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Article VIII of the Alaska Constitution

There has been great interest in the issue of rights of landowners and the State's responsibility to develop its resources. A review of the constitutional provisions about natural resources should clarify the issue. Article VIII is the Natural Resources section of the Alaska Constitution.

Section 1 of Article VIII is the "Statement of Policy" section, and it reads, "*It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.*"

The language in this section is unambiguous about maximum use of the resources; however, the phrase "...*consistent with the public interest*" is somewhat subjective. It is generally construed that it is in the public interest to make resources available to meet the needs of its citizens. This must be balanced against conservation of the resources. In the case of natural gas, there are documented shortages expected in the Cook Inlet Basin. There is approximately a 10-year supply of gas available for sixty percent of the Alaskan population. It is clearly in the public interest to ensure our resources are developed to meet the economic, health and safety needs of our citizens. The ability of the Commissioner of DNR to waive local regulations of shallow gas is simply a codification of this constitutional responsibility. The common law doctrine defines the subsurface as the dominant estate.

Alaska had the most subsurface ownership reserved to the State at statehood. The only land granted fee-simple status is land patented before statehood and native land. Fee-simple land is land that the owner retains both the surface and subsurface estate. Most of us (myself included) purchased only the surface estate.

Section 9 of Article VIII states, "*Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interest therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.*"

This section enumerates that the reservation of resources in the public domain, and the development of them, is the legislature's responsibility. There are further rights of surface owners detailed in the

statutes, regulations, mitigation measures and unit agreements with natural resource operators. In other words, no one is going to drill under your house.

Congress required the State to retain the subsurface estate and the U. S. Attorney General has the duty to take them back if we dispose of them. This was part of the Statehood Compact, a compact between the State and the Federal government. Some have asked for the ability to buy the subsurface under their land. It cannot be done without changing the Statehood Compact. (Something not likely to happen in our lifetime.) For those wishing to control the subsurface of a split estate, they must either lease it from the state or buy fee-simple land.

Section 9 also says that “*Reservation of access shall not unnecessarily impair...*” the surface owner’s use of their land. What does that term mean? In order to develop the subsurface estate, the lessee of the mineral interest may not needlessly compromise the surface owner’s right to use of the surface estate. In other words, only reasonable and necessary access to the subsurface is allowed. The surface owner can still enforce trespass (it does not become a public right-of-way) and is entitled to compensation for damages.

The thought of not owning the subsurface estate of property they purchased is understandably troubling to most people. However, those of us who own land did not buy it under duress when we signed the contract. We contracted to the purchase of only the surface estate. In many other energy-producing areas of the country, a rancher with fee-simple land receives the royalty from subsurface land ownership. However, in Alaska we are all collectively ranchers with common ownership of the subsurface resources. The subsurface is public domain, subject to lease and development, whether it is coal, gold, oil and gas or other minerals. Twenty-five percent of the royalty from this public resource is mandated by the Constitution to be deposited into the Permanent Fund. In conclusion, while most of us that own land did not buy the subsurface estate, we benefit from the collective subsurface ownership through the permanent fund dividend. That is why I will always defend your dividend... it represents your share of the natural resources that we all own.