

AS 38.05.125 is the statutory reservation of mineral rights to the State in any conveyance by the State to others

### **AS 38.05.130. Damages and Posting of Bond.**

Rights may not be exercised by the state, its lessees, successors, or assigns under the reservation as set out in AS [38.05.125](#) until the state, its lessees, successors, or assigns make provision to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option, contract, or lease for mining coal or lease for extracting geothermal resources, petroleum, or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be sufficient as to form, amount, and security to secure to the owner payment for damages, and may institute legal proceedings in a court where the land is located, as may be necessary to determine the damages which the owner may suffer.

### **11 AAC 86.145. Surface use**

(a) The following provisions apply to land for which the state owns the surface:

(1) A locator does not have exclusive use of the surface of the location. A locator may use the surface of the location only to the extent necessary for the prospecting for, extraction of, or basic processing of mineral deposits. A locator may not restrict public access to or other uses of the surface unless approved in writing by the director. The director may allow the locator to restrict public access or other surface uses of the location only to protect public safety or prevent unreasonable interference with the rights of the locator.

(2) The building, placing, .....

(3) A classification or designation indicating that timber and .....

(4) The director may require documentary evidence of mining activity .....

(b) If the surface estate or interests in the surface estate are owned by a third party with the minerals reserved to the state under [AS 38.05.125](#), the locator must make provisions under [AS 38.05.130](#) to pay the owner of the surface estate or surface interests for any damage that may be caused by the use or development of that location. If the locator and the owner of the surface estate or interests are unable to reach agreement concerning the provision for payment of damages, the locator may enter the land in the exercise of the locator's right to use or develop the minerals reserved under [AS 38.05.125](#) after a determination by the director that the proposed activities are necessary for the locator to exercise the rights reserved under [AS 38.05.125](#), and after posting a surety bond determined by the director under [AS 38.05.130](#). A locator who wishes to enter the land in this manner shall provide information requested by the director so that the director may make each of the determinations required by this subsection. The locator shall also comply with requirements for a reclamation plan and bond under [AS 27.19.010 - 27.19.100](#) and [11 AAC 97.010 - 11 AAC 97.640](#).

# Fact Sheet



Division of Mining, Land & Water – February 2013

## Mineral Locations (Claims) and the Rights Acquired

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### **What Mineral Rights are Acquired with a Mining Claim?**

Under the mining law, a mining claim grants the exclusive right to the locatable minerals in the ground. Locatable minerals are a variety of uncommon minerals, and typically consist of precious metals and/or base metals. Precious metals are elements such as gold (Au), silver (Ag), and platinum (Pt). Base metals are elements such as copper (Cu), lead (Pb), and zinc (Zn). Minerals containing these metals, and the rock they are contained in, are considered locatable under the mining laws. Locatable minerals can also include uncommon varieties of rock that are considered rare in occurrence and are valuable for marketing. Examples are precious stones such as the sapphires, rubies and diamonds, or the industrial stones such as garnet, diamond and quartz sand, or the building/decorative stones such as marble, high grade limestone or dolomite, and some granitic rocks that have building stone quality.

### **Does the Mining Law Grant Exclusive Right to all Minerals in the Ground?**

No, only those minerals that are considered locatable. The mining law does grant the exclusive right to extract the locatable minerals upon receiving all required authorizations, and most of the time the extraction involves removing the surrounding or encompassing rock or materials in order to get at the locatable minerals.

### **What About Other Minerals, Rocks or Materials in the Ground?**

Any other mineral, rock or material in the ground that is not considered locatable, do not belong to the mining claimant. Sand and gravel is a common variety material present on most mining claims that are located for placer minerals such as gold, platinum, and precious stones, etc. The sand and gravel may be mined in order to screen and wash and separate the locatable placer minerals from the sand and gravel, but the screened and washed sand and gravel may not be sold as a by product to mining by the mining claimant unless the claimant obtains a material sale permit from the department to sell the sand and gravel materials. This also applies to tailings and spoil byproducts of hardrock mining operations. See definition of "materials" under AS 38.05.965(10). The use of materials for beneficial purposes on a claim requires the purchase of the material from the state under AS 38.05.550-565.

### **So What Happens to these Other Minerals, Rocks or Materials in the Ground that are Removed as a Result of Mining?**

Their disposition is defined in an approved reclamation plan authorized by the department.

### **What about Resources on the Surface Such as Trees or Timber Stands, Can a Mining Claimant Harvest them for Personal Use or Resale?**

No, not unless the claimant gets a timber sale contract or firewood permit from the department first. A claimant may remove trees and timber without the above contract or permit in the process of mining the ground under an approved mining plan of operation, but the trees and other vegetative matter must be saved for reclamation purposes to be mixed with the topsoil for reclamation when mining is completed.

### **What Else Can a Mining Claimant do on a Mining Claim - Build a Recreation Cabin or Other Living Structure on the Claim - Keep Other People Off of the Claim, and Post it With No Trespassing?**

No. Cabins or living structures on mining claims are absolutely forbidden unless approved in writing by the department under an approved mining plan of operation. Camp structures, which are generally authorized for large-scale exploration, or commercial-scale mining operations, range from portable tent-type camps to ATCO-type trailer units or other modular-type buildings on skids, which can be easily moved or removed after mining ceases. Cabins on pilings, and especially log cabins are never authorized as they cannot be easily removed after mining ceases. Prohibiting public access is also illegal.

### **For Further Questions, Please Contact One of Our Public Information Offices Below**

#### **Anchorage**

Public Information Center

550 West 7 Ave., Suite 1260

Anchorage, AK 99501-3557

(907) 269-8400 TDD: (907) 269-8411

Office Hours: M thru F; 10:00 AM to 5:00 PM

#### **Fairbanks**

Public Information Center

3700 Airport Way

Fairbanks, AK 99709-4699

(907) 451-2705 TDD: (907) 451-2770

Office Hours: M thru F; 10:00 AM to 5:00 PM

913 P.2d 1089 (1996)

**Harold F. PARKER, Appellant,**  
**v.**  
**ALASKA POWER AUTHORITY, Appellee.**

No. S-6350.

**Supreme Court of Alaska.**

March 29, 1996.

Harold F. Parker, pro se, Talkeetna.

Ross A. Kopperud, Assistant Attorney General, Anchorage, Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before RABINOWITZ, MATTHEWS, COMPTON and EASTAUGH, JJ.

## **OPINION**

MATTHEWS, Justice.

Harold Parker is the holder of a mining claim located on land owned by the State. The Alaska Power Authority (APA) built two power line towers on this land under a right-of-way permit issued by the State. Prior to the construction of the towers the APA filed an eminent domain complaint against Parker because of his ownership of the mining claim on the land.

Parker moved for a deposit of just compensation pursuant to AS 09.55.400. The APA filed a memorandum which argued that APA need not proceed by eminent domain. The APA alleged that Parker's mining claim, a creation of AS 38.05.255, is subject to reasonable concurrent uses, that the towers represented a reasonable concurrent use, and that the APA need not compensate Parker because it had not taken any property or rights to property from Parker. The parties treated APA's 1090 memorandum as a motion to \*1090 dismiss, and Parker responded to it. The trial court then dismissed the case, stating:

Pursuant to Civil Rule 72(i)(1) and (3), the above-captioned case is dismissed without prejudice. Defendant Parker is free to mine in and around [the land the APA occupies] provided he comply with State of Alaska, Department of Natural Resources, Division of Mines' statutes and regulations governing such activities.

From this order Parker has appealed.

Civil Rule 72(i)(1) and (3), regarding eminent domain, provided at the time of the dismissal:

(i) Dismissal of Action.

(1) As of Right. If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

....

(3) By Order of the Court. At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly

joined.

The only issue in this case is whether the superior court correctly dismissed the complaint under either of the above subsections. We conclude that dismissal was proper under both subsections.

Both subsections speak to the acquisition of title or a lesser interest or the taking of possession of the property in question. Both subsections make clear that for a defendant to receive compensation there must be a taking accomplished by eminent domain. If there has been no taking then a defendant has no right to compensation, and the action may be dismissed.

APA acquired its right to possess the land in question by a right-of-way permit from the owner of the surface estate, the State of Alaska. The question in this case is whether an additional title or right to possession must be acquired from Parker. To answer this question the nature of Parker's interest must be examined.

At common law, the scope of a mineral owner's rights to the surface estate was "determined by reasonableness: the mineral owner [was] entitled to use as much of the surface estate as [was] reasonably necessary to obtain access to the minerals. Conduct [was] reasonable if it [was] consistent with the practices of the extraction industry." Ronald W. Polston, *Surface Rights of Mineral Owners — What Happens When Judges Make Law and Nobody Listens?*, 63 N.D.L.Rev. 41, 42 (1987). *Norken Corp. v. McGahan*, 823 P.2d 622, 628 (Alaska 1991). Thus, the mineral interest was the dominant estate, and "the mineral owner [had] no obligation to pay the surface owner for the reasonable amount of surface consumed in the development of the mineral estate."<sup>[1]</sup> *Id.*; see also Michelle A. Wenzel, *The Model Surface Use and Mineral Development Accommodation Act: Easy Easements for Mining Interests*, 42 Am.U.L.Rev. 607, 622 (1993).

1091 The common law rule is not applicable to lands owned by or devolving from the State of Alaska. Alaska Statute 38.05.125 reserves minerals from every land grant.<sup>[2]</sup> Thus, \*1091 much land in Alaska is divided into surface and mineral estates. A mineral rights owner has a right to surface uses of the land containing the minerals he owns. Such uses shall be "limited to those necessary for the prospecting for, extraction of, or basic processing of mineral deposits and shall be subject to reasonable concurrent uses." AS 38.05.255.<sup>[3]</sup> Further, before mineral rights are exercised under a reservation of mineral rights made pursuant to AS 38.05.125, the mineral rights owner must "make provision to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land." AS 38.05.130.

Thus, Parker's surface right is a limited one. He can use the surface as necessary for his mining activities, but his surface uses are subject to reasonable concurrent uses. The State, as the owner of the surface estate, is permitted to convey all or part of its interest to other parties and it has done so in this case through the right-of-way grant to APA.

Because of Parker's limited interest in the surface estate, APA has not, by acquiring the right of way or constructing the power line towers, acquired title or a lesser interest in, or taken possession of, any property interest Parker has in the mining claim. APA thus had the right, under Civil Rule 72(i)(1), to have this case dismissed. For the same reason, dismissal by the court was proper under Civil Rule 72(i)(3).

Parker has made no attempt to mine the property. Further, he has not shown that he has plans to commence mining operations in the near future. Any claim that APA has taken an interest in or possession of Parker's mineral rights is premature. If, in the future, Parker can demonstrate that the APA towers substantially interfere with his mining activity, he can initiate an inverse condemnation action. We intimate no view as to how the specific legal or factual issues presented by such a suit should be resolved.

**AFFIRMED.**

<sup>[1]</sup> The authorities Parker cites for the proposition that he has a right to exclusive use of the surface above his mining claim follow this common law rule; they are not Alaska cases.

<sup>[2]</sup> AS 38.05.125(a) states:

Each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under AS 38.05.045-38.05.120, 38.05.321, 38.05.810-38.05.825, AS 38.08, or AS 38.50 except as provided in AS 38.50.050 is subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made,

unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said land above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said land, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other land and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said land or any part thereof for the foregoing purposes and to occupy as much of said land as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved."

[3] AS 38.05.255 provides in part:

Surface uses of land or water included within mining properties by owners of those properties shall be limited to those necessary for the prospecting for, extraction of, or basic processing of mineral deposits and shall be subject to reasonable concurrent uses.

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