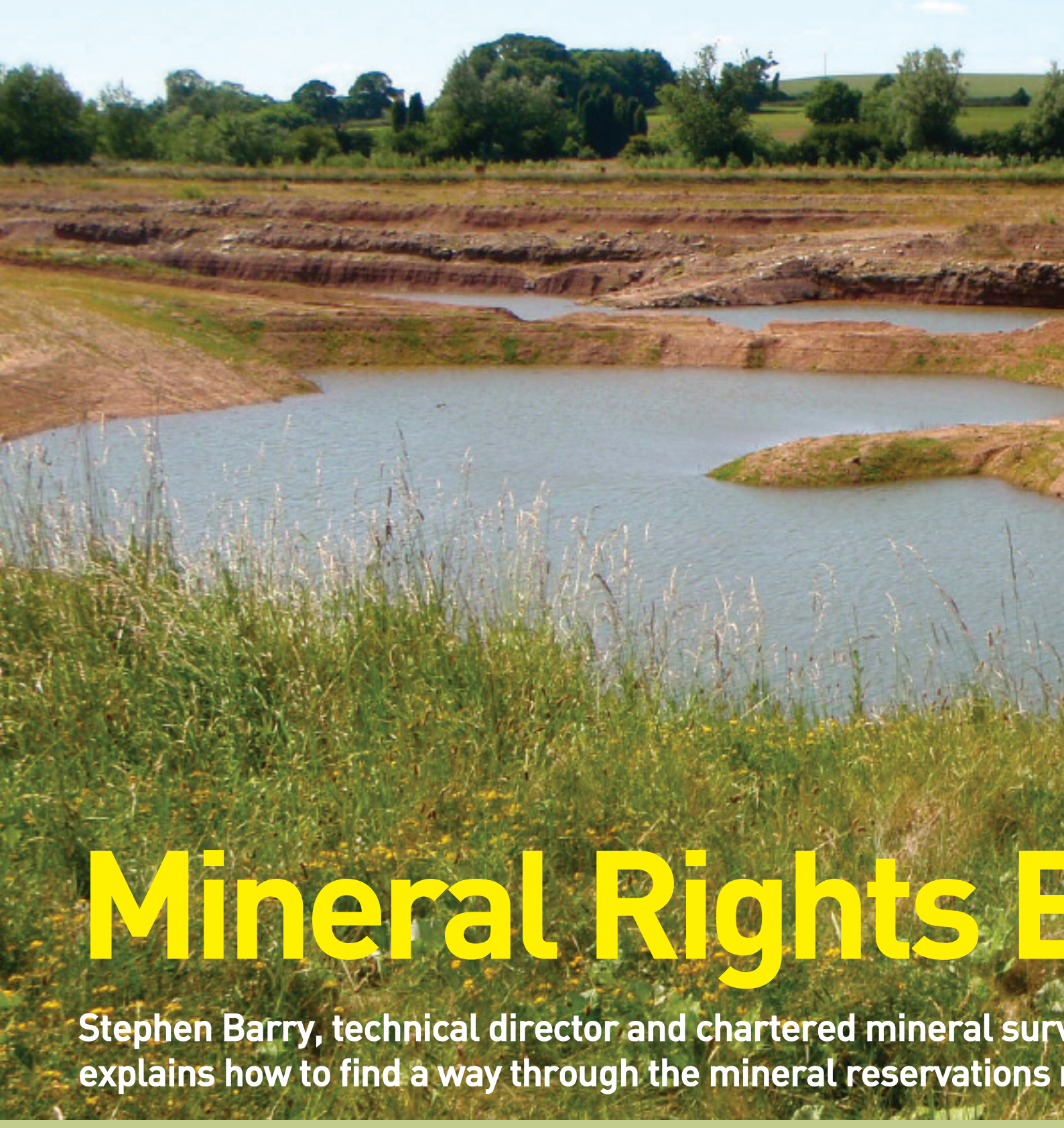

Mineral Rights E

Stephen Barry, technical director and chartered mineral surv explains how to find a way through the mineral reservations

What, exactly, is a mineral? That might sound like a daft question, but the perplexing answer is that it is quite possibly not what we think it is, and almost certainly not what we mean in everyday language. After all, coal is regarded as a mineral whereas it is, in fact, compressed peat. The precise meaning of a mineral reservation can, therefore, be equally unclear, especially since it depends on a large body of case law which mostly dates back to the nineteenth century. And resolving disputes – or simply removing ambiguity – often requires quite a rare combination of expertise in geology, law and mineral extraction.

It is not surprising, therefore, that many people worry when they see 'mineral rights excepted' or something similar on the title deeds of a property. Solicitors are understandably cautious about the risks that might be involved. Although there is probably nothing to worry about in the majority of cases, the legal costs of those that do end up in court can be very high.

What does all this mean for quarry operators? Unfortunately, there is no simple answer because every site and every situation is different. Freehold mineral reservations are quite common in the UK and the commercial questions and issues can be pressing and real. When you buy or lease land for mineral extraction, are you sure you are getting everything you need or is the property subject to a mineral reservation? If there is a mineral reservation, does it include the minerals you want to extract? Will your mineral extraction operations trespass on any reserved minerals? Can the mineral owner be identified? And how much should you pay to obtain the reserved interests to ensure that you can legitimately extract the minerals?

There is no single formula for interpreting

Excepted

veyor with Wardell Armstrong, minefield

a mineral reservation, nor is this a definite term. It is one that has been described in legal cases as 'capable of bearing a variety of meanings'. Therefore, a series of tests or pointers is often applied to point to a conclusion.

But even before getting to this stage, there is still the basic question of whether what might be in the ground is actually a mineral. It might be hard to believe, but most types of 'mineral' (including flints, granite, sand, limestone, clay and many other types of geological strata) have all been held by the courts in various instances either to be included in a mineral reservation or to be excluded from it. Much depends on the wording of the individual reservation, and its meaning is ultimately a matter for the courts to decide.

'Exceptionality' is the first of the tests that are commonly applied, and this one often carries much more weight than any of the others. Is the material in question exceptional in use, value and character? For all practical purposes, the strata that make up the surface of the land are unlikely to be included in a general reservation of 'all mines and minerals' unless they are identified by name or are 'special' or 'exceptional' in character. Thus, china clay forming the surface of the land is likely to be included because it is exceptional, while 'common clay' forming the surface is unlikely to be included unless it is specifically included by name. So far so good, but of course a mineral that is 'exceptional' in one location might be nothing out of the ordinary in another. By definition, it will be common where it occurs.

'Common soil' is the second test. Is the material in question the common rock of the district, so that if it were worked it would practically swallow up the grant of the land? Generally, the common soil of a district is not classed as a mineral. Thus, aggregates ➤

such as sand and gravel, for example, which are not specified by name might well not be included within a general reservation of mines and minerals because they are the common soil of the district. On the other hand, there are legal cases where they have been included.

Then there is the 'vernacular' test. Was the material encompassed within the vernacular meaning of 'minerals' within the mining, commercial and landowners' worlds at the time the exception was made? Although this might seem to be the weakest pointer, some judgements have said that it is the fundamental starting point. For example, just because sand and gravel are regarded as minerals today, it does not necessarily follow that they were regarded that way a hundred years ago. Nor should it be assumed that they will be regarded as being included in a reservation of 'all mines and minerals' that is made today but which might be litigated in a hundred years' time.

Another test is 'working rights'. Do they give an indication as to what was excepted from the grant? For example, if the working rights are 'by underground means only', the reservation is likely, in the eyes of the court, to include only minerals which were habitually worked by underground means at the time the exception was made, unless surface minerals are specifically named. This can happen where the vendor intended to maximize the surface sale value while retaining a portion of the potential future value of surface minerals. Few present-day purchasers of land would accept a mineral reservation which included surface working powers, so this form of reservation is not uncommon. The phrase 'to let down the surface' is also a pointer to working rights being by underground means only, rather than digging up the surface, although it is not conclusive.

The 'state of knowledge' test asks what the state of geological knowledge was at the time. It does not seem to be a very strong pointer or to feature much in precedent. However, it might throw some light on what an exceptor intended to include in the reservation, based on, for

example, what it might then have been reasonable for them to believe to be present at depth.

Finally, there is 'context' – the circumstances in which the exception was made, especially in relation to the state of the law as it was at the time. If, for example, there was a nearby working quarry and the exceptor wanted to except minerals from a conveyance in order to retain royalty income in future, and had made clear provision to compensate the new surface owner for land taken when exercising the reservation, this would be a fairly strong pointer. But the other aspect of 'context' is the assumption that anyone drafting a mineral reservation in the past would have known the current state of the law, including the precedents of legal cases. This assumption still stands today, even though in many cases the draftsman may well not have had that knowledge.

If all this is rather confusing, it is hardly surprising. Because of past ambiguity, widely varying interpretation and heavy dependence on case law, mineral reservations can often present a confused picture. Therefore, involving the 'right' specialist may be the key to understanding your position and knowing how best to protect your interests. The critical word here is 'right'. Here, the definition is easier. It means someone who can genuinely combine geological knowledge and minerals expertise with complementary skills in valuation and negotiation – someone who can balance the strength of the minerals reservation and know when to cut a deal and when to take the risk of going to court. Today, this combination is an increasingly rare commodity, but when trying find your way through a minefield, it pays to have the right people by your side.

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