

Memorandum 87-45

Subject: Study H-408 - Uniform Dormant Mineral Interests Act (Draft of Tentative Recommendation)

At the May meeting in Sacramento the Commission decided to prepare a draft tentative recommendation for enactment of the Uniform Dormant Mineral Act in California. The Uniform Act is based on California law, but makes a number of clarifying and technical improvements. It makes one major substantive improvement--if the surface owner commences an action to terminate a dormant mineral interest, the mineral interest owner is precluded from recording a late notice of intent to preserve the interest if the interest has been dormant for 40 years or more. (Under California law, the mineral owner may always record a late notice, no matter how long the period of dormancy).

The attached staff draft of the tentative recommendation adapts the Uniform Act for enactment in California with minimal changes, to replace the existing California statute. Affected parties, including large mineral owners such as oil companies and railroads, may see some advantage in uniformity in the law from state to state, as well as in the clarification of the law that the Uniform Act provides.

The staff recommends that the Commission distribute the tentative recommendation to interested persons for comment. We would circulate the draft to our real property mailing list as well as to interest group representatives we have worked with in the past in obtaining enactment of California's existing dormant mineral legislation. When we have received their comments we will be in a better position to make a determination whether to recommend enactment of the Uniform Act.

Respectfully submitted,

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06/05/87

Staff DraftTentative Recommendation
relating to

UNIFORM DORMANT MINERAL INTERESTS ACT

California's statute for termination of dormant mineral rights¹ 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

1. Civ. 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, 1986.

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

5. Civ. 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 that long 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.

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.

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:

Civ. 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 (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 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.

§ 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.

§ 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.

§ 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. 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.

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.

Civ. 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.