S T A T E O F N E W Y O R K

10971

I N A S S E M B L Y

May 5, 2010

Introduced by M. of A. PARMENT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to specifying ownership of pore space in strata underlying the surface of land and water

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The environmental conservation law is amended by adding a new section 23-1309 to read as follows:

S 23-1309. OWNERSHIP OF PORE SPACE UNDERLYING SURFACES.

1. THE OWNERSHIP OF ALL PORE SPACE IN ALL STRATA BELOW THE SURFACE LANDS AND WATERS OF THIS STATE IS DECLARED TO BE VESTED IN THE SEVERAL OWNERS OF THE SURFACE ABOVE THE STRATA.

2. A CONVEYANCE OF THE SURFACE OWNERSHIP OF REAL PROPERTY SHALL BE A CONVEYANCE OF THE PORE SPACE IN ALL STRATA BELOW THE SURFACE OF SUCH REAL PROPERTY UNLESS THE OWNERSHIP INTEREST IN SUCH PORE SPACE PREVIOUSLY HAS BEEN SEVERED FROM THE SURFACE OWNERSHIP OR IS EXPLICITLY EXCLUDED IN THE CONVEYANCE. THE OWNERSHIP OF PORE SPACE IN STRATA MAY BE CONVEYED IN THE MANNER PROVIDED BY LAW FOR THE TRANSFER OF INTERESTS IN REAL PROPERTY. NO AGREEMENT CONVEYING MINERAL OR OTHER INTERESTS UNDERLYING THE SURFACE SHALL ACT TO CONVEY OWNERSHIP OF ANY PORE SPACE IN THE STRATUM UNLESS THE AGREEMENT EXPLICITLY CONVEYS THAT OWNERSHIP INTEREST.

3. AS USED IN THIS SECTION, THE TERM "PORE SPACE" IS DEFINED TO MEAN SUBSURFACE SPACE OF ANY SIZE AND WHETHER VACANT OR FILLED WHICH CAN BE USED AS STORAGE SPACE FOR SUBSTANCES INJECTED INTO THE SPACE FOR STORAGE SEQUESTRATION.

4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CHANGE OR ALTER MINERAL RIGHTS WHICH EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

5. ALL INSTRUMENTS WHICH TRANSFER THE RIGHTS TO PORE SPACE UNDER THIS SECTION SHALL DESCRIBE THE SCOPE OF ANY RIGHT TO USE THE SURFACE ESTATE. THE OWNER OF ANY PORE SPACE RIGHT SHALL HAVE NO RIGHT TO USE THE SURFACE ESTATE BEYOND THAT SET OUT IN A PROPERLY RECORDED INSTRUMENT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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6. TRANSFERS OF PORE SPACE RIGHTS MADE AFTER THE EFFECTIVE DATE OF THIS SECTION ARE NULL AND VOID AT THE OPTION OF THE OWNER OF THE SURFACE ESTATE IF THE TRANSFER INSTRUMENT DOES NOT CONTAIN A SPECIFIC DESCRIPTION OF THE LOCATION OF THE PORE SPACE. THE VALIDITY OF PORE SPACE RIGHTS UNDER THIS SUBDIVISION SHALL NOT AFFECT THE RESPECTIVE LIABILITIES OF ANY PARTY AND SUCH LIABILITIES SHALL OPERATE IN THE SAME MANNER AS IF THE PORE SPACE TRANSFER WERE VALID.

7. THIS SECTION SHALL NOT ALTER ANY LAW OF THE STATE REGARDING MINERAL RIGHTS AND ANY RIGHT CREATED HEREUNDER SHALL NOT LIMIT THE RIGHT OF A MINERAL OWNER OR HIS LESSEE TO ESTABLISH REASONABLE USE OF THE SURFACE FOR THE PURPOSE OF MINERAL EXPLORATION AND PRODUCTION.

S 2. This act shall take effect immediately.