

Memorandum 87-38

Subject: Study H-408 - Uniform Dormant Mineral Interests Act

BACKGROUND

One duty imposed by statute upon the Law Revision Commission is the duty to:

Receive and consider proposed changes in the law recommended by the . . . National Conference of Commissioners on Uniform State Laws

In 1986, the Uniform Commissioners approved the Uniform Dormant Mineral Interests Act. This Uniform Act also has been approved by the American Bar Association. The existing authority of the Commission to study various topics includes authority to study the subject matter of the Uniform Act. In fact, the existing California statute on dormant mineral interests was enacted upon Commission recommendation, and this topic has been retained on the agenda so that the Commission could recommend any needed revisions of the statute in light of new developments.

STAFF RECOMMENDATION

The staff recommends that the Commission study the Uniform Act with a view to determining whether the Commission will propose its enactment to the 1988 session of the California Legislature. Enactment of the Uniform Act would make a number of clarifying and technical improvements in the California statute and one significant substantive improvement. The Commission could submit this recommendation in 1988 without any significant effect on its progress in preparing a new Probate Code.

A Commission recommendation proposing the enactment of the Uniform Act could be developed with a modest expenditure of staff and Commission time. Mr. Sterling drafted the existing California statute and served as the Reporter on the Uniform Act. He estimates that it would take him about two days to draft a tentative recommendation for consideration by the Commission. We estimate that it would take about one hour of Commission meeting time to review the tentative recommendation and approve it for distribution for review and comment.

ADDITIONAL BACKGROUND INFORMATION

Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown. It may be difficult or impossible to develop the minerals if the owner of the mineral interest is missing or unknown. The dormant mineral interest may create problems if the surface owner seeks to develop the surface estate and finds it impossible to assemble an unencumbered fee. It may be impossible to trace the ownership of fractional interests in the mineral estate.

Upon recommendation of the Law Revision Commission, California enacted legislation (Civil Code §§ 878-887.090) which permits an action to be brought to terminate mineral rights that have been dormant for 20 years. The action permits the cloud on the title of the property to be removed if all of the following are established:

(1) The interest is dormant (i.e., there has been no production or exploration or development activity in connection with the minerals) during the 20-year period.

(2) There has been no instrument involving the minerals recorded during that period.

(3) The holder of the mineral rights failed to record a notice of intent to preserve the mineral rights within that period.

(4) No taxes were paid on the mineral rights within that period.

However, even though it is established that there has been no use, recording, or taxes paid, the owner of the mineral rights can preserve the mineral interest by a late recording of the notice of intent to preserve the mineral rights. The court is required to permit the owner to make the late recording if the owner pays the litigation expenses incurred by the person bringing the action to terminate the mineral rights.

The Uniform Act is drawn from the California statute but makes at least one significant substantive change and a number of drafting improvements. The significant change the Uniform Act would make in California law is that the remedy of the late recording order is not available to the mineral owner if the mineral interest has been dormant for more than 40 years (i.e., there has been no use, taxation, or recording of any kind affecting the minerals for that period). The

staff believes that enactment of the Uniform Act in California would improve California law.

Uniformity among the states would be of value to persons who hold property in a number of states (such as railroad companies that have sold surface rights and retained mineral interests). The staff does not know whether there would be significant opposition to the enactment of the Uniform Act in California.

Respectfully submitted,

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Executive Secretary