

**Review of
Mineral Rights
and Conveyance
of State Lands**

Report 08-11

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REPORT SUMMARY

The State Must Manage its Trust Resources to Benefit the Beneficiaries

At statehood, the federal government granted land to the state for the support of public schools, colleges and other state institutions. Initially, the responsibility for managing these lands rested with the Board of State Lands Commissioners and the Commissioner of Public Lands. In 1957, however, the Legislature created the Department of Natural Resources and transferred most management authority for these lands to the Department. Because the federal government required that these lands be used for specified purposes, the Department must manage these trust lands in a manner that provides financial support for the beneficiaries. Pursuant to this duty, the Department may sell or otherwise transfer natural resources found on the land in exchange for payment.

State Law Governs How the State Transfers its Resources

While ownership of land involves multiple rights, state law dictates the nature of those rights and how the Department may use them. This study concerns one of those rights—the right to transfer natural resources found on the land. The particular resources addressed here are minerals and valuable materials. This review contains two components: the categories of the resources and the methods for transferring those resources.

Two Categories of Natural Resources for the Purpose of Transfer

For the purposes of transfers, state law has set forth two basic categories of natural resources since the late 1800s: minerals and valuable materials.

Minerals

The first category is minerals. The Legislature has not specifically defined this term as it relates to their transfer. The statutes describing the process for mineral transfer have listed gold, copper, silver, lead, cinnabar, oils, gases, coal, ores, and minerals and fossils of every kind as included minerals.

Valuable Materials

The second category is valuable materials. In 1959, the Legislature defined this term to include “any product or material on said lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value *except mineral, coal, petroleum, and gas.*” Prior to this definition and beginning in 1895, the statutes included timber, stone, rock, hay and gravel in this category.

Separate Processes for Transferring Minerals and Valuable Materials

Currently, the transfer of minerals is handled through mineral prospecting leases and mining contracts, while the transfer of valuable materials occurs through sales. Initially, the right to both minerals and valuable materials could be sold either with the land or separate from it. In 1897, the Legislature also provided that mineral rights on state-owned land could be leased as well as sold.

A major change in this process occurred in 1907 when the Legislature declared that anytime the state sold land, the mineral rights could not be transferred with the land, but rather must be retained by the state through a reservation of mineral rights. The Legislature authorized the leasing of these reserved mineral rights in 1917. Accordingly, the current process allows the Department to lease mineral rights whether they occur on land the state owns or land the state sold. Under this process, the state has an ongoing interest in the management of the mineral rights.

For valuable materials, on the other hand, the state law has authorized the sale of those rights either with the land or separate from the land since 1895. The law has never required that the right to those materials be reserved when the land is sold. Once the state sells the valuable materials, either with the land or separate from it, the state has no further legal interest in the rights to those materials and thus is not involved in any subsequent transfer.

For the Case Studies Reviewed, the State Used the Appropriate Processes for Transferring Minerals and Valuable Materials

The study mandate directed JLARC to conduct case study reviews of transactions involving the transfer of minerals rights. Based on the legal history setting forth the two categories of resources with distinct methods of transfer, JLARC staff reviewed 24 case studies: ten relating to reserved mineral rights and 14 relating to valuable materials. In all the cases reviewed where the state sold the land, it appropriately reserved the mineral rights. The Department treated all ten requests for access to mineral rights as mineral prospecting leases or mining contracts in accordance with the relevant statutes. In regard to valuable materials, with one exception in 1974, the Department handled those transactions in accordance with the applicable sale statutes.