

## Part 5 Vested Mining Use

### **17-41-501 Vested mining use -- Conclusive presumption.**

- (1)
  - (a) A mining use is conclusively presumed to be a vested mining use if the mining use existed or was conducted or otherwise engaged in before a political subdivision prohibits, restricts, or otherwise limits the mining use.
  - (b) Anyone claiming that a vested mining use has not been established has the burden of proof to show by clear and convincing evidence that the vested mining use has not been established.
- (2) A vested mining use:
  - (a) runs with the land; and
  - (b) may be changed to another mining use without losing its status as a vested mining use.
- (3) The present or future boundary described in the large mine permit of a mine operator with a vested mining use does not limit:
  - (a) the scope of the mine operator's rights under this chapter; or
  - (b) the protection that this chapter provides for a mining protection area.
- (4)
  - (a) A mine operator with a vested mining use shall file a declaration for recording in the office of the recorder of the county in which the vested mining use is located.
  - (b) A declaration under Subsection (4)(a) shall:
    - (i) contain a legal description of the land included within the vested mining use; and
    - (ii) provide notice of the vested mining use.

Enacted by Chapter 376, 2009 General Session

### **17-41-502 Rights of a mine operator with a vested mining use -- Expanding vested mining use.**

- (1) Notwithstanding a political subdivision's prohibition, restriction, or other limitation on a mining use adopted after the establishment of the mining use, the rights of a mine operator with a vested mining use include the rights to:
  - (a) progress, extend, enlarge, grow, or expand the vested mining use to any surface or subsurface land or mineral estate that the mine operator owns or controls;
  - (b) expand the vested mining use to any new land that:
    - (i) is contiguous and related in mineralization to surface or subsurface land or a mineral estate that the mine operator already owns or controls;
    - (ii) contains minerals that are part of the same mineral trend as the minerals that the mine operator already owns or controls; or
    - (iii) is a geologic offshoot to surface or subsurface land or a mineral estate that the mine operator already owns or controls;
  - (c) use, operate, construct, reconstruct, restore, extend, expand, maintain, repair, alter, substitute, modernize, upgrade, and replace equipment, processes, facilities, and buildings on any surface or subsurface land or mineral estate that the mine operator owns or controls;
  - (d) increase production or volume, alter the method of mining or processing, and mine or process a different or additional mineral than previously mined or owned on any surface or subsurface land or mineral estate that the mine operator owns or controls; and

- (e) discontinue, suspend, terminate, deactivate, or continue and reactivate, temporarily or permanently, all or any part of the mining use.
- (2)
  - (a) As used in this Subsection (2), "applicable legislative body" means the legislative body of each:
    - (i) county in whose unincorporated area the new land to be included in the vested mining use is located; and
    - (ii) municipality in which the new land to be included in the vested mining use is located.
  - (b) A mine operator with a vested mining use is presumed to have a right to expand the vested mining use to new land.
  - (c) Before expanding a vested mining use to new land, a mine operator shall provide written notice:
    - (i) of the mine operator's intent to expand the vested mining use; and
    - (ii) to each applicable legislative body.
  - (d)
    - (i) An applicable legislative body shall:
      - (A) hold a public meeting or hearing at its next available meeting that is more than 10 days after receiving the notice under Subsection (2)(c); and
      - (B) provide reasonable, advance, written notice:
        - (I) of:
          - (Aa) the intended expansion of the vested mining use; and
          - (Bb) the public meeting or hearing; and
        - (II) to each owner of the surface estate of the new land.
      - (ii) A public meeting or hearing under Subsection (2)(d)(i) serves to provide sufficient public notice of the mine operator's intent to expand the vested mining use to the new land.
    - (e) After the public meeting or hearing under Subsection (2)(d)(ii), a mine operator may expand a vested mining use to new land without any action by an applicable legislative body, unless there is clear and convincing evidence in the record that the expansion to new land will imminently endanger the public health, safety, and welfare.
- (3) If a mine operator expands a vested mining use to new land, as authorized under this section:
  - (a) the mine operator's rights under the vested mining use with respect to land on which the vested mining use occurs apply with equal force after the expansion to the new land; and
  - (b) the mining protection area that includes land on which the vested mining use occurs is expanded to include the new land.

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**17-41-503 Abandonment of a vested mining use.**

- (1) A mine operator may abandon some or all of a vested mining use only as provided in this section.
- (2) To abandon some or all of a vested mining use, a mine operator shall record a written declaration of abandonment with the recorder of the county in which the vested mining use being abandoned is located.
- (3) The written declaration of abandonment under Subsection (2) shall specify the vested mining use or the portion of the vested mining use being abandoned.

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