

September 24, 2006  
National Roundtables on CSR,  
Calgary (October 10-11, 2006)

**by Svetlana Tikhomirova**

PhD (Geological Science)  
Post-Doc (Jurisprudence)

Some notes for reach an understanding of the Russian  
legal deficiencies and defects in the mining (resource) laws

Many legislative and legal acts of the Russian Federation (RF) start with the General Concept section, which interprets official terms used in these documents. Lawyers, economists, geologists and mining engineers – specialists of different spheres – need in unified the terms of the subsurface use regulatory framework. Some professional economic and technical terms so typical for the exploration and extractive sectors (“subsurface resources”, “mining lease” or “geological lease”, “preliminary borders of mining claim”, “mineral resources”, “mineral products recovered”, “geological information”, “fields and mineral wealth inventory” and so on) become widely used in legal and normative acts after collapse the USSR. In respect to mining (resource) laws Russia derived some habitudes from former Soviet Union and uses the permit of land tenure system. By this scheme, the government controls the mineral rights and licences the prospector to explore a certain area. The permit also called in other countries - the concession, licence, or contract area which expires after a specified period. But the said terms are not working in Russian mining (resource) laws. Lawmaker in Russia uses a special term - licence agreement. What it is mean? We will never find interpretation for this specific formula in Russian mining (resource) law or Civil Code. But at the same time we can read the Directive of the RF Committee on geology and use of mineral resources, which indicates that when a license is reissued then the terms from the RF Civil Code shall be used (order of the RF Committee on geology and use of mineral resources of 18 May, 1995 № 65).

It is well known that contract has to be flexible and understandable enough to adapt to changes so that both parties can sidestep miscommunication and finger-pointing. A separate premise - "Terms used in the PSA" - in production sharing agreements explains special terms. Contract agreements of mining or oil and gas companies the Parties give definitions to such terms as “Spud Date”, “Continuous Process”, “Production Testing of a Well”, and “Right to geological information” and so on. Parties to agreements on cooperation in the sphere of examination, exploration and use of mineral deposits agree on unification of terms used in exploration and use of mineral resources taking into account the international requirements. In due time the RF Committee on geology and use of mineral resources and the RF Geological Fund developed requirement for the use of terms obligatory for license passports only. However the basic documents – The RF Law “On Subsurface Resources” and the Resolution on Procedure for Licensing Subsurface Use – give in fact no official interpretation of terms and concepts of subsurface use in Russia. Why?

Departmental acts of the Ministry of Natural Resources RF, Ministry of Energy RF, the Federal Committee for Mining and Industrial Supervision RF and other bodies have created in the last fifteen years a huge base of local acts and legal documents, relevant in the sphere of mapping, exploration and extractive. These documents delegate powers and rights to take decision on tenders and auctions; powers to approve decisions on the results of tenders and auctions; for revision of licence agreement; for re-registration of licenses, issuance, termination

or suspension of licenses etc.; bring in different types of documents, determine the ground and procedure for their execution and their requisites. The said documents use a wide range of professional terms, which sometimes are not clear for specialists who have not experience in mapping, exploration and extractive sectors. As well as legal language is not clear for specialists who have not understood details of technical terms of law.

Thus on the one hand lawyers have to apply to different scientific and encyclopedic literature, which has no binding effect, to find interpretation of some specific terms and expressions relating to the sphere of subsurface use. While law books classifies of different ways for creation terms and expressions. And they include not only doctrinal constructions (of scientific nature and rather debatable in geological circles), but also authentic (given by the authority issuing the norm), legal (given by the authority with the corresponding competence) and a judicial construction (given by a corresponding judicial body). On the other hand project geologists, management of mining or oil and gas companies also needs a collection of renew terms with construction of legal concepts commonly used in documents relating to subsurface use – especially after collapse USSR. Absence of uniform terms in the mining (recourse) laws undoubtedly hinders creation of a uniform regulatory base, transparent for individuals, entrepreneurs, specialists and officials; interferes with communication of state bodies, enterprises, research organizations and citizens with different interests in study, examination, use and protection of subsurface resources.

Specialists need to look for terms and their definitions by the searching from such typical normative documents as a “Procedure”, “Instruction” and “Regulations”, in regulatory acts such as an “Order”, “Directive” and “Regulations” and in some cases also from “Letters” which are not of normative nature, but often explain certain issues and give definitions of some special terms. You have to show a huge patience in this matter. For example, the construction of one of the most important terms for Russian exploration and extractive sectors “geological information” was found in the little know explanatory notes (!) to the normative-methodic document «Procedure of estimating the costs borne in previous years for exploration and their accounting as the contribution of the Russian Party to the authorized capital of companies with foreign capital» which was approved by the RF Committee on geology and use of mineral resources, the RF Ministry of Fuel and Energy and the RF State Property Committee in 1994.

Explanations in "Directives" and "Letters" (tradition descends from USSR) are caused by the need in professional explanation of specialized documents. Letter of the RF Committee on geology and use of mineral resources of 9 March 1994 № BYa-61/526 “On Mineral Resource Licensing”, which gave corresponding directives concerning the liquidation of different interpretation of licenses and requirements of the state geological expertise of mineral resources confirms this fact. Different interpretation of separate provisions and normative documents relating to subsurface use by the regional authorities of the Ministry of Natural Resources RF and the RF Committee for Mining and Industrial Supervision (Republic of Buryatia, Kamchatka or Kemerovo regions and so on) become grounds for special explanations given in Letter of the Russian Ministry of Natural Resources and the RF Federal Committee for Mining and Industrial Supervision “On Subsurface Licensing” of 16 January, 1998 (№№ BYa-61/171 and 04-35/43). The letter, in particular, indicated “*to address to the Russian Ministry of Natural Resources and the RF Federal Committee for Mining and Industrial Supervision for all issues related to the problem of interpretation of the regulatory framework of subsurface use*».

The RF Law “On Subsurface Use” lacks interpretation of many expressions and definitions for special terms, which are used in the preamble and in the Law body which is not always convenient for law enforcement. For example, how shall the phrase “previously unknown subsurface lot” (art. 34 of the RF Law “On Subsurface Resources) be understood by persons who have discovered a new mineral deposit and, in accordance with this article, have the right to

register the subsurface lot in the federal authority for the state subsurface resource management or its territorial authority?

Geologists are aware of the fact that in the late 1950-s, the geological studies of the country completed the survey on scale 1: 1,000,000, and as a result of which in 1961 The State Geological Map of the USSR (without water areas) was published. In the late 80-s – early 90-s the mapping on scale 1: 200,000 was done for 98.1% of the country territory, and the geological survey on scale 1: 50,000 with general search covered 26.5% of the territory. The general examination using the methods of finding direct prospecting indicators (placer, litho- and hydrogeochemical) varied from 10 to 100% in early 1990-s (Geological Survey and the Development of mineral and raw material base, 1993). So, the results of systematic different scale geological, geophysical, and geochemical and hydrogeochemical examination of the country territory during several decades give us grounds to believe that there should be no “previously unknown subsurface lots” on the ex-USSR territory. In other words, one of the most important articles of the RF Law “On Subsurface Resources” contains an unclear clause and the interpretation of this expression by the Ministry of Natural Resources RF or its regional authorities may result in formal refusal to register a “previously unknown” subsurface lot.

No doubt, that interpretation of different special terms has a particular important for Russian exploration and extractive sectors today. “Mining licenses”, in particular, mentioned in the text of the Law “*On Precious metals and precious stones*” as is well know do not exist. What the lawmaker meant at this point? Legal definitions of delicts and crimes, committing of which institute proceedings (administrative, criminal, and civil) for users of subsurface, prescribed by the applicable law and administrative acts, also needs in more accurate and clear statement for potential conflicts with government. And of course - a lovely Russian subject - it should be given much consideration for definitions which describe legal regulation of information relations in the sphere of subsurface use also. As well know special RF laws regulate relations connected with protection of state secret not only in extractive sector. Russian lawmaker gives terms, which are known for ‘smoke-filled room’ specialists in the sphere of protection of this information and constitute confidential information, but this terms and theirs official definitions are not known to the wide circle of subjects to mining relations and subsurface use relations - for everybody is afraid anybody.

An analysis of mining (resources) laws and hand-on practice give information on co-relation and interrelation of reality and the modern mining laws in Russia. Law and order are still far from perfect for various reasons. Russian geological and layers communities need in more pellucid law-terms which could make a number of theirs definitions more precise; clean up a confusion of terms and notions for contracts clauses; help to get orientation in very complicated cases of discrepancies between interpretations, conflicts in legal regulations, deviation of standards and gaps; draw up the mining, oil and gas contracts for greater depth and successful cooperation with foreign companies in exploration and extractive sectors.

