while the proposed act limits this right to the "surface owner of real property." There may be numerous instances in which a subsurface owner of a real property right or interest could have just as great a need to clear impaired title as would someone owning only an interest in the surface of the property. What purpose is served by enacting language that potentially restricts the availability of a statutory remedy when the fullest use of the remedy is the stated purpose of the act.

3. The present law states that there is no intent to limit or affect the common law governing abandonment, a position that is not followed in the Uniform Act. The official comments to the Uniform Act indicate that the act "supplements" common law and yet does not affect common law. This contradictory statement ignores the fact that the application of a conclusive presumption does not "supplement" the common law - it avoids the common law. The key element in the common law of abandonment is the intent of the party allegedly abandoning its interest. In several instances, the Uniform Act simply ignores the intent, or lack of intent, of the mineral owner.

Section 883.040(a) states that "[d]isability or lack of knowledge of any kind on the part of any person" has no effect on the running of the dormancy period. Someone unable to act or lacking knowledge of an event cannot be found to have intended the act or the results thereof. Another example of ignoring the clearly stated intent of the parties is in refusing to recognize a shut-in well as an "active mineral operation" that constitutes use of a mineral interest. Such a position is clearly inconsistent with the intent of the parties and ignores a significant investment in the drilling and completion of a well. SWEPI contends that a shut-in well is evidence of continued use, and is certainly evidence of an intent to preserve an interest in the well and its minerals, particularly when shut-in royalty payments are being made on an annual basis.

The official Comment for subsection (c) of § 883.040 states, without even a nod toward the common law principles of abandonment, that this subsection is intended to preclude a mineral owner from evading the purpose of the act by contracting for a long or indefinite "duration of the mineral interest." Again, the intent of the parties is ignored and the application of the act is extended way beyond the purposes stated in § 883.010. Section 883.040(c) does not actually concern itself with dormancy of a mineral interest, but with a contractual use by identified parties that is deemed unacceptable under this act. In other words, the act becomes an end in and of itself rather than the means to an end as it is characterized in its statement of policy and purpose.

4. The Uniform Act excludes injection of substances for purposes of disposal or storage from the scope of "active mineral operations." To prevent future judicial interpretation from becoming overly broad in its view of this exclusion, the proposed act should state that the "injection of substances for purposes of production, development or pressure maintenance" is an active mineral operation.

5. The first sentence of § 883.040(b)(3) appears to provide that recordation of certain instruments evidencing the continued existence of a mineral interest constitutes a use of that interest. The second sentence of this subsection seems to significantly limit this provision by stating that recordation constitutes use only of a "recorded interest," indicating that not only need there be recordation of a certain instrument within the 20 year period, but that instrument must itself relate to a recorded mineral interest. Thus one could not rely on the recordation of an instrument as evidence of a qualifying use without also determining whether the underlying mineral interest to which that instrument pertains is also recorded.

Significant problems could arise from this language in cases where, for example, an estate is divided amongst many heirs by intestate succession without probate proceedings, and those interests are not a matter of record. Thereafter, an oil and gas company, through standard title research and the obtaining of affidavits of heirship and other similar documents, determines title to its satisfaction and obtains and records oil and gas leases from these heirs. This recordation of an instrument (the oil and gas lease) evidencing a claim to or continued existence of a mineral interest may not constitute a use because it does not pertain to "any recorded mineral interest." In such situations the parties would be forced to resort to legal action to obtain a recorded judgment or decree in order to evidence a defined use of the mineral interest. For the purpose of determining dormancy of minerals, what purpose is served by such a requirement?

6. Section 883.040 attempts to handle issues relating to fractional ownership of minerals, multiple minerals and "lesser included minerals." The legal and title problems raised by the language used in the Uniform Act to address these issues are limited only by the bounds of a litigious imagination. Suffice it to say, that the official Comment to Section 4 of the Uniform Act, as quoted in the Commission's recommendation, is sufficient justification in and of itself to reject the Uniform Act. First, the Comment goes well beyond the act itself, drawing conclusions and asserting interpretations that have little to no support in the actual language of the proposed act. Second, the Comment itself is an incredible, convoluted statement that portends the onslaught of many frustrated judicial attempts to unravel the meaning of the Uniform Act with regard to these critical issues.

7. The official Comment on § 883.020(a) of the Uniform Act, with regard to liens, goes well beyond the single word reference to the subject in this subsection. The proposed act says nothing about the

priority or preservation of liens, yet the Comment draws several conclusions and states inferred positions as though the act thoroughly addresses the topic. This is one of several examples in the Uniform Act where the intent of the legislation is expressed almost exclusively in the Comments and not in the proposed act itself. This is not the way to enact laws in an area where statutory precision is critical and legislative intent must be evidenced on the face of the statute.

8. The Commission's comments on the proposed act state that it makes only one "significant substantive change" in the law, that being the insertion of the 40-year threshold upon which a dormant mineral interest is conclusively presumed to be abandoned. If this is the case, SWEPI recommends that the Commission simply propose that single amendment to the Legislature and let it stand or fall on its own merits. There is no need to create "significant substantive uncertainty" through the other questionable language included in the Uniform Act.

With respect to the 40-year threshold, SWEPI is opposed to the use of any conclusive presumption of abandonment. Any mineral interest owner should be permitted at any time to respond to an action to quiet title under a dormant minerals act and thereby preserve its interest in those minerals through the simple recording of a notice of intent to preserve, as is presently provided in California law. All stated purposes of a dormant minerals act are served by the present law.

9. If an amendment is made to the present law, whether by adoption of the Uniform Act or otherwise, the revised law should include a statutory form for the required Notice of Intent to Preserve an Interest in Minerals. This is particularly important if the confusing provisions in the Uniform Act relating to multiple minerals and fractional interests are enacted. The preservation of property rights in the face of unclear legislation should not turn on a possible mistake in the form of notice used in attempting to comply with such legislation.

10. Other wording problems are presented by the Uniform Act, such as:

a. What is the meaning of "exploitation" as used in § 883.040(b)(1)?

b. What is the meaning of "active" mineral operations as used in § 883.040(b)(1), as opposed to a simple reference to "mineral operations?"

c. There is no reference in § 883.040(b)(4) to the "entry" of a judgment, as there is in the official Comment. Also, this subsection should refer to an "order" as well as to a judgment or decree.

d. The reference to "the name of the class of which the owner is a member" in § 883.050(c) has no meaning. What is intended?

e. The reference in § 883.060(b) to the payment of litigation expenses "attributable to the mineral interest" is unclear. What is intended?

SWEPI appreciates the opportunity to comment on the Commission's Tentative Recommendation. We urge the Commission to reconsider any preliminary decision to support the introduction of the Uniform Act and to carefully review the other alternatives available to correct any perceived problems in the current California law on dormant mineral interests. Thank you for your consideration of the above comments.

Sincerely,

J. L. Reid
Attorney on behalf of
Shell Western E&P Inc.

JLR:ska

cc: Shell Western E&P Inc.
R. F. Gibson
W. P. Harper
T. L. Marshall
T. L. Poland

TICOR TITLE INSURANCE

J. Earle Norris
Vice President
Senior Title Counsel

SEP 24 1987
RECEIVED

September 22, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation relating to
Uniform Dormant Mineral Interest Act
Study H-408

Gentlemen:

I apologize for the lateness of this response but it was due to my relocating offices within the company.

I and the members of the California Land Title Association Forms and Practices Special Committee have reviewed the above captioned Tentative Recommendation and we do not find any significant problems.

However, it would be quite helpful if the Act could make reference to the filing of a notice of Pendency of Action pursuant to California Code of Civil Procedure Section 409 when the action is commenced to terminate a Dormant Mineral Interest. This would promote the protection for a bona fide purchaser or encumbrancer for value who might assume after looking at the record that the Mineral Interests may have been abandoned under the Common Law of Abandonment. Or, the purchaser of a Mineral Interest which may be subject to an Action to Terminate that Interest should arguably take free and clear of the claim of the surface owner without actual or constructive notice.

If you have any further questions regarding this, please do not hesitate to contact the undersigned at your convenience.

Very truly yours,

J. Earle Norris

J. Earle Norris

JEN/lz

cc: Robert Cavallaro
Collyer Church
Gordon Granger
Richard Klarin
Clark Stave
James Wickline

Ticor Title Insurance Company of California
6300 Wilshire Boulevard, P.O. Box 92792, Los Angeles, California 90009-2792 (213) 852-6831

September 24, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303 - 4739

Re: Tentative Recommendation
Relating to [9/17/87]
Uniform Dormant Mineral
Interests Act

Gentlemen:

My comments on specific provisions of the Act are placed mostly alongside the provision upon which comment is made.

One general comment: This Act, in my opinion, is useful to the title industry (with suggested revisions) to clear up mineral problems.

My guess is that no competent underwriter employed by a title insurer would ignore a mineral interest even if forty years have elapsed from the creation of the interest without a final recorded judgment. Naturally, recording would take place in the county in which the mineral estate existed.

A key notion which remains unclear to me is the time period language for preservation of a mineral interest set-out in section 883.050.

A second measuring (quantitative) problem exists in the language used in section 883.040. (The language which is unclear is underlined in red ink on the Tentative Recommendation).

I look forward to seeing the next draft of your Tentative Recommendation.

Very truly yours,

John C. Hoag

JCH/ts
Enc.

cc: Charles F. Saltus

STATE OF CALIFORNIA

California Law Revision Commission

TENTATIVE RECOMMENDATION

relating to

UNIFORM DORMANT MINERAL INTERESTS ACT

July 1987

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature in 1987. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN SEPTEMBER 15, 1987.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

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#H-408

NS13b
07/24/87

Tentative Recommendation
relating to
UNIFORM DORMANT MINERAL INTERESTS ACT

California's statute for termination of dormant mineral rights[1] was enacted in 1984 on recommendation of the California Law Revision Commission.[2] Since then, the National Conference of Commissioners on Uniform State Laws has promulgated a Uniform Dormant Mineral Interests Act,[3] based largely on the California statute.

The Uniform Act makes a number of clarifying, technical, and drafting improvements over the California statute. In particular, the Uniform Act deals extensively with fractional ownership issues, a matter on which the California statute is largely silent.[4] Other improvements include refinement of the nature of qualifying mineral operations and elaboration of the treatment of multiple minerals and lesser included interests.

The Uniform Act also makes one significant substantive change in law. Under the California statute, if the surface owner commences an action to terminate a dormant mineral interest (one that has been unused for 20 years or more), the mineral interest holder may preserve the interest from termination by paying the surface owners's litigation expenses and recording a notice of intent to preserve the interest.[5] The Uniform Act keeps this feature of California law, except that it

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1. Civil Code §§ 883.110-883.270.

2. 1984 Cal. Stat. ch. 240, § 2. See *Recommendation Relating to Dormant Mineral Rights,* 17 Cal. L. Revision Comm'n Reports 957 (1984).

3. The Uniform Act was approved and recommended for enactment in all the states by the Uniform Law Commissioners at its annual conference on August 1-8, 1986, and was approved by the American Bar Association on February 16, 1987.

4. Compare Civil Code § 883.220 with Section 4 of the Uniform Act and the Comment thereto.

5. Civil Code § 883.250.

does not apply if the mineral interest has been dormant for 40 years or more.[6] The concept of this change is that if so lengthy a period has elapsed without any activity whatsoever, whether physical or of record, involving the mineral interest, the interest should be conclusively considered abandoned and should be terminated, thereby releasing the property from the impairment of its marketability.

The Law Revision Commission believes the technical and substantive changes made by the Uniform Act would be an improvement in California law. Moreover, adoption of the Uniform Act would promote uniformity among California and the other mineral states; this would be helpful to multi-state land owners as well as to multi-state mineral owners. These objectives could be achieved without substantial disruption of existing law or practice since the Uniform Act and California law are largely the same.

For these reasons, the Law Revision Commission recommends enactment of the Uniform Dormant Mineral Interests Act in California. The Commission's recommendation would be effectuated by enactment of the following measure.

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6. See subsection (c) of Section 6 of the Uniform Act.

An act to add Chapter 3 (commencing with Section 883.010) to, and to repeal Chapter 3 (commencing with Section 883.110) of, Title 5 of Part 2 of Division 2 of the Civil Code, relating to mineral interests.

The people of the State of California do enact as follows:

Civil Code §§ 883.010-883.340 (added). Mineral interests

SEC. 1. Chapter 3 (commencing with Section 883.010) is added to Title 5 of Part 2 of Division 2 of the Civil Code, to read:

CHAPTER 3. MINERAL INTERESTS

Article 1. Uniform Dormant Mineral Interests Act

Comment. This article is a uniform act and is therefor drawn as a self-contained unit. As such, it duplicates a number of general provisions of Chapter 1 (commencing with Section 880.020). To the extent specific provisions of this article conflict with general provisions, the specific provisions control. To the extent general provisions cover a matter not covered by specific provisions of this article, the general provisions control.

§ 883.010. Statement of policy

883.010. (a) The public policy of this State is to enable and encourage marketability of real property and to mitigate the adverse effect of dormant mineral interests on the full use and development of both surface estate and mineral interests in real property.

(b) This chapter shall be construed to effectuate its purpose to provide a means for termination of dormant mineral interests that impair marketability of real property.

Comment. Section 883.010 is the same as Section 1 of the Uniform Dormant Mineral Interests Act (1986). Section 883.010 applies to Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease) as well as to this article. Section 883.010 is a specific application of Section 880.020 (declaration of policy and purposes).

The Comment to Section 1 of the Uniform Act states:

> This section is a legislative finding and declaration of the substantial interest of the state in dormant mineral legislation.

§ 883.020. Definitions

883.020. As used in this chapter:

(a) "Mineral interest" means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, leasehold, or lien, in minerals, regardless of character.

(b) "Minerals" includes gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable, and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, and any other substance defined as a mineral by the law of this State.

Comment. Section 883.020 incorporates former Section 883.110 and is the same as Section 2 of the Uniform Dormant Mineral Interests Act (1986). Section 883.020 applies to Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease) as well as to this article.

The Comment to Section 2 of the Uniform Act states:

> The definitions in this section are broadly drafted to include all the various forms of minerals and mineral interests. This includes both fugacious and non-fugacious, as well as organic and inorganic, minerals. The Act does not distinguish among minerals based on their character, but treats all minerals the same.
>
> The reference to liens in paragraph (1) includes both contractual and noncontractual, voluntary and involuntary, liens on minerals and mineral interests. It should be noted that the duration of a lien may be subject to general laws governing liens. For example, a lien that by state law has a duration of 10 years may not be given a life of 20 years simply by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice), just as a mineral lease which by its own terms has a duration of 5 years is not extended by recordation of a notice of intent to preserve the lease. Likewise, if state law requires specific filings, recordings, or other acts for enforceability of a lien, those acts must be complied with even though the lien is not dormant within the meaning of this Act. Conversely, an instrument that creates a security interest which, by its terms, endures more than 20 years, cannot avoid the effect of the 20 year statute. See Section 4(c) (termination of dormant mineral interest).

The definition of "minerals" in paragraph (2) is inclusive and not exclusive. "Coal" and other solid hydrocarbons within the meaning of paragraph (2) includes lignite, leonardite, and other grades of coal. This Act is not intended to affect water law but is intended to affect minerals dissolved or suspended in water. See Section 3 (exclusions).

While Section 2 defines the terms "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

§ 883.030. Exclusions

883.030. (a) This chapter does not apply to:

(1) A mineral interest of the United States or an Indian tribe, except to the extent permitted by federal law.

(2) A mineral interest of this State or an agency or political subdivision of this State, except to the extent permitted by state law other than this chapter.

(b) This chapter does not affect water rights.

Comment. Section 883.030 incorporates former Section 883.120 and is the same as Section 3 of the Uniform Dormant Mineral Interests Act (1986). Section 883.030 applies to Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease) as well as to this article. For additional exceptions to this chapter, see Section 880.240 (interests excepted from title).

The Comment to Section 3 of the Uniform Act states:

> Public entities are excepted by this section because they have perpetual existence and can be located if it becomes necessary to terminate by negotiation a mineral interest held by the public entity. A jurisdiction enacting this statute should also exclude from its operation interests protected by statute, such as environmental or natural resource conservation or preservation statutes.
>
> This Act does not affect mineral interests of Indian tribes, groups, or individuals (including corporations formed under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1600 et seq.) to the extent that the interests are protected against divestiture by superseding federal treaties or statutes.
>
> Although this Act affects minerals dissolved or suspended in water, it is not intended to affect water law. See Comment to Section 2 (definitions).

While Section 2 (definitions) defines the terms "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

§ 883.040. Termination of dormant mineral interest

883.040. (a) The surface owner of real property subject to a mineral interest may maintain an action to terminate a dormant mineral interest. A mineral interest is dormant for the purpose of this article if the interest is unused within the meaning of subdivision (b) for 20 years or more immediately preceding commencement of the action and has not been preserved pursuant to Section 883.050. The action must be in the nature of and requires the same notice as is required in an action to quiet title. The action may be maintained whether or not the owner of the mineral interest or the owner's whereabouts is known or unknown. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the 20-year period.

(b) For the purpose of this section, any of the following actions taken by or under authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the entire mineral interest:

(1) Active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development, but not including injection of substances for purposes of disposal or storage. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations.

(2) Payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest.

(3) Recordation of an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, leases, or divides the interest. Recordation of an instrument constitutes use of

** Title insurer's (and a lawyer's) main concern is that the action assures due process. Thus, must name all necessary parties and vest minerals in landowner. If you do not so vest, -6- action would accomplish nothing since you would still have a mineral estate "out there". Naturally, a vital concern is the length of the appeal period? [See continuation of note on PAGE 1A].

[include] Lack of capacity)

Standing problems may exist if any person can bring an action under the Act. Can beneficiary under a deed of trust bring action? I submit that only a entity with a record interest ought to be able to bring the action since it is possible an action brought by an entity without a record interest would be outside the chain of Title and hence not picked-up by insurer. Hence, two problems exist with the notion of any-person-can-bring-an-action: (1) Standing and (2) chain of Title.

Notice by publication in connection with an action under the Act ought to embody a diligent effort factor.

(i) any recorded interest owned by any person in any mineral that is the subject of the instrument, and (ii) any recorded mineral interest in the property owned by any party to the instrument.

(4) Recordation of a judgment or decree that makes specific reference to the mineral interest.

(c) This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to or the continued existence of the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

Comment. Section 883.040 incorporates former Sections 883.210, 883.220, and 883.240, and is the same as Section 4 of the Uniform Dormant Mineral Interests Act (1986). The quiet title procedure is in Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure.

Section 883.040 authorizes termination of dormant mineral interests, subject to the limitations and conditions in this article. This is consistent with public policy to enable and encourage full use and development of real property, including both surface and subsurface interests. Section 883.010 (statement of policy). Section 883.040 is also consistent with the common law rule that mineral interests in oil and gas are subject to abandonment, and applies to mineral interests in other substances as well. See Sections 883.020 ("mineral interest" defined) and 883.080 (savings provision) and the Comments thereto; *cf.* Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease). This article supplements common law principles of abandonment by providing a separate and independent basis for terminating a dormant mineral interest; the definition of dormancy is solely for the purpose of this article and does not affect the common law of abandonment. See Section 883.080 (savings provision).

The 20-year period prescribed in this section is consistent with the 20-year period prescribed by statute for termination of a right of entry or occupation of surface lands under an oil or gas lease. Code Civ. Proc. §§ 772.010-772.060. The 20-year period can be extended indefinitely by periodic recordation of a notice of intent to preserve the mineral interest. Section 883.050 (preservation of mineral interest by notice).

The Comment to Section 4 of the Uniform Act states:

> This section defines dormancy for the purpose of termination of a mineral interest pursuant to this Act. The dormancy period selected is 20 years--a not uncommon period among the various jurisdictions.
>
> Subsection (a) provides for a court proceeding in the nature of a quiet title action to terminate a dormant mineral interest. The device of a court proceeding ensures notice to the mineral owner

** If the "specific reference" is contained within an omnibus clause in a -7- recorded decree of distribution, the specificity dimension should be distribution of a specific mineral estate.

personally or by publication as may be appropriate to the circumstances and a reliable determination of dormancy.

Subsection (b) ties the determination of dormancy to nonuse. Each paragraph of subsection (b) describes an activity that constitutes use of a mineral interest for purposes of the dormancy determination. In addition, a mineral interest is not dormant if a notice of intent to preserve the interest is recorded pursuant to Section 5 (preservation of mineral interest).

Paragraph (b)(1) provides for preservation of a mineral interest by active mineral operations. Repressuring may be considered an active mineral operation if made for the purpose of secondary recovery operations. A shut-in well is not an active mineral operation and therefore would not suffice to save the mineral interest from dormancy.

Paragraph (b)(1) is intended to preserve in its entirety a mineral interest where there are active operations directed toward any mineral that is included within the interest. Thus if there are fractional owners of a mineral interest, activity by one owner is considered activity by all owners. Other interests owned by other persons in the minerals that are the object of the operations are also preserved by the operations. For example, oil and gas operations by a fractional oil, gas and coal owner would save not only the interests of other fractional oil and gas owners but also the interests of oil and gas lessees and royalty owners holding under either the oil and gas owner or any fractional owner, as well as the interests of holders of any other mineral interest in the oil and gas that is the object of the operations. The oil and gas operations suffice to save the coal interest of the oil, gas, and coal owner, as well as other minerals included in any of the affected mineral interests, not just the interest in oil and gas that is the subject of the particular operations. This is the case regardless whether the mineral interest was acquired in one instrument or by several instruments. However, oil and gas operations by a fractional oil, gas, and coal owner would not save the mineral interest of a fractional coal owner if the interest does not include oil and gas.

Under paragraph (b)(2), taxes must be actually paid within the preceding 20 years to suffice as a qualifying use of the mineral interest.

Paragraph (b)(3) is intended to cover any recorded instrument evidencing an intention to own or affect an interest in the minerals, including a recorded oil, gas, or mineral lease, regardless whether such a lease is recognized as an interest in land in the particular jurisdiction.

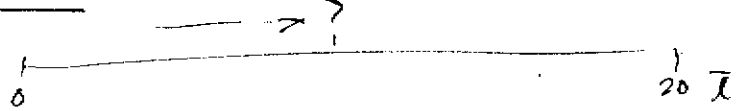
Under paragraph (b)(3), recordation has the effect of preserving not only the interests of the parties to the instrument in the minerals that are the subject of the instrument, but also the recorded interests of nonparties in the subject minerals, as well as other recorded interests of the parties in other minerals in the same property. Thus, recordation of an oil and gas lease between a fractional owner and lessee preserves the interest in oil and gas not only of the fractional owner but also of the co-owners; moreover, the recordation preserves the interest of the fractional owner in other minerals that are not the subject of the lease, whether the other minerals were acquired by the same instrument by which the oil and gas interest was acquired or by a separate instrument.

Recordation of a judgment or decree under paragraph (b)(4) includes entry or recordation in a judgment book in a jurisdiction where such an entry or recordation becomes part of the property records. The judgment or decree must make specific reference to the mineral interest in order to preserve it. Thus, a general judgment lien or other recordation of civil process such as an attachment or sheriff's deed of a nonspecific nature would not constitute use of the mineral interest within the meaning of paragraph (b)(4).

Subsection (c) is intended to preclude a mineral owner from evading the purpose of this Act by contracting for a very long or indefinite duration of the mineral interest. A lien on minerals having a 30 year duration, for example, would be subject to termination after 20 years under this Act if there were no further activities involving the minerals or mineral interest. A person seeking to keep the lien for its full 30 year duration could do so by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice). It should be noted that recordation of a notice of intent to preserve the lien would not extend the lien beyond the date upon which it terminates by its own terms.

§ 883.050. Preservation of mineral interest by notice

883.050. (a) The owner of a mineral interest may record at any time a notice of intent to preserve the mineral interest or a fractional part ~~thereof~~ of the mineral interest. The mineral interest is preserved in each county in which the notice of intent to preserve is recorded. A mineral interest is not dormant if the notice is recorded within 20 years immediately preceding commencement of the action to terminate the mineral interest or pursuant to Section 883.060 after commencement of the action.



(b) The notice may be executed by an owner of the mineral interest or by another person acting on behalf of the owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf or whose identity cannot be established or is uncertain at the time of execution of the notice. The notice may be executed by or on behalf of a co-owner for the benefit of any or all co-owners or by or on behalf of an owner for the benefit of any or all persons claiming under the owner or persons under whom the owner claims.

(c) The notice must contain the name of the owner of the mineral interest or the co-owners or other persons for whom the mineral interest is to be preserved or, if the identity of the owner cannot be established or is uncertain, the name of the class of which the owner is a member, and must identify the mineral interest or part thereof to be preserved by one of the following means:

(1) A reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the interest or of the judgment or decree that confirms the interest.

(2) A legal description of the mineral interest. If the owner of a mineral interest claims the mineral interest under an instrument that is not of record or claims under a recorded instrument that does not specifically identify that owner, a legal description is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims. In such a case, the record of the notice of intent to preserve the mineral interest must be indexed under the name of the record owner as well as under the name of the owner of the mineral interest.

(3) A reference generally and without specificity to any or all mineral interests of the owner in any real property situated in the county. The reference is not effective to preserve a particular mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the interest, (i) a previously recorded instrument that creates, reserves, or otherwise evidences that interest or (ii) a judgment or decree that confirms that interest.

Comment. Section 883.050 incorporates former Section 883.230 and is the same as Section 5 of Uniform Dormant Mineral Interests Act (1986). The specific provisions of Section 883.050 governing the notice of intent to preserve a mineral interest control over conflicting general provisions of Article 3 (commencing with Section 880.310) of Chapter 1 (preservation of interests).

** Section 883.050 makes recording a notice of intent to preserve a mineral interest (conclusive) evidence of non-dormancy for purposes of this article. Recording a notice of intent to preserve also creates a presumption affecting the burden of proof that the claimant has not abandoned the mineral interest for purposes of a determination of abandonment pursuant to common law. Section 880.310 (notice of intent to preserve interest).

The Comment to Section 5 of the Uniform Act states:

> This section is broadly drawn to permit a mineral owner to preserve not only his or her own interest but also any or all related interests. For example, the mineral owner may share ownership with one or more other persons. This section permits but does not require the mineral owner to preserve the interests of any or all of the co-owners by specifying the interests to be preserved. Likewise, the mineral interest being preserved may be subject to an overriding royalty or sublease or executive interest. In this situation, the mineral owner may elect also to preserve any or all of the interests subject to it, by specifying the interests in the notice of intent to preserve. The mineral owner may also elect to preserve the interest as to some or all of the minerals included in the interest.
>
> Where the mineral interest being preserved is of limited duration, recordation of a notice under this section does not extend the interest beyond the time the interest expires by its own terms. Where the mineral interest being preserved is a lien, recordation of the notice does not excuse compliance with any other applicable conditions or requirements for preservation of the lien.
>
> The bracketed language in paragraph (c)(2) is for use in a jurisdiction that does not have a tract index system. It is intended to assist in indexing a notice of intent to preserve an interest despite a gap in the recorded mineral chain of title.
>
> Paragraph (c)(3) permits a blanket recording as to all interests in the county, provided that there is a prior recorded instrument, or a judgment whether or not recorded, that establishes the name of the mineral owner in the county records. The blanket recording provision is a practical necessity for large mineral owners. Where a county does not have a general index of grantors and grantees, it will be necessary to establish a separate index of notices of intent to preserve mineral interests for purposes of the blanket recording.

** Uniform Act does not so provide. Instead of an inferential possibility, Act should be explicit about the conclusiveness of non-dormancy.

§ 883.060. Late recording by mineral owner

883.060. (a) In this section, "litigation expenses" means costs and expenses that the court determines are reasonably and necessarily incurred in preparing for and prosecuting an action, including reasonable attorney's fees.

(b) In an action to terminate a mineral interest pursuant to this article, the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest as a condition of dismissal of the action, upon payment into court for the benefit of the surface owner of the real property the litigation expenses attributable to the mineral interest or portion thereof as to which the notice is recorded.

(c) This section does not apply in an action in which a mineral interest has been unused within the meaning of subdivision (b) of Section 883.040 for 40 or more years immediately preceding commencement of the action.

Comment. Section 883.060 incorporates former Section 883.250 and is the same as Section 6 of Uniform Dormant Mineral Interests Act (1986). Section 883.060 enables a mineral interest owner to preserve the mineral interest after commencement of an action to terminate the interest by filing a late notice of intent to preserve the interest. This authority is conditioned upon payment of the surface owner's litigation expenses. If the mineral interest is fractionated, the mineral interest owner must pay only the fraction of litigation expenses that corresponds to the mineral interest preserved. Litigation expenses include disbursements made for title reports and other disbursements made in preparation for the litigation as well as court costs and attorney's fees incurred in connection with the litigation.

The Comment to Section 6 of the Uniform Act states:

> This section applies only where the mineral owner seeks to make a late recording in order to obtain dismissal of the action. The section is not intended to require payment of litigation expenses as a condition of dismissal where the mineral owner secures dismissal upon proof that the mineral interest is not dormant by virtue of recordation or use of the property within the previous 20 years, as prescribed in Section 4 (termination of dormant mineral interest). Moreover, the remedy provided by this section is available only if there has been some recordation or use of the property within the previous 40 years.

how late?

unclear?

will PT. pymt of litigation expenses preserve the mineral interests of those not paying litigation expenses?

§ 883.070. Effect of termination

883.070. A court order terminating a mineral interest, when recorded, merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments.

Comment. Section 883.070 incorporates former Section 883.260 and is the same as Section 7 of Uniform Dormant Mineral Interests Act (1986). A grant of minerals includes an implied right of entry to extract them. Callahan v. Martin, 3 Cal. 2d 110, 43 P.2d 788 (1935). See also Code Civ. Proc. §§ 764.010-764.070 (effect of quiet title judgment).

The Comment to Section 7 of the Uniform Act states:

> In some states it is standard practice for judgments such as this to be recorded. In other states entry of judgment alone may suffice to make the judgment part of the land records.
>
> Merger of a terminated mineral interest with the surface is subject not only to existing tax liens and assessments, but also to other outstanding liens on the mineral interest. However, an outstanding lien on a mineral interest is itself a mineral interest that may be subject to termination under this Act. It should be noted that termination of a mineral interest under this Act that has been tax-deeded to the state or other public entity is subject to compliance with relevant requirements for release of tax-deeded property.
>
> The appurtenant surface rights and obligations referred to in Section 7 include the right of entry on the surface and the obligation of support of the surface. However, termination of the support obligation of the surface under this Act does not terminate any support obligations owed to adjacent surface owners.
>
> It is possible under this section for a surface owner to acquire greater mineral interests than the surface owner started with. Assume, for example, there are equal co-owners of the surface, one of whom conveys his or her undivided 50% share of minerals. Upon termination of the conveyed mineral interest under this Act, the interest would merge with the surface estate in proportion to the ownership of the surface estate, so that each owner would acquire one-half of the mineral interest. The end result is that the conveying surface owner would hold an undivided one-fourth of the minerals and the non-conveying surface owner would hold an undivided three-fourths of the minerals. This result is proper since the reversion represents a windfall to the surface estate in general and to the conveying owner in particular, who has previously received the value of the mineral interest.

* As long as a judgment is required under the Act and that required judgment is very clear on the subject of who owns what proportion of the mineral estate, then this provision is all right.

In the example above, assume that the conveyed mineral interest is not terminated, but instead the owner of the mineral interest executes a 30-year mineral lease. If the lease is terminated under this Act after 20 years have run, the interest in the remaining 10 years of the lease would merge with the surface estate in proportionate shares, at the end of which time it would expire, leaving the interest of the mineral owner unencumbered.

§ 883.080. Savings and transitional provisions 883.080

883.080. (a) Except as otherwise provided in ~~this~~ section, this article applies to all mineral interests, whether created before, on, or after its effective date.

(b) Subdivision (c) of Section 883.060 does not become operative until two years after the effective date of the article.

(c) This article does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

(d) This article does not affect the validity of the recording of a notice of intent to preserve a mineral interest or the termination of any mineral interest made pursuant to any predecessor statute on dormant mineral interests. Section 880.370 (grace period for recording notice) applies to this article until December 31, 1989.

Comment. Section 883.070 incorporates former Section 883.270 and is the same as Section 7 of the Uniform Dormant Mineral Interests Act (1986), with the following exceptions:

(1) Subdivision (b) defers the operative date of the 40-year dormancy provision of Section 883.060(c) (late recording by mineral owner) for two years, but does not defer the operation of the entire act for two years. The 40-year provision is the only major substantive change made by the Uniform Act in California law that has been operative since January 1, 1985.

(2) Subdivision (d) is revised to recognize that a notice of intent to preserve a mineral interest could be made under former California law since January 1, 1985, and the grace period for recording a notice of intent to preserve an interest has been running since that time.

The effective date of this article is January 1, 1989. Section 883.120 (effective date).

Subdivision (c) of Section 883.080 makes clear that although this article provides a ~~procedure~~ method by which a dormant mineral interest may be terminated, the procedure is not intended to limit the common law of abandonment of mineral interests. See, e.g., Gerhard v. Stephens, 68 Cal. 2d 864, 442 P.2d 692, 69 Cal. Rptr. 621 (1968) (mineral interest in oil and gas subject to abandonment). Thus, for example, nothing in

this article affects the common law determination of abandonment of an oil or gas lease. See, e.g., Banks v. Calstar Petroleum Co., 82 Cal. App. 2d 789, 187 P.2d 127 (1947); Barry v. Kelly, 90 Cal. App. 2d 486, 203 P.2d 80 (1949). Nor is this article the exclusive means by which title to property may be cleared of an abandoned mineral interest. See, e.g., Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease) and Code Civ. Proc. §§ 760.010-764.070 (quiet title).

The Comment to Section 7 of the Uniform Act states:

> The [two]-year grace period provided by this section is to enable a mineral owner to take steps to record a notice of intent to preserve an interest that would otherwise be subject to termination immediately upon the effective date because of the application of the Act to existing mineral interests. Thus, a mineral owner may record a notice of intent to preserve an interest during the [two]-year period even though no action may be brought during the [two]-year period. Subsection (d) is intended for those states that repeal an existing dormant mineral statute upon enactment of this Act.

§ 883.090. Uniformity of application and construction

883.090. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Comment. Section 883.090 is the same as Section 9 of the Uniform Dormant Mineral Interests Act (1986).

§ 883.100. Short title

883.100. This article may be cited as the Uniform Dormant Mineral Interests Act.

Comment. Section 883.100 is the same as Section 10 of the Uniform Dormant Mineral Interests Act (1986).

§ 883.110. Severability clause

883.110. If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Comment. Section 883.110 is the same as Section 11 of the Uniform Dormant Mineral Interests Act (1986).

§ 883.120. Effective date

883.120. This article takes effect January 1, 1989.

Article 2. Expired or Abandoned Mineral Interest Lease

§ 883.310. Definitions

883.310. As used in this article:

(a) "Lessee" includes an assignee or other successor in interest of the lessee.

(b) "Lessor" includes a successor in interest or heir or grantee of the lessor.

why limited?

Comment. Section 883.310 restates subdivision (a) of former Section 883.140 without substantive change.

§ 883.320. Release of interest by lessee

883.320. If the term of a mineral interest lease has expired or if a mineral interest lease has been abandoned by the lessee, the lessee shall, within 30 days after demand therefor by the lessor, execute, acknowledge, and deliver, or cause to be recorded, one of the following:

will a quitclaim deed itself suffice? Require a recital on quitclaim deed, e.g., "The purpose of this deed is to . . . etc."

(a) A deed quitclaiming all interest in and to the mineral rights covered by the lease.

(b) If the expiration or abandonment covers less than the entire interest of the lessee, an appropriate instrument or notice of surrender or termination that covers the interest that has expired or been abandoned.

Comment. Section 883.320 restates subdivision (b) of former Section 883.140 without substantive change.

§ 883.330. Sanctions for lessee's failure

883.330. If the lessee fails to comply with the requirements of this article:

(a) The lessee shall forfeit to the lessor the sum of one hundred fifty dollars ($150).

(b) The lessee is liable for all damages sustained by the lessor as a result of the failure, including, but not limited to, court costs and a reasonable attorney's fee in an action to clear title to the lessor's interest.

Comment. Section 883.330 restates subdivision (c) of former Section 883.140 without substantive change.

§ 883.340. Action to clear title not affected

883.340. Nothing in this article makes a quitclaim deed or other instrument or notice of surrender or termination, or a demand therefor, a condition precedent to an action to clear title to the lessor's interest.

Comment. Section 883.340 restates subdivision (d) of former Section 883.140 without substantive change.

Civil Code §§ 883.110-883.270 (repealed). Mineral rights

SEC. 2. Chapter 3 (commencing with Section 883.110) of Title 5 of Part 2 of Division 2 of the Civil Code is repealed.

Comment. Former Sections 883.110 to 883.270 are replaced by new Sections 883.010 to 883.340.

Tentative Recommendation
relating to
UNIFORM DORMANT MINERAL INTERESTS ACT

California's statute for termination of dormant mineral rights[1] was enacted in 1984 on recommendation of the California Law Revision Commission.[2] Since then the National Conference of Commissioners on Uniform State Laws has promulgated a Uniform Dormant Mineral Interests Act,[3] based largely on the California statute.

The Uniform Act makes a number of clarifying, technical, and drafting improvements over the California statute. In particular, the Uniform Act deals extensively with fractional ownership issues, a matter on which the California statute is largely silent.[4] Other improvements include refinement of the nature of qualifying mineral operations and elaboration of the treatment of multiple minerals and lesser included interests.

The Uniform Act also makes one significant substantive change in law. Under the California statute, if the surface owner commences an action to terminate a dormant mineral interest (one that has been unused for 20 years or more), the mineral interest holder may preserve the interest from termination by paying the surface owners's litigation expenses and recording a notice of intent to preserve the interest.[5] The Uniform Act keeps this feature of California law, except that it does not apply if the mineral interest has been dormant for 40 years or more.[6] The concept of this change is that if so lengthy a period has elapsed without any activity whatsoever, whether physical or of record, involving the mineral interest, the interest should be conclusively considered abandoned and should be terminated, thereby releasing the property from the impairment of its marketability.

The Law Revision Commission believes the technical and substantive changes made by the Uniform Act would be an improvement in California law. Moreover, adoption of the Uniform Act would promote uniformity among California and the other mineral states; this would be helpful to multi-state land owners as well as to multi-state mineral owners.

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1. Civil Code §§ 883.110-883.270.

These objectives could be achieved without substantial disruption of existing law or practice since the Uniform Act and California law are largely the same.

For these reasons, the Law Revision Commission recommends enactment of the Uniform Dormant Mineral Interests Act in California. The Commission's recommendation would be effectuated by enactment of the following measure.

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2. 1984 Cal. Stat. ch. 240, § 2. See *Recommendation Relating to Dormant Mineral Rights,* 17 Cal. L. Revision Comm'n Reports 957 (1984).

3. The Uniform Act was approved and recommended for enactment in all the states by the Uniform Law Commissioners at its annual conference on August 1-8, 1986, and was approved by the American Bar Association on February 16, 1987.

4. Compare Civil Code § 883.220 with Section 4 of the Uniform Act and the Comment thereto.

5. Civil Code § 883.250.

6. See subsection (c) of Section 6 of the Uniform Act.

An act to add Chapter 3 (commencing with Section 883.010) to, and to repeal Chapter 3 (commencing with Section 883.110) of, Title 5 of Part 2 of Division 2 of the Civil Code, relating to mineral interests.

The people of the State of California do enact as follows:

Civil Code §§ 883.010-883.340 (added). Mineral interests

SEC. 1. Chapter 3 (commencing with Section 883.010) is added to Title 5 of Part 2 of Division 2 of the Civil Code, to read:

CHAPTER 3. MINERAL INTERESTS

Article 1. Uniform Dormant Mineral Interests Act

Comment. This article is a uniform act and is therefor drawn as a self-contained unit. As such, it duplicates a number of general provisions of Chapter 1 (commencing with Section 880.020). To the extent specific provisions of this article conflict with general provisions, the specific provisions control. To the extent general provisions cover a matter not covered by specific provisions of this article, the general provisions control.

Note. J.L. Reid, Shell Western E&P Inc. (Exhibit 4), and John C. Hoag, Ticor Title Insurance (Exhibit 6), point out a number of perceived ambiguities in the drafting of various provisions of the Uniform Act. If the Commission decides to proceed with the Uniform Act, we will address the specific matters requiring clarification that they raise in their letters.

§ 883.010. Statement of policy

883.010. (a) The public policy of this State is to enable and encourage marketability of real property and to mitigate the adverse effect of dormant mineral interests on the full use and development of both surface estate and mineral interests in real property.

(b) This chapter shall be construed to effectuate its purpose to provide a means for termination of dormant mineral interests that impair marketability of real property.

Comment. Section 883.010 is the same as Section 1 of the Uniform Dormant Mineral Interests Act (1986). Section 883.010 applies to Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease) as well as to this article. Section 883.010 is a specific application of Section 880.020 (declaration of policy and purposes).

The Comment to Section 1 of the Uniform Act states:

> This section is a legislative finding and declaration of the substantial interest of the state in dormant mineral legislation.

Note. The policy expressed by this section was satisfactory to both Leslie E. Kell, Carmel (Exhibit 3), and J.L. Reid, Shell Western E&P Inc. (Exhibit 4). However, Ms. Kell felt the statute does not go far enough to accomplish the objectives, whereas Mr. Reid believes the statute goes far beyond the expressed policies.

§ 883.020. Definitions

883.020. As used in this chapter:

(a) "Mineral interest" means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, leasehold, or lien, in minerals, regardless of character.

(b) "Minerals" includes gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable, and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, and any other substance defined as a mineral by the law of this State.

Comment. Section 883.020 incorporates former Section 883.110 and is the same as Section 2 of the Uniform Dormant Mineral Interests Act (1986). Section 883.020 applies to Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease) as well as to this article.

The Comment to Section 2 of the Uniform Act states:

> The definitions in this section are broadly drafted to include all the various forms of minerals and mineral interests. This includes both fugacious and non-fugacious, as well as organic and inorganic, minerals. The Act does not distinguish among minerals based on their character, but treats all minerals the same.
>
> The reference to liens in paragraph (1) includes both contractual and noncontractual, voluntary and involuntary, liens on minerals and mineral interests. It should be noted that the duration of a lien may be subject to general laws governing liens. For example, a lien that by state law has a duration of 10 years may not be given a life of 20 years simply by recording a

notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice), just as a mineral lease which by its own terms has a duration of 5 years is not extended by recordation of a notice of intent to preserve the lease. Likewise, if state law requires specific filings, recordings, or other acts for enforceability of a lien, those acts must be complied with even though the lien is not dormant within the meaning of this Act. Conversely, an instrument that creates a security interest which, by its terms, endures more than 20 years, cannot avoid the effect of the 20 year statute. See Section 4(c) (termination of dormant mineral interest).

The definition of "minerals" in paragraph (2) is inclusive and not exclusive. "Coal" and other solid hydrocarbons within the meaning of paragraph (2) includes lignite, leonardite, and other grades of coal. This Act is not intended to affect water law but is intended to affect minerals dissolved or suspended in water. See Section 3 (exclusions).

While Section 2 defines the terms "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

Note. J.L. Reid, Shell Western E&P Inc. (Exhibit 4), is critical of the Comment's explanation of how the statute works as applied to liens. "The Comment draws several conclusions and states inferred positions as though the act thoroughly addresses the topic. This is one of several examples in the Uniform Act where the intent of the legislation is expressed almost exclusively in the Comments and not in the proposed act itself. This is not the way to enact laws in an area where statutory precision is critical and legislative intent must be evidenced on the face of the statute." The staff believes Mr. Reid is naive if he thinks a statute can spell out the consequences of its application to every situation. The Comment picks a few examples of applications of the statutory language that are not necessarily obvious on the face of the statute, and shows how the statute is intended to apply. This has generally been felt to be useful by practitioners trying to apply the language of the statute.

§ 883.030. Exclusions

883.030. (a) This chapter does not apply to:

(1) A mineral interest of the United States or an Indian tribe, except to the extent permitted by federal law.

(2) A mineral interest of this State or an agency or political subdivision of this State, except to the extent permitted by state law other than this chapter.

(b) This chapter does not affect water rights.

Comment. Section 883.030 incorporates former Section 883.120 and is the same as Section 3 of the Uniform Dormant Mineral Interests Act (1986). Section 883.030 applies to Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease) as well as to this article. For additional exceptions to this chapter, see Section 880.240 (interests excepted from title).

The Comment to Section 3 of the Uniform Act states:

> Public entities are excepted by this section because they have perpetual existence and can be located if it becomes necessary to terminate by negotiation a mineral interest held by the public entity. A jurisdiction enacting this statute should also exclude from its operation interests protected by statute, such as environmental or natural resource conservation or preservation statutes.
>
> This Act does not affect mineral interests of Indian tribes, groups, or individuals (including corporations formed under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1600 et seq.) to the extent that the interests are protected against divestiture by superseding federal treaties or statutes.
>
> Although this Act affects minerals dissolved or suspended in water, it is not intended to affect water law. See Comment to Section 2 (definitions).
>
> While Section 2 (definitions) defines the terms "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

Note. Howard V. Golub, Pacific Gas and Electric Company (Exhibit 2), suggests that an exception be granted for electric and gas utilities subject to regulation by the California Public Utilities Commission. Specifically, PG&E has two problems with the application of the Uniform Act to its operations--the refusal of the Uniform Act to recognize holding minerals to preclude development as a mineral operation, and the provision of the Uniform Act for absolute termination of a mineral interest after 40 years of dormancy. These two issues are discussed below in connection with those specific provisions.

§ 883.040. Termination of dormant mineral interest

883.040. (a) The surface owner of real property subject to a mineral interest may maintain an action to terminate a dormant mineral interest. A mineral interest is dormant for the purpose of this article if the interest is unused within the meaning of subdivision (b) for 20 years or more immediately preceding commencement of the action and has not been preserved pursuant to Section 883.050. The action

must be in the nature of and requires the same notice as is required in an action to quiet title. The action may be maintained whether or not the owner of the mineral interest or the owner's whereabouts is known or unknown. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the 20-year period.

(b) For the purpose of this section, any of the following actions taken by or under authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the entire mineral interest:

(1) Active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development, but not including injection of substances for purposes of disposal or storage. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations.

(2) Payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest.

(3) Recordation of an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, leases, or divides the interest. Recordation of an instrument constitutes use of (i) any recorded interest owned by any person in any mineral that is the subject of the instrument, and (ii) any recorded mineral interest in the property owned by any party to the instrument.

(4) Recordation of a judgment or decree that makes specific reference to the mineral interest.

(c) This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to or the continued existence of the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

Comment. Section 883.040 incorporates former Sections 883.210, 883.220, and 883.240, and is the same as Section 4 of the Uniform

Dormant Mineral Interests Act (1986). The quiet title procedure is in Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure.

Section 883.040 authorizes termination of dormant mineral interests, subject to the limitations and conditions in this article. This is consistent with public policy to enable and encourage full use and development of real property, including both surface and subsurface interests. Section 883.010 (statement of policy). Section 883.040 is also consistent with the common law rule that mineral interests in oil and gas are subject to abandonment, and applies to mineral interests in other substances as well. See Sections 883.020 ("mineral interest" defined) and 883.080 (savings provision) and the Comments thereto; *cf.* Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease). This article supplements common law principles of abandonment by providing a separate and independent basis for terminating a dormant mineral interest; the definition of dormancy is solely for the purpose of this article and does not affect the common law of abandonment. See Section 883.080 (savings provision).

The 20-year period prescribed in this section is consistent with the 20-year period prescribed by statute for termination of a right of entry or occupation of surface lands under an oil or gas lease. Code Civ. Proc. §§ 772.010-772.060. The 20-year period can be extended indefinitely by periodic recordation of a notice of intent to preserve the mineral interest. Section 883.050 (preservation of mineral interest by notice).

The Comment to Section 4 of the Uniform Act states:

> This section defines dormancy for the purpose of termination of a mineral interest pursuant to this Act. The dormancy period selected is 20 years--a not uncommon period among the various jurisdictions.
>
> Subsection (a) provides for a court proceeding in the nature of a quiet title action to terminate a dormant mineral interest. The device of a court proceeding ensures notice to the mineral owner personally or by publication as may be appropriate to the circumstances and a reliable determination of dormancy.
>
> Subsection (b) ties the determination of dormancy to nonuse. Each paragraph of subsection (b) describes an activity that constitutes use of a mineral interest for purposes of the dormancy determination. In addition, a mineral interest is not dormant if a notice of intent to preserve the interest is recorded pursuant to Section 5 (preservation of mineral interest).
>
> Paragraph (b)(1) provides for preservation of a mineral interest by active mineral operations. Repressuring may be considered an active mineral operation if made for the purpose of secondary recovery operations. A shut-in well is not an active mineral operation and therefore would not suffice to save the mineral interest from dormancy.

Paragraph (b)(1) is intended to preserve in its entirety a mineral interest where there are active operations directed toward any mineral that is included within the interest. Thus if there are fractional owners of a mineral interest, activity by one owner is considered activity by all owners. Other interests owned by other persons in the minerals that are the object of the operations are also preserved by the operations. For example, oil and gas operations by a fractional oil, gas and coal owner would save not only the interests of other fractional oil and gas owners but also the interests of oil and gas lessees and royalty owners holding under either the oil and gas owner or any fractional owner, as well as the interests of holders of any other mineral interest in the oil and gas that is the object of the operations. The oil and gas operations suffice to save the coal interest of the oil, gas, and coal owner, as well as other minerals included in any of the affected mineral interests, not just the interest in oil and gas that is the subject of the particular operations. This is the case regardless whether the mineral interest was acquired in one instrument or by several instruments. However, oil and gas operations by a fractional oil, gas, and coal owner would not save the mineral interest of a fractional coal owner if the interest does not include oil and gas.

Under paragraph (b)(2), taxes must be actually paid within the preceding 20 years to suffice as a qualifying use of the mineral interest.

Paragraph (b)(3) is intended to cover any recorded instrument evidencing an intention to own or affect an interest in the minerals, including a recorded oil, gas, or mineral lease, regardless whether such a lease is recognized as an interest in land in the particular jurisdiction.

Under paragraph (b)(3), recordation has the effect of preserving not only the interests of the parties to the instrument in the minerals that are the subject of the instrument, but also the recorded interests of nonparties in the subject minerals, as well as other recorded interests of the parties in other minerals in the same property. Thus recordation of an oil and gas lease between a fractional owner and lessee preserves the interest in oil and gas not only of the fractional owner but also of the co-owners; moreover, the recordation preserves the interest of the fractional owner in other minerals that are not the subject of the lease, whether the other minerals were acquired by the same instrument by which the oil and gas interest was acquired or by a separate instrument.

Recordation of a judgment or decree under paragraph (b)(4) includes entry or recordation in a judgment book in a jurisdiction where such an entry or recordation becomes part of the property records. The judgment or decree must make specific reference to the mineral

interest in order to preserve it. Thus a general judgment lien or other recordation of civil process such as an attachment or sheriff's deed of a nonspecific nature would not constitute use of the mineral interest within the meaning of paragraph (b)(4).

Subsection (c) is intended to preclude a mineral owner from evading the purpose of this Act by contracting for a very long or indefinite duration of the mineral interest. A lien on minerals having a 30 year duration, for example, would be subject to termination after 20 years under this Act if there were no further activities involving the minerals or mineral interest. A person seeking to keep the lien for its full 30 year duration could do so by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice). It should be noted that recordation of a notice of intent to preserve the lien would not extend the lien beyond the date upon which it terminates by its own terms.

Note. Section 883.040 provides an action to terminate a mineral interest based on passage of time alone, without the need for a showing of intent to abandon. J.L. Reid, Shell Western E&P Inc. (Exhibit 4), observes that existing law does not preclude use of the abandonment remedy, whereas this section does. This observation is incorrect. Common law abandonment is preserved as an alternate remedy in Section 883.080(c) (savings and transitional provisions).

The California Land Title Association Forms and Practices Special Committee (Exhibit 5) believes it would be helpful if the statute could make reference to the lis pendens provisions of Code of Civil Procedure Section 409 when an action to terminate a mineral interest is commenced under this section. "The purchaser of a Mineral Interest which may be subject to an Action to Terminate that Interest should arguably take free and clear of the claim of the surface owner without actual or constructive notice." The staff believes this is a good point, and should be accommodated in some manner if the Commission decides to pursue the recommendation. It would also help with the concern expressed by John C. Hoag, Ticor Title Insurance (Exhibit 6), about an action brought by an owner not of record.

Subdivision (a).

Subdivision (a) allows the surface owner of real property to bring an action to terminate a mineral interest in the property. This provision is criticized by J.L. Reid, Shell Western E&P Inc. (Exhibit 4), because it restricts existing law which permits any owner to bring an action. "There may be numerous instances in which a subsurface owner of a real property right or interest could have just as great a need to clear impaired title as would someone owning only an interest in the surface of the property. What purpose is served by enacting language that potentially restricts the availability of a statutory remedy when the fullest use of the remedy is the stated purpose of the act." The reason the Uniform Act restricts the action to surface owners is one of practicality and simplicity: since a terminated mineral interest inures to the benefit of surface owners and not other mineral owners, it makes little sense to complicate the matter by allowing actions between mineral owners.

John C. Hoag, Ticor Title Insurance (Exhibit 6), is concerned about due process in the termination action, particularly due diligence to discover interested persons and problems with notification by publication. These problems are resolved in the draft by requiring that the termination action "must be in the nature of and requires the same notice as is required in an action to quiet title." The quiet title statute takes care of due process problems in a thorough manner.

Subdivision (b).

Paragraph (1). Subdivision (b)(1) defines active mineral operations that have the effect of saving a mineral interest from dormancy to include "production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development, but not injection of substances for purposes of disposal or storage." Leslie E. Kell, Carmel (Exhibit 3), thinks this listing is too broad and nebulous. The statute should "require actual drilling or development operations be conducted in order to preserve an inactive mineral interest. These are facts which could be readily determined by an oil and gas operator. In the absence of such production or actual drilling and development during the twenty year statutory period, the mineral interest should be deemed dormant." The Uniform Act adopts a broader policy that any active interest demonstrated by the mineral owner is sufficient, including exploration. This is an overt physical act that can be ascertained by physical inspection of the land and by inquiry of occupants and neighbors.

For these reasons also, inactive operations such as storage or shut-in wells do not qualify to preserve the mineral interest. This policy is opposed by J.L. Reid, Shell Western E&P Inc. (Exhibit 4). "Such a position is clearly inconsistent with the intent of the parties and ignores a significant investment in the drilling and completion of a well. [Shell Western E&P Inc.] contends that a shut-in well is evidence of continued use, and is certainly evidence of an intent to preserve an interest in the well and its minerals, particularly when shut-in royalty payments are being made on an annual basis."

The requirement of active operations also concerns Howard V. Golub, Pacific Gas and Electric Company (Exhibit 2). Mr. Golub notes that his company often insures the integrity of underground gas storage areas by acquiring mineral rights in adjoining tracts. By holding these interests without development the company can ensure that no drilling will occur that might cause leaks from the underground storage area. "Because the tracts are held as a buffer zone, no exploration or production activity takes place. Under the provisions of the Uniform Dormant Mineral Interests Act, these mineral interest holdings would be deemed dormant and can be preserved only by the filing of appropriate notice." This is true. The policy of the Uniform Act is that it is not a great burden on a mineral owner to record a notice once every 20 years if active operations are not being carried out.

Paragraph (3). Subdivision (b)(3) provides that recordation of an instrument preserves recorded mineral interests. J.L. Reid, Shell Western E&P Inc. (Exhibit 4), believes it should preserve unrecorded mineral interests as well. He gives as an example an oil and gas lease executed by heirs whose interest is unrecorded but whose title is shown to the satisfaction of the oil company lessee. Recordation of the

lease by the oil company should preserve the mineral interest of the heirs even though the interest of the heirs is not recorded. The reason the Uniform Act preserves only prior recorded interests is to ensure an adequate chain of title and to enable a person to ascertain from the record whether a mineral interest is dormant or not. The ultimate purpose of a marketable title act, such as the Uniform Act, is to clear the records and enable persons to make decisions, to the maximum extent practicable, from the records.

Subdivision (c).

Subdivision (c) precludes an instrument from contractually extending or eliminating the 20-year dormancy period. J.L. Reid, Shell Western E&P Inc. (Exhibit 4), opposes this provision. "Section 883.040(c) does not actually concern itself with dormancy of a mineral interest, but with a contractual use by identified parties that is deemed unacceptable under this act. In other words, the act becomes an end in and of itself rather than the means to an end as it is characterized in its statement of policy and purpose." The issue here, of course, is whether the Uniform Act can be rendered meaningless by insertion of boilerplate in every document creating a mineral interest. The policy of the Uniform Act has to be that such a boilerplate cannot be used to evade the purposes of the act.

Comment.

J.L. Reid, Shell Western E&P Inc. (Exhibit 4), rightly observes that Section 883.040 attempts to handle issues relating to fractional ownership of minerals, multiple minerals, and "lesser included minerals." He notes that the Comment seeks to elaborate on this, that the Comment is long and complex, and that the Comment draws conclusions unsupported by the Uniform Act itself "that portends the onslaught of many frustrated judicial attempts to unravel the meaning of the Uniform Act with regard to these critical issues." The staff disagrees that the Comment goes beyond the scope of the act or that it will complicate judicial construction. Perhaps the major improvement of the Uniform Act over existing California law is that it deals with these complex issues head on, and the Comment gives examples and other discussion that illustrates the operation of the act. Rather than confusing the matter, the Uniform Act and Comment will provide useful judicial guidance in this area where existing California law is completely silent.

§ 883.050. Preservation of mineral interest by notice

883.050. (a) The owner of a mineral interest may record at any time a notice of intent to preserve the mineral interest or a part thereof. The mineral interest is preserved in each county in which the notice is recorded. A mineral interest is not dormant if the notice is recorded within 20 years immediately preceding commencement of the action to terminate the mineral interest or pursuant to Section 883.060 after commencement of the action.

(b) The notice may be executed by an owner of the mineral interest or by another person acting on behalf of the owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf or whose identity cannot be established or is uncertain at the time of execution of the notice. The notice may be executed by or on behalf of a co-owner for the benefit of any or all co-owners or by or on behalf of an owner for the benefit of any or all persons claiming under the owner or persons under whom the owner claims.

(c) The notice must contain the name of the owner of the mineral interest or the co-owners or other persons for whom the mineral interest is to be preserved or, if the identity of the owner cannot be established or is uncertain, the name of the class of which the owner is a member, and must identify the mineral interest or part thereof to be preserved by one of the following means:

(1) A reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the interest or of the judgment or decree that confirms the interest.

(2) A legal description of the mineral interest. If the owner of a mineral interest claims the mineral interest under an instrument that is not of record or claims under a recorded instrument that does not specifically identify that owner, a legal description is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims. In such a case, the record of the notice of intent to preserve the mineral interest must be indexed under the name of the record owner as well as under the name of the owner of the mineral interest.

(3) A reference generally and without specificity to any or all mineral interests of the owner in any real property situated in the county. The reference is not effective to preserve a particular mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the interest, (i) a previously recorded instrument that creates, reserves, or otherwise evidences that interest or (ii) a judgment or decree that confirms that interest.

Comment. Section 883.050 incorporates former Section 883.230 and is the same as Section 5 of Uniform Dormant Mineral Interests Act (1986). The specific provisions of Section 883.050 governing the notice of intent to preserve a mineral interest control over conflicting general provisions of Article 3 (commencing with Section 880.310) of Chapter 1 (preservation of interests).

Section 883.050 makes recording a notice of intent to preserve a mineral interest conclusive evidence of non-dormancy for purposes of this article. Recording a notice of intent to preserve also creates a presumption affecting the burden of proof that the claimant has not abandoned the mineral interest for purposes of a determination of abandonment pursuant to common law. Section 880.310 (notice of intent to preserve interest).

The Comment to Section 5 of the Uniform Act states:

> This section is broadly drawn to permit a mineral owner to preserve not only his or her own interest but also any or all related interests. For example, the mineral owner may share ownership with one or more other persons. This section permits but does not require the mineral owner to preserve the interests of any or all of the co-owners by specifying the interests to be preserved. Likewise, the mineral interest being preserved may be subject to an overriding royalty or sublease or executive interest. In this situation, the mineral owner may elect also to preserve any or all of the interests subject to it, by specifying the interests in the notice of intent to preserve. The mineral owner may also elect to preserve the interest as to some or all of the minerals included in the interest.
>
> Where the mineral interest being preserved is of limited duration, recordation of a notice under this section does not extend the interest beyond the time the interest expires by its own terms. Where the mineral interest being preserved is a lien, recordation of the notice does not excuse compliance with any other applicable conditions or requirements for preservation of the lien.
>
> The bracketed language in paragraph (c)(2) is for use in a jurisdiction that does not have a tract index system. It is intended to assist in indexing a notice of intent to preserve an interest despite a gap in the recorded mineral chain of title.
>
> Paragraph (c)(3) permits a blanket recording as to all interests in the county, provided that there is a prior recorded instrument, or a judgment whether or not recorded, that establishes the name of the mineral owner in the county records. The blanket recording provision is a practical necessity for large mineral owners. Where a county does not have a general index of grantors and grantees, it will be necessary to establish a separate index of notices of intent to preserve mineral interests for purposes of the blanket recording.

Note. J.L. Reid, Shell Western E&P Inc. (Exhibit 4), suggests that it would be useful to have a statutory form of notice of intent to preserve a mineral interest. A statutory form does appear in Section 880.340, though it must be tailored to the mineral interest. Perhaps a pre-tailored form could be set out in the Comment.

§ 883.060. Late recording by mineral owner

883.060. (a) In this section, "litigation expenses" means costs and expenses that the court determines are reasonably and necessarily incurred in preparing for and prosecuting an action, including reasonable attorney's fees.

(b) In an action to terminate a mineral interest pursuant to this article, the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest as a condition of dismissal of the action, upon payment into court for the benefit of the surface owner of the real property the litigation expenses attributable to the mineral interest or portion thereof as to which the notice is recorded.

(c) This section does not apply in an action in which a mineral interest has been unused within the meaning of subdivision (b) of Section 883.040 for 40 or more years immediately preceding commencement of the action.

Comment. Section 883.060 incorporates former Section 883.250 and is the same as Section 6 of Uniform Dormant Mineral Interests Act (1986). Section 883.060 enables a mineral interest owner to preserve the mineral interest after commencement of an action to terminate the interest by filing a late notice of intent to preserve the interest. This authority is conditioned on payment of the surface owner's litigation expenses. If the mineral interest is fractionated, the mineral interest owner must pay only the fraction of litigation expenses that corresponds to the mineral interest preserved. Litigation expenses include disbursements made for title reports and other disbursements made in preparation for the litigation as well as court costs and attorney's fees incurred in connection with the litigation.

The Comment to Section 6 of the Uniform Act states:

> This section applies only where the mineral owner seeks to make a late recording in order to obtain dismissal of the action. The section is not intended to require payment of litigation expenses as a condition of dismissal where the mineral owner secures dismissal upon proof that the mineral interest is not dormant by virtue of recordation or use of the property within the previous 20 years, as prescribed in Section 4 (termination of dormant mineral interest). Moreover,

the remedy provided by this section is available only if there has been some recordation or use of the property within the previous 40 years.

Note. The major substantive effect of the Uniform Act is that late recordings to preserve a mineral interest are not permitted if the mineral interest has been unused for 40 years, whereas under existing California law late recordings are never barred. Leslie E. Kell, Carmel (Exhibit 3), thinks 40 years is too long, and that a 25-year cutoff would be more reasonable. "Surely a mineral interest owner who has neither caused his mineral interest to be produced or developed within such period of time or even bothered to record the prescribed statutory notice, does not deserve further statutory protection of his interest." This view is not shared by either Howard V. Golub, Pacific Gas and Electric Company (Exhibit 2), or J.L. Reid, Shell Western E&P Inc. (Exhibit 4). Mr. Golub is concerned about mineral interests that are being held for the sole protective purpose of preventing development--"This is particularly important in view of the proposed change in the Act that would eliminate the ability to restore the utility's title after 40 years of inactivity." Shell Western E&P Inc. is also opposed to the 40-year conclusive presumption of abandonment. "Any mineral interest owner should be permitted at any time to respond to an action to quiet title under a dormant minerals act and thereby preserve its interest in those minerals through the simple recording of a notice of intent to preserve, as is presently provided in California law. All stated purposes of a dormant minerals act are served by the present law."

§ 883.070. Effect of termination

883.070. A court order terminating a mineral interest, when recorded, merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments.

Comment. Section 883.070 incorporates former Section 883.260 and is the same as Section 7 of Uniform Dormant Mineral Interests Act (1986). A grant of minerals includes an implied right of entry to extract them. Callahan v. Martin, 3 Cal. 2d 110, 43 P.2d 788 (1935). See also Code Civ. Proc. §§ 764.010-764.070 (effect of quiet title judgment).

The Comment to Section 7 of the Uniform Act states:

> In some states it is standard practice for judgments such as this to be recorded. In other states entry of judgment alone may suffice to make the judgment part of the land records.
>
> Merger of a terminated mineral interest with the surface is subject not only to existing tax liens and assessments, but also to other outstanding liens on the mineral interest. However, an outstanding lien on a mineral interest is itself a mineral interest that may

be subject to termination under this Act. It should be noted that termination of a mineral interest under this Act that has been tax-deeded to the state or other public entity is subject to compliance with relevant requirements for release of tax-deeded property.

The appurtenant surface rights and obligations referred to in Section 7 include the right of entry on the surface and the obligation of support of the surface. However, termination of the support obligation of the surface under this Act does not terminate any support obligations owed to adjacent surface owners.

It is possible under this section for a surface owner to acquire greater mineral interests than the surface owner started with. Assume, for example, there are equal co-owners of the surface, one of whom conveys his or her undivided 50% share of minerals. Upon termination of the conveyed mineral interest under this Act, the interest would merge with the surface estate in proportion to the ownership of the surface estate, so that each owner would acquire one-half of the mineral interest. The end result is that the conveying surface owner would hold an undivided one-fourth of the minerals and the non-conveying surface owner would hold an undivided three-fourths of the minerals. This result is proper since the reversion represents a windfall to the surface estate in general and to the conveying owner in particular, who has previously received the value of the mineral interest.

In the example above, assume that the conveyed mineral interest is not terminated, but instead the owner of the mineral interest executes a 30-year mineral lease. If the lease is terminated under this Act after 20 years have run, the interest in the remaining 10 years of the lease would merge with the surface estate in proportionate shares, at the end of which time it would expire, leaving the interest of the mineral owner unencumbered.

§ 883.080. Savings and transitional provisions

883.080. (a) Except as otherwise provided in this section, this article applies to all mineral interests, whether created before, on, or after its effective date.

(b) Subdivision (c) of Section 883.060 does not become operative until two years after the effective date of the article.

(c) This article does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

(d) This article does not affect the validity of the recording of a notice of intent to preserve a mineral interest or the termination of any mineral interest made pursuant to any predecessor statute on dormant mineral interests. Section 880.370 (grace period for recording notice) applies to this article until December 31, 1989.

Comment. Section 883.070 incorporates former Section 883.270 and is the same as Section 7 of the Uniform Dormant Mineral Interests Act (1986), with the following exceptions:

(1) Subdivision (b) defers the operative date of the 40-year dormancy provision of Section 883.060(c) (late recording by mineral owner) for two years, but does not defer the operation of the entire act for two years. The 40-year provision is the only major substantive change made by the Uniform Act in California law that has been operative since January 1, 1985.

(2) Subdivision (d) is revised to recognize that a notice of intent to preserve a mineral interest could be made under former California law since January 1, 1985, and the grace period for recording a notice of intent to preserve an interest has been running since that time.

The effective date of this article is January 1, 1989. Section 883.120 (effective date).

Subdivision (c) of Section 883.080 makes clear that although this article provides a procedure by which a dormant mineral interest may be terminated, the procedure is not intended to limit the common law of abandonment of mineral interests. See, e.g., Gerhard v. Stephens, 68 Cal. 2d 864, 442 P.2d 692, 69 Cal. Rptr. 612 (1968) (mineral interest in oil and gas subject to abandonment). Thus, for example, nothing in this article affects the common law determination of abandonment of an oil or gas lease. See, e.g., Banks v. Calstar Petroleum Co., 82 Cal. App. 2d 789, 187 P.2d 127 (1947); Barry v. Kelly, 90 Cal. App. 2d 486, 203 P.2d 80 (1949). Nor is this article the exclusive means by which title to property may be cleared of an abandoned mineral interest. See, e.g., Article 2 (commencing with Section 883.310) (expired or abandoned mineral interest lease) and Code Civ. Proc. §§ 760.010-764.070 (quiet title).

The Comment to Section 7 of the Uniform Act states:

> The [two]-year grace period provided by this section is to enable a mineral owner to take steps to record a notice of intent to preserve an interest that would otherwise be subject to termination immediately upon the effective date because of the application of the Act to existing mineral interests. Thus, a mineral owner may record a notice of intent to preserve an interest during the [two]-year period even though no action may be brought during the [two]-year period. Subsection (d) is intended for those states that repeal an existing dormant mineral statute upon enactment of this Act.

§ 883.090. Uniformity of application and construction

883.090. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Comment. Section 883.090 is the same as Section 9 of the Uniform Dormant Mineral Interests Act (1986).

§ 883.100. Short title

883.100. This article may be cited as the Uniform Dormant Mineral Interests Act.

Comment. Section 883.100 is the same as Section 10 of the Uniform Dormant Mineral Interests Act (1986).

§ 883.110. Severability clause

883.110. If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Comment. Section 883.110 is the same as Section 11 of the Uniform Dormant Mineral Interests Act (1986).

§ 883.120. Effective date

883.120. This article takes effect January 1, 1989.

Article 2. Expired or Abandoned Mineral Interest Lease

§ 883.310. Definitions

883.310. As used in this article:

(a) "Lessee" includes an assignee or other successor in interest of the lessee.

(b) "Lessor" includes a successor in interest or heir or grantee of the lessor.

Comment. Section 883.310 restates subdivision (a) of former Section 883.140 without substantive change.

§ 883.320. Release of interest by lessee

883.320. If the term of a mineral interest lease has expired or if a mineral interest lease has been abandoned by the lessee, the lessee shall, within 30 days after demand therefor by the lessor, execute, acknowledge, and deliver, or cause to be recorded, one of the following:

(a) A deed quitclaiming all interest in and to the mineral rights covered by the lease.

(b) If the expiration or abandonment covers less than the entire interest of the lessee, an appropriate instrument or notice of surrender or termination that covers the interest that has expired or been abandoned.

Comment. Section 883.320 restates subdivision (b) of former Section 883.140 without substantive change.

§ 883.330. Sanctions for lessee's failure

883.330. If the lessee fails to comply with the requirements of this article:

(a) The lessee shall forfeit to the lessor the sum of one hundred fifty dollars ($150).

(b) The lessee is liable for all damages sustained by the lessor as a result of the failure, including, but not limited to, court costs and a reasonable attorney's fee in an action to clear title to the lessor's interest.

Comment. Section 883.330 restates subdivision (c) of former Section 883.140 without substantive change.

§ 883.340. Action to clear title not affected

883.340. Nothing in this article makes a quitclaim deed or other instrument or notice of surrender or termination, or a demand therefor, a condition precedent to an action to clear title to the lessor's interest.

Comment. Section 883.340 restates subdivision (d) of former Section 883.140 without substantive change.

Civil Code §§ 883.110-883.270 (repealed). Mineral rights

SEC. 2. Chapter 3 (commencing with Section 883.110) of Title 5 of Part 2 of Division 2 of the Civil Code is repealed.

Comment. Former Sections 883.110 to 883.270 are replaced by new Sections 883.010 to 883.340.