

LANDOWNERS' QUESTIONS ANSWERED

MINERAL TENEMENT ADMINISTRATION



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LANDOWNERS' QUESTIONS ANSWERED

Mineral Tenement Administration

Introduction

This pamphlet has been prepared for the benefit of native landowners, whose land may be subject to application for licence to explore for minerals or a mining lease to extract minerals. Exploration licence and mining lease are granted by the Director of Mines under the provisions of the Mining Act, which is administered by the Mineral Resources Department, Ministry of Lands, ALTA and Mineral Resources.

A mineral deposit may be found from exploration work. Normally many years of exploration work may be required to prove that the deposit can be developed commercially or is abandoned. The world average is roughly, that for every 1000 mineral deposits explored, only one may turn out to be commercially viable and developed into a mine. Some deposits may be explored many times over and by different licence holders. Good example is Namosi copper and gold deposit, which has been explored since mid 1960's and has not been proven to be commercial. It is explored under an exploration (Prospecting) licence. Mt Kasi gold deposit, much smaller than Namosi was explored under an exploration licence until it was proven to be commercial and was granted a mining lease to extract minerals. It was in the mining business for about 2 years, when the fall in gold price made the deposit uneconomic.

The impact on the landowners and other local communities as well as the involvement of the locals varies, depending on the level and intensity of exploration activities. An exploration area could be fairly large, but a mining lease could be over a more restricted area. Mining activities are much more intensive than exploration work.

The information presented in this pamphlet is intended to promote a better understanding between the landowners and holders of licences and leases, granted by the Government to allow the holders of these permits to have access to their land.

1. **Who owns the minerals?**

Mineral rights belong to the State. This is provided for in the Mining Act. By virtue of this right being with the State, the Government permits exploration and development of minerals on all land by grant of various licences and leases through Mineral Resources Department. Mineral Resources Department is the custodian of Fiji's minerals on behalf of people of Fiji.

2. **Who owns the minerals if it is on the surface of the land, on the river bed or the sea bed?**

Irrespective of where the mineral may be located, on the surface of the land, underground, on the river bed on the sea bed or even if present in the water, all minerals belong to the State.

3. **Why is it that the State own the minerals?**

The laws of Fiji vests ownership of minerals to the State. The laws of Fiji are based on the British legal system which sets the provision that all the people who form the State, own the mineral resources. The British Legal System is seen by many investors as the most secure and fair system around. This arrangement reduces Fiji's country risk and helps to attract investors to the very risky investment in mineral exploration. Until minerals are discovered and proven to be commercial, it benefits nobody. Mineral rights vested in State suppresses fraudulent activities, bribery and other corrupt and illegal practices.

4. **What earthy materials, that could be easily confused to be minerals, do not belong to the State.**

There are certain earthy materials, which can easily be mistaken to be minerals as defined by the law. The more common earthy materials, that don't belong to the State are sand, gravel, ordinary soils and clays, limestone, quarry rocks and top soil. They belong to the landowner. These materials belong to the State however, if they occur on State Land, river beds to the point where river is tidal and the foreshore area. Tidal river beds and foreshore areas belong to the State. Only fishing rights

belong to local communities, whose rights are formally registered under the Fisheries Act.

5. **What is the difference between an exploration licence and a mining lease?**

The holder of the exploration licence, which is formally called a Prospecting Licence or a Special Prospecting Licence, is permitted to enter any area of land specified in the licence to search for minerals; is permitted to use light tools and machinery to search for minerals; is permitted to remove small amounts of rocks and soils as samples for the purpose of testing the mineral content. There may be no economic minerals whatsoever in the samples or very small amounts of no commercial value. The licence requires that any damage done to the land should be rehabilitated and compensation paid to the owner of the land or the legal occupier whose land has suffered damage.

The mining lease is granted to a holder only after the applicant has proven, by exploration work done under an exploration licence, sufficient quantities of mineral in an area which is likely to be developed commercially. Development will mean extraction of mineral by constructing a mine, surface or underground; building rock crushing and milling facilities and providing a waste storage area. Under a mining lease, ownership of the extracted mineral changes from the State to the lease holder, who removes the mineral and sells it. All the development and extraction is done at the expense of the lease holder.

Government and the community benefits from work and wages created and taxes and royalties paid. The owner of the land is paid compensation for all the disturbance and damage done in the lease area, and receives a portion of the royalty payable.

6. **Who grants exploration licences and mining leases?**

Exploration licences and Mining Leases are granted by the Director of Mines after the consent of the Minister responsible for Mineral Resources. For mining leases the Minister may also obtain the approval of the Cabinet because mines are much more important enterprises than exploration activities.

Before the licences and leases are granted, the law requires and the Director ensures, that landowners whose land is likely to be affected, are consulted, compensation agreement is made and compliance bond secured from the holder of licence or lease.

7. Do I, as a landowner, need a licence to explore for minerals on my own land?

Yes, you require a licence, like anyone else and under the usual conditions. In your case as a landowner, the *Turaga ni mataqali* may consent to the exemption from the bond for damage to the *mataqali* land. However, a smaller bond for other compliance will still be required.

8. Is compensation payable to me by the licence holder or leaseholder working on my land?

All holders of licences and leases are required to pay compensation to the owners of land and also to the legal occupiers whose land is affected by activities undertaken under a licence or lease. No licence or lease will be granted unless compensation agreement is formally made between the landowner and the applicant for a licence or lease.

A Prospector's Right holder is also required to pay compensation to a landowner if the holders activities cause disturbance and damage to any land.

9. Under what conditions is compensation payable?

A document prepared by Government called '*Compensation Policy for Fiji's Mineral Sector*' fully explains the circumstances under which compensation becomes payable and

also how much compensation should be paid and to whom. Any landowner who is likely to be affected by the activities of a holder of an Exploration Licence or a Mining Lease, should require the holder to deal with the compensation matters as provided for in the compensation policy document. The landowner should seek assistance from the officers of the Provincial Office and if necessary from NLTB or Mineral Resources Department on compensation matters.

10. When is mineral royalty payable and to whom?

Mineral royalty is payable to the owner of the land from whose land mineral is mined and extracted. Mineral royalty is also payable to the fishing rights owner if the mineral (or oil) is extracted from his fishing rights area. The royalties are first paid to the Director of Mines, who is in the best position to check that the right level of royalty is paid. He then transfers the royalties to NLTB (for minerals from the land) and to the Ministry of Foreign Affairs (for fishing rights owners) who then distribute the royalties to the right people, less any poundage.

The level of royalty payable is set out in the Mining Act. A particular project could also pay a level of royalty set by the Cabinet for that project which could be at a different level from the one in the Act.

11. Is exploration permitted on my farm land?

An exploration licence permits the holder of an exploration to enter and carry out exploration work on a farmland. The laws and regulations require the holder to follow laid-down procedures and protocol before he can enter the land. These procedures require consultation with the landowner and the occupier of land who may have a crop on the land. The consultation could decide the timing when work could start; the procedures and level of compensation payable and the rehabilitation and restoration work that needs to be done at the end of the exploration. A written agreement is required to be done between the landowner or the occupier and the holder of the licence.

12. Can I as a landowner, enter into any agreement with a licence holder or a leaseholder?

It has been the practice until the recent past that members of a *mataqali* entered into an informal written agreement with the holder of an exploration licence for the payment of compensation and other arrangements for work proposed on the *mataqali* land. In most cases this has worked satisfactorily. Most exploration activities are short-term and the exploration company will not appear on the scene again. Some exploration activities, however, can be long-term. If the provisions of the agreement were disputed by either party, and the settlement was sought in the court, such an agreement will not be recognised by the court. Such agreements are also not registrable by the Director of Mines.

The correct body that should enter into an agreement, on behalf of the landowners, as their trustees, as provided by the law, is Native Lands Trust Board as one party and the holder of the licence as the other party.

The Compensation Policy Document provides guidelines for the *Turaga ni mataqali* to enter into an agreement with the licence holder. This agreement is a *Standard Agreement* for exploration activities, and also has recognition of the NLTB.

The *Standard Agreement* does not apply in the case of Mining Leases. For mining leases agreements are negotiated for each project, using the compensation policy document as a guide.

13. How am I to know that an application has been made for an exploration licence or a mining lease on my land?

The Mining Act as well as the Fijian protocol requires that the landowner is fully informed and traditional consent received from him, before formal procedures are started for the granting of any exploration licence or a mining lease. The procedures are set out in *Exploration Code of Conduct* produced by MRD in consultation with NLTB and Government Departments, as well as the industry.

Anyone intending to apply for an exploration licence (or a mining lease) is required to submit his intention in writing to the Director of Mines. The applicant is required to serve this notice of intention personally to the *Turaga ni Mataqali*, in a traditional way; discuss the programme of his intended work; receive the consent of the members of the *mataqali* and present proof of the presentation to the Director of Mines. This notice is also given to the NLTB, the District Officer, the Commissioner of the Division and the Provincial Office.

Following these steps and fulfilling all the other requirements of lodging a formal application, the Director will require the applicant to advertise his application in the *Fiji Gazette*, an English daily newspaper and one Fijian language newspaper. This notice is open for 30 days for any objection or submission. The applicant is required by law to hand-deliver a copy of this notice to the *turaga ni mataqali* and provide a proof of this delivery to the Director.

The landowner is thus given the opportunity to make any submission or objection to the Director.

14. Can I refuse the grant of an exploration licence or a mining lease on my land?

The law does not make provision for the landowner to directly refuse granting of an exploration licence or a mining lease on his land. If such a provision was made under the law, considering the complex nature of land ownership in the country, over 83% native-owned, it will be virtually impossible to administer such a provision of the law. The law however, allows for maximum consultation and consensus building between the landowner and the applicant, before the licence is granted. If there is no consensus, the Minister will not approve and the Director will not grant a licence. Indirectly, therefore, the landowner can influence the refusal of a grant of a licence or lease.

15. How can I do so if this is possible?

If a landowner is not satisfied for some reason for exploration at mining to proceed on his land, he has various avenues to convey his objection to the Director, who may then consider to refuse to grant of an exploration licence or a mining lease, until the landowner is satisfied.

The landowner can convey his objection to the applicant during the initial meeting with the applicant. The objection can also be made at the time when the application is advertised. This objection can be made in writing to the Director directly, and the objection letter sent by post. He could also approach the local Provincial Office or the NLTB office to convey the objection to the Director in Suva. The Mineral Resources Department has only one office in Suva and no branch offices.

16. What is the role of NLTB in the grant of an exploration?

NLTB has a significant role in the procedures leading to the grant of an exploration licence by the Director of Mines. As trustees of native landowners, NLTB has to ensure that the interests of the landowners are fully protected, without reducing its role as a facilitator for investment and development on native land. These interests could include provisions in any agreement or procedures regarding compensation, distribution of any payments, protection of cultural and historical sites, rehabilitation of any damaged land and conservation measures and environmental protection generally. NLTB has to be a party to any endorsement of agreement between and on behalf of the landowners and the licence holder, if the agreement is to have any legal standing. NLTB also serves as a facilitator for communication between landowners and government agencies as well as with the licence holder. NLTB should also ensure that the landowner commitments and obligations are complied with.

17. What is the role of NLTB in the grant of a mining lease?

NLTB has a greater role on behalf of the native landowners for the granting of a mining lease by the Director of Mines. Compensation arrangements are important in processing a mining lease. No mining lease can be granted if no compensation agreement has been entered into between NLTB on behalf of the landowners and the applicant of the mining lease. NLTB should be involved at every stage in the negotiation of this agreement. NLTB may even opt for granting a surface lease over the mining lease area and incorporate compensation in surface lease rental. Compensation payments on rental moneys received should be invested and/or distributed to landowners under NLTB procedures and protocol.

NLTB also has a role in facilitating landowners particularly in small business and other commercial activities linked to mining activities.

As in the case of exploration licences, NLTB is legally obligated to ensure landowners honour their part of any agreement.

18. What is the role of Native Lands Commission (NLC) in matters relating to exploration and mining?

Exploration work and mining on native land can be complicated by unclear definition of the native land boundaries, particularly the *mataqali* boundaries and the correct registration of members of *mataqalis* or other indigenous divisions. Unfavourable impacts arising from unresolved land ownership, land boundaries or chiefly appointments, could hamper smooth execution of exploration on mining work and cause trouble to local people. NLC should be brought in at the early stage in any exploration programme or mining proposals. Landowner dissatisfaction could ruin a project.

19. What is the role of the Provincial office in exploration and mining activities?

The Provincial Offices in the 14 provinces of the country represent the Ministry of Fijian Affairs in the administration of all matters relating to indigenous people. It has a wider presence in the country than NLTB or the Mineral Resources

Department. The services provided by these offices should, therefore, be utilized in communication between the landowners and other Government departments, particularly the Mineral Resources Department.

The officers of the Provincial office together with NLTB representative, should avail themselves for the initial meeting between the landowners and the licence applicants; with assistance from Mineral Resources Department staff, explain the rights and obligations of the licence applicants to the landowners, explain the expectation on protocol and other local matters to the applicants and work closely with NLC in resolving any ownership or *mataqali* boundary issues.

Provincial officers should facilitate raising matters of concern to the landowners to the Mineral Resources Department and actually assist with phone or fax facilities for conveyance of messages or submissions to the Mineral Resources Department.

20. Where do I take my complaints if I am not happy with any matter about exploration and Mining on my land?

There may be occasions when you as a landowner may have genuine complaints against the holder of an exploration licence or a mining lease, who has been correctly granted a licence or lease to work on your land. The holder of the licence or lease is expected to fully understand the requirements of the mining regulations, special conditions of the licence, the provisions of the *Exploration Code of Conduct* and the Fijian protocol. The holder is required to explain to you as a landowner, the various work activities he will undertake on your land and will enter into an agreement with you and/or NLTB for paying compensation for any damage on your land or crops. If you have any complaints relating to exploration and mining the office of the Director of Mines is the right place to take your complaints to. You could seek the help of local Provincial Office or NLTB or local District Officer to convey your complaints to the Director. The Provincial Office, NLTB and the District Officer strictly cannot deal with your complaint regarding exploration licence or mining lease, but can convey your complaints to Mineral Resources Department.

If you are not happy or satisfied with the decision of the Director, you can take your complaints to the Mining Appeals Board. The Board's decision can be challenged in the High Court. The address of the Appeals Board is : The Secretary, Mining Appeals Board, Mineral Resources Department, Private Mail Bag, GPO, Suva. The Board is appointed by the Minister responsible for Mineral Resources.

21. Am I entitled to know what kind of activity will take place on my land and for how long? What damage will be done and measures taken to rehabilitate my land?

After an exploration licence or Mining Lease is granted, the holder of the licence or lease is required by law to submit to you in writing and explain fully with maps, drawings etc the various types work he will undertake on your land; the equipment and machinery he will use; the labour he will use; where he may set up his camp if necessary; how long he will be on your land; what measures he will take to rehabilitate the land he may damage; what compensation he will pay. The licence holder and the lease holder are expected to explain you all these in a meeting he has to arrange with you and other landowners and, as necessary, enter into an agreement, before he can start work on your land. However, the licence holder or his representative is required by the Exploration Code of Conduct to explain the various proposals to landowners in the initial meeting, before the formal application is made to the Director.

22. Where can I get correct advice if I were to understand what my rights as a landowner are and the rights of the holder of the exploration licence and the mining lease?

The rights of the owner of the land which is affected by the exploration licence granted over the land and the rights of the holder of the exploration and Mining Lease are provided for in the Mining Act, Chapter 146 of the Laws of Fiji. This document may not be easily available to you and may be a little difficult to understand, mainly because of the style of language used in writing the laws. It is therefore, now formally provided in the *Exploration Code of Conduct*, that

the licence holder facilitate a meeting with the landowners prior to the grant of a licence or lease by the Director, during which the rights of the landowner and the licence holder are explained by the representatives from the Provincial Office and Mineral Resources Department. The *Exploration Code of Conduct* also explains how the holder of the licence and his/her workers should conduct themselves and abide by the provisions in the *Code* and not beyond those provisions and rights.

23. Is mining royalty payable to me as a landowner and by whom? Who determines the level of royalty payable?

If you are the owner of land from where mineral is extracted, you are entitled to receive mining royalties. The royalty is payable initially by the holder of this mining lease to the Director of Mines. The Director of Mines is the right authority to understand the correct royalty payable by the holder of the lease. The Director is required to check that the correct level is paid and at the correct time and then transfer the royalty to NLTB. The NLTB deducts the approved level of poundage and the rest is either paid out to the landowners, divided in the customary way or keep in trust on behalf of the present and future landowners. After the royalty is transferred to the NLTB, it is then a matter between the NLTB and the landowners and not for the Mineral Resources Department or the licence/leaseholders.

The payment of mining royalties to landowners became effective after 1990 Constitution. The Constitution required that the Cabinet of the day determine the percentage royalty to be divided between the Government and the landowners. The Constitution also provided that any leases granted or agreement on the level of royalties payable, prior to the 1990 Constitution, will not be affected by a provision in the 1990 Constitution.

Compensation is also payable to the landowner by the leaseholder for damage done to the land.

The 1997 Constitution amended the 1990 Constitution on mining royalties and requires that the Mining Act should itself state the level of mining royalties payable to the landowner, but

taking into account the compensation that is payable to the landowner the other benefits that landowners and Government receive from mining. This provision is yet to be made in the Mining Act.

24. What am I entitled to as the owner of fishing rights that is affected by exploration licence or mining lease?

The owner(s) of fishing right is entitled to receive mining royalties in the same way explained above in the case of a landowner, if the mineral is mined and extracted from the river bed or seabed, over which fishing right is registered in favour of any group of indigenous people. You are also entitled to receive compensation for damage to your fishing rights area.

The royalties to fishing rights owners is dispensed by ministry of Fijian Affairs and not by NLTB as in the case of landowners.

25. What are my rights and eligibilities after mining has ceased on my land?

The rights and eligibilities of the landowner after mining has ceased on his land, are provided for in the Mining Act, special conditions of the Mining Lease, Compensation Agreement between NLTB (for landowners) and the mining lease holder and any Development Agreement government has entered into between the government and the NLTB (for Landowners). Landowners should expect full compensation for all the damage done which cannot be rehabilitated. A good percentage of this compensation will be retained in a trust and payment phased so that compensation is available in future years. Work will be undertaken by the leaseholder to restore and rehabilitate what can be possible. Government may takeover of the maintenance of infrastructure available at the time of mine closure. Bonds will be retained by Government to ensure all the commitments of the leaseholder are met. Following the cessation of the mining lease the access to land reverts back to landowner.

26. Who grants licences for extraction of sand and gravel from my land or river bed?

A licence is required by any operator who intends to extract sand and/or gravel from any land or river bed or foreshore area. The licence is granted by the authority who legally owns the land or the river bed. The following situations could apply:

- (i) If it is State land, then the Divisional Surveyor will grant the licence.
- (ii) If it is bed of a river, which is tidal, the right of the river bed is with the State; therefore the Divisional Surveyor will grant the licence.
- (iii) The foreshore area and the seabed which is below the high-water mark, Divisional Surveyor will grant the licence.
- (iv) If the land is native or bed of the river is above tidal point, then NLTB grants the licence.
- (v) If there are two different ownership on the opposite sides of river, which is not tidal, the respective owners (NLTB, State or freehold owner) could grant the licence, with midpoint of the river as the dividing line.

27. Am I entitled to compensation, in addition to royalty, for damage done to land and crops, during extraction of sand and gravel?

If your land is affected by an operator of sand and gravel pit or quarry, compensation is payable to the owner of the land. If the landowner whose land is affected or damaged, and he also owns the sand and gravel, he is eligible for compensation in addition to royalties. If it is native landowner and native land is involved, the NLTB licence should make the conditions on royalties and compensation in the licence.

28. Who should rightfully collect royalty for extraction of sand and gravel?

Royalty is payable for extraction of sand and gravel. Compensation is also payable to fishing rights owners, if fishing rights area is affected by extraction of sand and gravel.

If correct procedure is followed then royalty is paid by the licence holder to NLTB as trustees of the landowners. Compensation for damage to land is paid to NLTB, but damage to fishing rights is payable to Ministry of Fijian Affairs.

The NLTB and Fijian Affairs are required to distribute the royalties and compensation to landowners and Fishing Rights owners under customary procedures.

29. Is it true that I own only six feet of the ground and the State owns the rest?

The ownership of the land to the legal owner, extends to the centre of the earth but does not include mineral rights in it.

30. Where can I get more information?

More information can be obtained on the various topics discussed in this pamphlet, from the following sources:

- (i) *Mining Act*, Chapter 146, Laws of Fiji. Copies can be purchased from the Government Printing Department or can be read at Mineral Resources Department Library, Mead Road, Nabua, Suva.
- (ii) *Fiji Mineral Policy*; copies available from MRD.
- (iii) *Compensation Policy for Fiji's Mineral Sector* (in preparation) from MRD.
- (iv) *Exploration Code of Conduct*; from MRD.
- (v) *Protocol and Procedures with Indigenous Landowners and Occupiers*; from MRD.

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