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STATUTORY FORFEITURE OF PRIVATE PROPERTY AND THE U.S. SPACE RESOURCE
EXPLORATION AND UTILIZATION ACT OF 2015

Abstract

The United States Space Resource Exploration and Utilization Act of 2015 ("Space Resource Act") allows a U.S. citizen engaged in the commercial recovery of any asteroid resource or space resource to "possess, own, transport, use and sell the asteroid resource or space resource obtained in accordance with applicable law, including the international obligations of the United States." The Space Resource Act is silent regarding the disposition of any asteroid resource or space resource possessed, owned or used by a U.S. citizen in violation of the applicable law.

The United States possesses the sovereign power to take title to private property without the owner's consent. Such a taking is generally undertaken pursuant to the eminent domain power or police power. When the United States exercises its police power to take private property, the taking is not for a public purpose and the Fifth Amendment's requirement for just compensation is inapplicable. A governmental taking of private property pursuant to the police power needs only comport with the Fifth Amendment's due process requirement. Due process is usually satisfied by compliance with the statutory procedures governing forfeiture of the targeted private property.

The United States has employed its police power to obtain forfeiture of Moon rocks collected during NASA's Apollo missions from private persons who possessed or claimed ownership of such items in contravention of law. This suggests the United States may utilize its police power to pursue forfeiture of any asteroid resource or space resource obtained by a citizen in contravention of the Space Resource Act. The United States exercise of its police power may be appropriate in certain situations given the obligations imposed by Outer Space Treaty Article VI which, among other things, mandate State responsibility for non-governmental national activity.

This paper will examine the potential circumstances and procedures by which the United States may seek forfeiture of an asteroid resource or space resource extracted or otherwise obtained by a United States citizen in violation of the Space Resource Act. It will also explore potential defenses to any such forfeiture action such as Article II of the Outer Space Treaty which prohibits the national appropriation of outer space and celestial bodies by any means. The paper will conclude with an analysis of whether new laws are necessary to remedy a United States citizen's unlawful possession or ownership of an asteroid resource or space resource.