ORIGINAL

In The Supreme Court of Ohio

CHESAPEAKE EXPLORATION, L.L.C., et al.,	)	Case No. 2014-0067
Petitioners,	)	On Certified Questions of State Law from the United States District Court for the Southern District of Ohio Eastern Division
vs.	)	
KENNETH BUELL, et al.,	)	S.D. Ohio Court Case No. 2:12-cv-00916
Respondents.	)	

MERIT BRIEF OF PETITIONER NORTH AMERICAN COAL ROYALTY COMPANY ON CERTIFIED QUESTIONS OF STATE LAW

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MERIT BRIEF OF PETITIONER NORTH AMERICAN COAL ROYALTY COMPANY ON CERTIFIED QUESTIONS OF STATE LAW

I. INTRODUCTION

This Court agreed to answer the following questions certified by the United States District Court for the Southern District of Ohio ("District Court"):

> "(1) Is the recorded lease of a severed subsurface mineral estate a title transaction under the [Ohio Dormant Mineral Act ("DMA")], Ohio Revised Code § 5301.56(B)(3)(a)?; and
>
> (2) Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the [DMA] at the time of the reversion?"

(March 26, 2014 Entry) (App. at 1). The correct answer to both of these questions is yes.

Petitioners are North American Coal Royalty Company ("North American"), the record owner of oil and gas rights beneath approximately 90 acres in Harrison County (the "Property); the lessees of the oil and gas rights, Chesapeake Exploration, L.L.C., CHK Utica, L.L.C., Larchmont Resources, L.L.C., Dale Pennsylvania Royalty, LP and TOTAL E&P USA, INC.; and Dale Property Services Penn, LP, which previously held an interest in the oil and gas lease and assigned it to plaintiff Dale Pennsylvania.

Respondents are the record owners of the surface rights to the Property. They claim that under the 1989 version of the DMA, title to the mineral interest was "deemed abandoned and vested" in them. The DMA provides that a severed mineral interest is deemed abandoned if the interest was not used in one or more specified ways for a period of 20 years. R.C. 5301.56(B) (App. at 300). The interest is not deemed abandoned if it was the subject of a recorded title transaction or if another so-called "savings event" occurred – such as actual production, the issuance of a drilling permit, or the filing of a claim to preserve the interest. *Id.* Respondents claim that no savings event occurred in the 20 years before the 1989 DMA went into effect.

Petitioners deny this, and contend that there were a number of savings events: oil and gas leases executed in 1974 and 1984, an assignment of the 1974 lease in 1975, an assignment of the 1984 lease in 1985, and the termination of the 1984 lease and reversion of the mineral interest to North American's predecessor in 1989.[1]

Respondents argue that an oil and gas lease does not qualify as a savings event because it is not a "title transaction" as defined in the Ohio Marketable Title Act, R.C. 5301.47(F) (App. at 298). They also argue that even if a lease is a title transaction, the termination or expiration of a lease is not, so the mineral interest was abandoned to them in 2004 or 2005 — 20 years after the second lease was signed in 1984 or assigned in 1985.

The parties filed cross-motions for summary judgment on these issues. The material facts needed to resolve the certified questions are not in dispute.

II. STATEMENT OF FACTS

A. The Severance Of The Oil And Gas Rights.

In 1943, the entire Property was owned in fee simple by The North American Coal Corporation ("NACoal") (a separate entity from Petitioner North American), which transferred the Property to the Powhatan Mining Company ("Powhatan") on or about January 30, 1943. (App. at 2.) In October 1958, Powhatan transferred the surface rights in the Property to Clarence and Anna Belle Sedoris, but expressly excepted and reserved to itself and its successors "all oil, gas or other minerals and land at such points and in such manner that may be proper and necessary for the purpose of digging, mining, draining, ventilating and carrying away such . . .

[1] Petitioners contend that the 2006 amendments to the DMA apply to any claim of abandonment asserted after 2006. There is no dispute that respondents failed to comply with any of the procedural requirements of the 2006 amendments. The District Court has not yet addressed whether the 2006 amendments apply in this case. Petitioners also contend that several recorded conveyances of the surface rights, in which the original reservation of mineral rights was noted, qualify as title transactions under the DMA. The District Court rejected that argument.

oil, gas and other minerals . . . ." (App. at 10.) On or about January 1, 1959, Powhatan merged into NACoal, and NACoal took ownership of the severed mineral interest. (App. at 12.)

B. The Surface Rights.

In April 1968, Clarence and Anna Belle Sedoris transferred the surface estate to Jerry and Janice Torok by a deed recorded in Harrison County. The 1968 deed explicitly excepted and reserved the oil, gas and other minerals previously reserved in the Powhatan 1958 deed. (App. at 17.) In March 1983, the Toroks transferred the Property to Levi and Naomi Miller. The deed to the Millers, like the Powhatan 1958 deed, included the exception and reservation of "all oil, gas or other minerals and land at such points and in such manner that may be proper and necessary for the purpose of digging, mining, draining, ventilating and carrying away such . . . oil, gas and other minerals . . . ." (App. at 20.)

Respondent Dennis Elias first assumed ownership of the Property in September 1984, when the Millers transferred the Property to him and his then-wife, Linda Elias. Dennis Elias's deed included the same exception and reservation of "all oil, gas or other minerals and land" set forth in the previous deeds. (App. at 23.)

In December 1989, Linda Elias transferred the Property to Dennis Elias by a quitclaim deed. Again that deed, like the Powhatan 1958 deed, excepted and reserved the oil, gas and other minerals and the land necessary for extracting such minerals. (App. at 26.)

In April 1995, Dennis Elias transferred the surface rights in 10.37 acres of the Property to Respondents Jeffrey Elias and Janice Elias. (App. at 29.) The 1995 deed again excepted and reserved the oil, gas and other minerals and land that were originally reserved in the 1958 Powhatan deed.

In October 1996, Dennis Elias conveyed the surface rights to 20.17 acres to John and Marilyn Jackson (App. at 31), and in August 2008, the Jacksons transferred the same 20.17 acres

to Benjamin Wiker. The 2008 deed stated that the property conveyed was part of the same property conveyed in the 1958 Powhatan deed, and stated that the transfer to Benjamin Wiker was "subject to all restrictions and reservations of record." (App. at 33.)

Respondents Ariel and Sunni Ordronneau became owners of the surface rights in the 20.17-acre portion of the Property by a deed dated July 27, 2011 from Benjamin Wiker, which specifically excepted the oil, gas and other minerals and land previously reserved in the 1958 Powhatan deed. (App. at 35.)

C. The Oil And Gas Rights.

Since the severance of the oil and gas rights, those rights have been the subject of numerous transactions. On January 30, 1974, NACoal entered into an oil and gas lease for a primary term of ten years with National Petroleum Corporation, which was recorded in Harrison County on February 6, 1974 (the "1974 Lease"). (App. at 38.) On May 12, 1975, National Petroleum Corporation assigned the 1974 Lease to American Exploration Company by a recorded assignment. (App. at 41.) When the 1974 Lease expired in 1984, the oil and gas rights reverted to NACoal.

On January 16, 1984, NACoal entered into an oil and gas lease for a five-year primary term with C.E. Beck, which was recorded with the Harrison County Recorder on February 6, 1984 (the "1984 Lease"). (App. at 43.) On May 30, 1985, C.E. Beck assigned the 1984 Lease to Carless Resources and recorded the assignment the same day. (App. at 47.) The 1984 Lease provided that if the lessee did not commence a well by January 31, 1985, the lease would terminate, unless the lessee, on or before that date, paid NACoal $3,033.12. Thereafter, the lessee could maintain the lease, in the event no well was drilled, by making annual payments of that same amount. C.E. Beck and Carless Resources, Inc. made delay rental payments to

NACoal in January of 1985, 1986, 1987 and 1988, thereby extending the lease. The oil and gas reverted to NACoal in January 1989, upon the expiration of the primary term.

Effective on or about June 28, 1988, NACoal changed its name to Bellaire Corporation ("Bellaire"). A certificate of amendment regarding the name change was recorded in Harrison County, Ohio on July 7, 1992. (App. at 50.) In November 2008, Bellaire transferred the severed mineral estate, including the oil and gas rights, to Petitioner North American by a quit claim deed recorded in Harrison County on December 16, 2008. (App. at 51.)

On January 28, 2009, Petitioner North American leased the severed oil and gas rights to Mountaineer (the "2009 Lease"). (App. at 53.) Effective on or about May 6, 2010, Mountaineer assigned the 2009 Lease to Third-Party Defendant in the District Court case, Dale Property (App. at 60), and in October 2010, Dale Property assigned its interest to Ohio Buckeye Energy, L.L.C. ("Ohio Buckeye"), reserving a 1.25% overriding royalty interest. (App. at 65.) On or about October 5, 2011, Ohio Buckeye transferred a portion of its interest in the 2009 Lease to Petitioner Larchmont, and recorded the assignment with the Harrison County Recorder. (App. at 71.) Ohio Buckeye also transferred a portion of its interest in the 2009 Lease to Petitioner CHK Utica in November 2011 (assignments recorded in 2012 and 2013). In June 2012, Dale Property assigned its remaining 1.25% overriding royalty interest to Petitioner Dale Pennsylvania, and recorded the assignment. (App. at 77.)

On December 22, 2011, Ohio Buckeye merged with Petitioner Chesapeake, which had the effect of transferring Ohio Buckeye's remaining interest in the 2009 Lease to Chesapeake. (App. at 89.) Chesapeake then transferred a portion of its interest in the 2009 Lease to TOTAL in December 2011. (App. at 92.)

North American's principal lessee, Chesapeake, has been actively developing oil and gas wells in Harrison County. Under its current Harrison County lease with North American,

Chesapeake completed the drilling of a well in March 2011, and successfully commenced production in June 2011.

III. THE DORMANT MINERAL ACT

On March 22, 1989, the Ohio legislature enacted Ohio's Dormant Mineral Act, R.C. 5301.56 as an expansion of the Ohio Marketable Title Act, R.C. 5301.47-5301.56. The statute was specifically modeled on Michigan's Dormant Mineral Act and on the Uniform Dormant Mineral Interests Act ("UDMIA") (App. at 103), which was approved and recommended for enactment by the National Conference of Commissioners on Uniform State Laws in 1986. As the proponent of this new legislation stated:

> Michigan's legislators recognized the importance of including minerals in those defects and errors which should be eliminated by operation of time and non-use. The Michigan Act and the Model Act provide an additional mechanism for the elimination of dormant mineral interests which, when used in conjunction with the Marketable Title Act, is effective in accomplishing this goal. Under the Michigan Act, owners of severed mineral interest are required to file notice of their claims of interest within 20 years after the last use of the interest. A three-year grace period was provided for initial filing under the Michigan Act. Any severed mineral interest deemed abandoned or extinguished as a result of the application of the Michigan Act vests in the owner of the surface.
>
> The major distinction between the proposed bill for consideration by the Ohio legislature and the Michigan Act is that the Michigan Act applies only to the interests in oil and gas.
>
> * * *
>
> The proposed bill also contains the essential elements recommended by the National Conference of Commissioners on Uniform State Laws at its annual conference in Boston in August, 1986. I have enclosed a copy of the Uniform Dormant Mineral Interests Act with prefatory notes and comments for your review.

S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA, p. 2 (App. at 121).

The basic purpose of dormant mineral legislation like the DMA is "to remedy uncertainties in titles and to facilitate the exploitation of energy sources and other valuable

mineral resources." *Texaco, Inc. v. Short*, 454 U.S. 516, 525 n. 15 (1982); *see also, e.g.*, W. Va. Code § 55-12A-1 *et seq.* (purpose is to remove "barriers to . . . development caused by interests in minerals owned by unknown or missing owners or by abandoning owners"). The drafters of the UDMIA explained how uncertain title can hinder the development of minerals:

> Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown . . . . It is possible that the only document appearing in the public record may be the document initially creating the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned about an apparently valueless mineral interest and may not even be aware of it; hence their interests may not appear of record. If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.
>
> * * *
>
> An extensive body of legal literature demonstrates the need for an effective means of clearing land titles of dormant mineral interests. Public policy favors subjecting dormant mineral interests to termination, and legislative intervention in the continuing conflict between mineral and surface interests may be necessary in some jurisdictions.

UDMIA, Prefatory Note, pp. 1-2.

One of the main aims of the Ohio legislature in enacting and amending the DMA was likewise to "encourage the development of minerals in Ohio which have been previously ignored due to defects in title," S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA, at 3, and to promote "new production sites":

> Ohio has had an active energy production industry since the mid 1800's. During this period, landowners in mineral producing areas have frequently severed the mineral rights in their lands from the

> surface rights. Through the decades, ownership of the severed minerals has been transferred and fractionalized through estates and business transfers. Today, those old severed mineral rights may be the key to new production sites, as advances in current technology and the high cost of energy make reworking old oil and gas fields possible.

H.B. 288, Sponsor Testimony, 2006 DMA, p. 1 (App. at 144). As expressed by its sponsors, the goals of the DMA were to "bring[] back old or marginal oil and gas fields to production . . . ." and to "help increase the availability of domestic energy supplies . . . .". *Id.* at 1, 2.

The purpose of the DMA is thus to identify truly dormant mineral interests and bring them back into use, not to deprive the mineral owners of their rights. That was specifically addressed by the committee drafting the UDMIA, which explained that the clearing of title "should not be an end in itself and should not be achieved at the expense of a mineral owner who wishes to retain the mineral interests," as that interest often represents a significant investment that was bargained for by the owner. UDMIA, Prefatory Note, at 4. Rather, the "objective is to clear title of worthless mineral interests and mineral interests about which no one cares." *Id.* The DMA was designed to achieve this objective by "terminating unused mineral interests not preserved by operations, transfers or filing of a notice of intent to preserve interest." S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA, at 3.

The policies underlying the DMA are consistent with the general public policy of Ohio that "it is an essential government function and public purpose of the state to . . . encourage the increased utilization of the state's indigenous energy resources . . . ." R.C. 1551.18 (App. at 297);

see Newbury Twp Bd. of Trs. v. Lomak Petro., 62 Ohio St.3d 387, 389 (1991) ("It is the public policy of the State of Ohio to encourage oil and gas production . . . .").[2]

IV. ARGUMENT

A. A Recorded Lease Of A Severed Subsurface Mineral Estate Is A Title Transaction Under The DMA.

There is no dispute that in 1974 and 1984, North American's predecessor in interest entered into recorded oil and gas leases, and that the 1974 and 1984 leases were assigned in 1975 and 1985. These transactions prevented the oil and gas rights from vesting in respondents because they were "title transactions" under the DMA.

An oil and gas lease is "the basic document of the oil and gas industry", authorizing "an operator, the lessee or his assignee, to enter upon described premises for the purpose of exploring for and developing the mineral resources in the premises." Williams & Meyers, *Oil and Gas Law* § 601. Indeed, the sole purpose of such a lease is the development and production of minerals -- exactly what the DMA was intended to promote. The only reasonable interpretation of the statute is one that recognizes that a lessor is actively using, not abandoning, his mineral rights.

1. The DMA's Plain Language Does Not Exclude Leases As Title Transactions.

Under the DMA, a savings event occurs if the severed oil and gas estate was "the subject of a title transaction that has been filed or recorded in the office of the county recorder of the

[2]As first enacted, the DMA did not specify any procedure for notice to the mineral owner of an abandonment claim, or for the mineral owner to contest an alleged abandonment, or for an abandonment to be recorded. In 2006, the legislature amended the DMA to include significant procedural provisions that must be followed before any abandonment and vesting in the surface owner can occur. The 2006 amendments, among other things, specify that the landowner must give notice to the holder of the mineral interest, must file an affidavit of abandonment, and must cause the county recorder to memorialize the record with an entry stating that the mineral interest was abandoned. R.C. 5301.56(E)-(G).

county in which the lands are located." R.C. 5301.56(B)(3). A "title transaction" is defined as:

> *[A]ny* transaction affecting title to *any* interest in land, *including* title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

R.C. 5301.47(F) (emphasis added).[3]

Respondents took the position in the District Court that because this definition does not specifically include leases, a lease is not a "title transaction." The District Court properly rejected this:

> The definition of a title transaction in § 5301.47(F) provides a non-exhaustive list of what is considered a title transaction. The word "including" means it is not exclusive, and other unlisted transactions may qualify as title transactions. This definition is also broad, involving "*any* transaction affecting title to *any* interest in land." Ohio Rev. Code § 5301.47(F) (emphasis added). Defendants' argument would require the Court to render the word "including" superfluous in the OMTA [Ohio Marketable Title Act] The list in the OMTA is non-exhaustive. Thus, failure to include an oil and gas lease in the list does not mean an oil and gas lease is not a title transaction under the OMTA.

(Dist. Ct. Op. at 14-15) (emphasis in original) (App. at 149).[4] In short, the statute *includes* examples of certain types of title transactions, but does not exclude others meeting the general definition. And of course, there is no exclusion of oil and gas leases.

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[3] The definitions in the Marketable Title Act, R.C. 5301.47, including the definition of a "title transaction," were expressly made applicable to the DMA: pursuant to § 5301.47, the definitions are to be "used in sections 5301.47 to 5301.56 [the DMA], inclusive, of the Revised Code."

[4] As another court noted, "[t]he fact that the words 'lease' or 'oil and gas lease' do not appear in the non-exhaustive list in the . . . statute does not end this Court's inquiry." *Eisenbarth v. Reusser*, Monroe C.P. No. 2012-292, at 10 (June 6, 2013) (App. at 174).

2. The DMA's History Shows The Legislature's Intent to Include Leases as Title Transactions.

The original draft of the DMA, S.B. 223, provided that a savings event occurred whenever "the interest has been conveyed, *leased*, transferred, or mortgaged by an interest filed or recorded in the recorder's office of the county in which the lands are located." S.B. 223, As Introduced, 117th General Assembly, Regular Session, 1987-1988, § 5301.56(B)(2)(a) (App. at 189) (emphasis added). The drafters thus originally intended that a lease would be a savings event. This original draft of the DMA was nearly identical to Michigan's statute, which provides that a savings event occurs when an oil and gas interest has "been sold, *leased*, mortgaged, or transferred by instrument recorded in the register of the deeds office . . . ." MCL § 554.291 (emphasis added).

The 1989 version of the Act, as adopted, replaced this language with the provision that a savings event occurs whenever "the mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located." R.C. 5301.56(B). The legislature thus replaced a list of individual types of transaction with a general term, "title transaction," that includes all of those individual types, such as leases, mortgages, and conveyances; it did not eliminate leases, or mortgages, or any other specific type of transaction from the scope of this provision. To the contrary, it is plain that, all along, leases and mortgages were to be included.[5]

Consistent with this history is that the two models for Ohio's statute – Michigan's DMA and the UDMIA – identify leases as savings events. Under Michigan's DMA, any "sale, *lease*, mortgage or transfer of record" is a savings event. Under the UDMIA, any "[r]ecordation of an

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[5] *Cf. Burks v. Poppy Constr. Co.*, 370 P.2d 313, 316 (Cal. 1962) ("These deletions can be explained on the ground that the legislature deemed specific references mere surplusage, unnecessary in view of the broad language of the act as finally passed.")

instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, *leases*, or divides the interest," is a savings event. UDMIA at 9 (emphasis added).[6]

A recorded lease evidences the continued existence of the mineral interest and is thus a "title transaction" that preserves that interest under the DMA. Nothing in the legislative history suggests in any way that Ohio's legislators intended to treat leases differently from the UDMIA or the Michigan Act. There is no suggestion anywhere that anyone thought leases (or mortgages), included in the original draft, would not be covered by the term "title transaction" in the final version of the DMA. Rather, the legislative history points only to the conclusion that leases were meant to be included.

3. Courts Have Concluded That An Oil And Gas Lease Is A Title Transaction Under The DMA.

Every court but one that has addressed this issue has concluded that an oil and gas lease is a "title transaction," and therefore a savings event under the DMA. *See McLaughlin v. CNX Gas Co.*, No. 5:13CV1502, at 5 (N.D. Ohio Dec. 13, 2013) (App. at 200); *Schucht v. Bedway Land and Minerals Co.*,Harrison C.P. No. CVH 2012-0010 (April 21, 2014) (App. at 207); *M & H Ptnshp. v. Hines*, Harrison C.P. No. CVH-2012-0059, at 6 (Jan. 14, 2014) (App. at 218); *Eisenbarth*, at 10 (App. at 174); *Lipperman v. Batman*, Belmont C.P. No. 12-CV-0085, at 7 (Dec. 16, 2013) (App. at 228); *Dahlgren v. Brown Farm Properties, L.L.C.*, Carroll C.P. No. 13CVH 27445, at 18 (Nov. 5, 2013) (App. at 237); *Taylor v. Crosby*, Belmont C.P. No. 11CV422, at 7 (Sept. 16, 2013) (App. at 257); *Davis v. Consolidation Coal Co.*, Harrison C.P. No. CVH-2011-0081, at 3, 7 (Aug. 28, 2013) (finding that the recorded release of a lease is a

[6] Indeed, the Prefatory Note to the UDMIA begins by stating: "[T]ransactions involving mineral interests may take several different forms. A *lease* permits the lessee to enter the land and remove minerals for a specified period of time; . . .". UDMIA, Prefatory Note, at 1 (emphasis in original).

title transaction) (App. at 265); *Bender v. Morgan*, Columbiana C.P. No. 2012-CV-378, at 5 (March 20, 2013) (App. at 273).

In the District Court, respondents cited two related cases in which one court ruled differently: *Swartz v. Householder*, Jefferson C.P. No. 12-CV-328 (July 17, 2013), and *Shannon v. Householder*, Jefferson C.P. No. 12-CV-328 (July 17, 2013) (App. at 282 and 289). *Swartz* and *Shannon* are essentially identical decisions that provide no reasoned explanation for holding that oil and gas leases are not title transactions, and do not even cite or acknowledge any contrary authority.

The District Court characterized the "nature of an oil and gas agreement in Ohio" as "unsettled." (Dist. Ct. Op. at 17.) It also noted that two decisions of this Court, *Harris v. Ohio Oil Co.*, 57 Ohio St. 118 (1897) and *Back v. The Ohio Fuel Gas Co.,* 160 Ohio St. 81 (1953), "take divergent views of the nature of oil and gas leases" (Dist. Ct. Op. at 18), and that these "divergent views" have been cited and relied upon by trial courts in DMA cases, though these Supreme Court cases were decided long before the DMA became law.

The proper analysis under the DMA should have little to do with how Ohio law has classified an oil and gas lease for other purposes or in other contexts. The drafters of the UDMIA recognized this, specifically noting that a title transaction "include[s] a recorded oil, gas, or mineral lease, *regardless whether such a lease is recognized as an interest in land in the particular jurisdiction.*" UDMIA, Comments to Section 4 (emphasis added). The presence of an active oil and gas lease is evidence that the interest is not dormant – whether or not state law would classify the lease itself as an interest or estate in land for other purposes.

Nevertheless, the lower courts have drawn on this Court's jurisprudence concerning oil and gas leases from non-DMA cases. Under this Court's *Harris* decision, an oil and gas lease creates a fee simple determinable interest and gives the lessee "ownership of the oil and gas

estate." *See Kramer v. PAC Drilling Oil & Gas, L.L.C.*, 197 Ohio App.3d 554, 2011-Ohio-6750, 968 N.E.2d 64, ¶ 11 (9th Dist.).

> [A]n oil and gas lease is not a "lease" in the traditional sense of a lease of the surface of real property. In a typical oil or gas lease, the lessor is a grantor and grants a *fee simple determinable* interest to the lessee, who is actually a grantee. Consequently, the lessee/grantee acquires ownership of all the minerals in place that the lessor/grantor owned and purported to lease, subject to the possibility of reverter in the lessor/grantor. The lessee's/grantee's interest is "determinable" because it may terminate and revert entirely to the lessor/grantor upon the occurrence of events that the lease specifies will cause termination of the estate.

Id. at 559 (*quoting Natural Gas Pipeline Co. of America v. Pool*, 124 S.W.3d 188, 192 (Tex. 2003)) (emphasis added). Insofar as an oil and gas lease grants a vested fee simple interest, it is necessarily a "title transaction" — *i.e.*, a "transaction affecting title to any interest in land." O.R.C. § 5301.47(F).

Citing the *Harris* decision, most courts have found that a lease, as well as any subsequent assignment, is "clearly a 'title transaction' as contemplated under R.C. 5301.47," and thus a savings event under the DMA. *Bender v. Morgan*, at 5. For example, the Columbiana County Court of Common Pleas wrote:

> A "title transaction" does not have to be a conveyance. . . . The transaction must merely "affect" the interest. Clearly, an oil and gas lease is an instrument which affects an interest in such minerals. Moreover, an oil and gas lease does more than merely permit use of minerals for development. Rather, an oil and gas lease does actually convey (a determinable fee interest in) the oil and gas (severed mineral interests in this case) in place, for production. That conveyance is subject to reverter in the event there is no production and the lease otherwise expires by its own terms. "Oil and gas in place are the same as any part of the realty, and capable of separate reservation or conveyance." A lessee to an oil and gas lease acquires a "vested, though limited, estate in the lands for the purposes named in the lease . . . ." As stated in *Kramer*, an oil and gas lease "*convey[s] ownership of the oil and gas estate*" to the lease; again, subject to reverter.

Id. at 4-5 (emphasis in original; internal citations omitted); *see also Eisenbarth*, at 12.

Relying on this Court's *Back* opinion, respondents argued in the District Court that an oil and gas lease is a mere "license" that does not convey title. There are two problems with this argument. First, it is not relevant under the DMA – a "title transaction" does not have to *convey* title, but need only *affect* it. Second, the *Back* case did not even involve oil and gas leases, because the instrument at issue was not an oil and gas lease at all. Indeed, this Court specifically noted and relied upon the appellee's concession that, for several reasons, the instrument was not a lease: "the instrument noted in question *is not a 'lease'* because it grants rights in perpetuity, reserved nothing in the nature of rent, and the rights granted are not subject to defeasement upon the happening of any conditions." *Back*, 160 Ohio St. at 85 (emphasis added). The Court then found that the instrument "as a whole, bears the earmarks of a license" rather than a deed of conveyance. *Id.* at 86.

Moreover, it was not important to the decision in *Back* whether the instrument in question was properly characterized as a "lease" or a "license" -- and the syllabus of the Court's opinion does not even mention this point. Rather, all that mattered was whether the instrument was, or was not, a deed of *conveyance*; the instrument had been recorded in the record of leases, and the Court had to decide whether this was sufficient notice to subsequent purchasers of the land, or whether instead it had to be recorded in the record of deeds. *Id.* at 90. The Court concluded that the instrument "is a license *rather than a deed of conveyance*," and that was dispositive -- no filing in the record of deeds was necessary. *Id.* at 89 (emphasis added). The applicable statute provided that both licenses and leases of oil and gas had to be recorded in the record of leases. *Id.* at 82 syl. ¶ 1. The obvious purpose of that requirement was to ensure that purchasers of the land would be on notice of a lease or license, because either a license or a lease of oil and gas rights would "affect" their title.

Back did not cite or mention *Harris*, and certainly did not overrule it or change the law in *Harris*. Nor did it cite, mention, or overrule other decisions of this Court to precisely the same effect, such as *Brown v. Fowler*, 65 Ohio St. 507, 521 (1902) ("The instrument grants the oil and gas, and also the land for the purpose of operating thereon for said oil and gas, and it is therefore a lease, and *not merely a license*.") (emphasis added) and *Woodland Oil Co. v. Crawford*, 55 Ohio St. 161, 176 (1896) ("This is *more than a license*. It is a lease of the land, oil, and gas for a limited time and purpose . . .") (emphasis added).

The District Court cited *In re Frederick Petroleum Corp.*, 98 B.R. 762 (Bankr. S.D. Ohio 1989), for its discussion of Ohio law on this issue. (Dist. Ct. Op. at 17-18.) *Frederick Petroleum* notes the early approaches taken by this Court and other courts to the construction of oil and gas instruments in contexts other than the DMA:

> The Ohio courts in early cases distinguished between instruments which purported to convey title to the land containing the oil and gas and those which merely granted the right to explore for and produce oil and gas. . . . [W]hen the instrument in question granted "all petroleum and gas in and under the following described tract of land, and also the said tract of land" for the purpose of drilling for oil and gas, the instrument was found to be a lease, not a license.

Frederick Petroleum Corp., 98 B.R. at 764. The court cited *Woodland Oil, supra*, and *Harris* as examples of cases in which the instrument was found to be a lease, and *Back* as a case in which the instrument was found to be a mere license, noting that "the language in the conveying documents before The Ohio Supreme Court in [*Woodland Oil* and *Harris*] differed from the terms of the documents at issue" in *Back* (and in *Frederick Petroleum* itself). *Id.* at 764-765.

This Court's opinions on oil and gas instruments, characterized by the District Court as "divergent" (Dist. Ct. Op. at 18), are really consistent, and can be explained by different language in the relevant instruments. The documents in *Harris* and *Woodland Oil* specifically "granted, demised and *let the lands described* to the lessee, for the purpose and with the

exclusive right of drilling and operating for petroleum oil and gas, for five years, and as much longer as oil and gas are found in paying quantities." *Harris*, 57 Ohio St. at 129 (emphasis added); *see also Woodland Oil*, 55 Ohio St. at 176 ("By the instrument in question the plaintiff below granted, demised and let the oil, gas, and *tract of land* for the purpose and with the right of drilling and operating for oil and gas for five years . . . .") (emphasis added). The document in *Back*, by contrast, purported to convey only the "oil and gas in and under" the lands, not the land. *Back*, 160 Ohio St. at 85.

The 1974 and 1984 leases in this case are virtually identical to the *Harris* and *Woodland Oil* leases, and are the type of instrument that has always, and uniformly, been regarded in Ohio as a true lease that creates property rights. The 1984 Lease thus provided that the lessor "by these presents does grant, demise, lease and let unto lessee, exclusively, for the purposes of prospecting and exploring by geophysical and other methods, drilling, mining, operating for and producing oil and gas . . . *all that certain tract of land* . . . described as follows, to wit: . . . ." (App. at 15) (emphasis added). That is indistinguishable from the *Harris* conveyance language, which provided that the lessor "granted, demised, and let onto the said party of the second part, for the purpose and with the exclusive right of drilling, operating for petroleum oil and gas, *all that certain tract of land* . . . known and described as follows: . . . ." *Harris*, 57 Ohio St. at 119 (emphasis added).

As this Court held, "an instrument in such form is more than a mere license; it is a lease of the land for the purpose and period limited therein, and the lessee has a vested right to the possession of the land to the extent reasonably necessary to perform the terms of the instrument on his part." *Id.* at 129-30. That vested right is necessarily an "interest in land," R.C. 5301.47(F), and it follows that the recorded conveyance of that right is a title transaction for purposes of the DMA, as lower courts repeatedly and consistently have held.

Ultimately, however, it is not necessary to decide whether an oil and gas instrument like those involved here conveys title to an interest in land, or is a "license," because the definition of "title transaction" is so broad:

> It is difficult for the Court to conceive of a broader definition than the one chosen by Ohio law. By its plain language, *the statute does not require a conveyance or transfer of real property* in order to constitute a title transaction. . . . Even if Defendant's property interests through the lease are something less than a grant of real property, those interests quite clearly still **affect** title to the mineral interests in the property.

McLaughlin, at 5 (emphasis added and in original). The leases here obviously "affected title" to the mineral rights. And more than that, they also affected title to the surface rights. "[A]pplying the principle that a good and indefeasible title imports such ownership of the land as enables the owner to exercise absolute control and dominion of it as against all others, an outstanding oil or gas right renders title to the surface land defective." 68 Oh. Jur. 3d (ed. 2011) Mines and Minerals § 29. To the extent that a lease renders the surface title "defective," it necessarily "affects" that title.

The concerns underlying the DMA about uncertain ownership and unused mineral rights are not implicated where the mineral rights are subject to a recorded lease – there is no "uncertainty" about ownership of the rights, and no impediment to their development. To the contrary, a lease encourages and promotes development, like the development that has actually occurred under this very lease in Harrison County. It would make no sense, and would not in any way serve the purpose of the DMA, to hold that a lessor who had entered into, and recorded, oil and gas leases for specific terms, had at the same time "abandoned" his interest – yet that is

the position that respondents took in the District Court. Respondents are wrong. The District Court's first certified question should be answered affirmatively.[7]

B. The Expiration Of A Recorded Lease And The Reversion Of The Rights Granted Under That Lease Is A Title Transaction That Restarts The 20-Year Forfeiture Clock Under The DMA.

No Ohio court has yet addressed the second question certified by the District Court: whether the reversion of an oil and gas interest at the termination of a lease is a transaction affecting title and a savings event under the DMA. If the reversion of oil and gas rights to the lessor upon the termination of a lease is a "title transaction" under the DMA, then the reversion here in 1989 restarted the 20-year clock, which ran until 2009 -- three years after the DMA was amended in 2006 to require that claimants follow specific notice and affidavit procedures before mineral rights may be deemed abandoned.

Respondents tried in the District Court to avoid the consequences of their noncompliance with the 2006 DMA by arguing that even if an oil and gas lease is a savings event, the termination of a lease is not, so that the 20-year period expired in 2004 or 2005, before the 2006 amendments.

Although no Ohio court has addressed the precise question certified here, several courts have recognized that if a lease is a "title transaction", then "there can be no dispute that the release of rights under the lease qualifies as a title transaction as well." *McLaughlin, supra,* at 5; *see also Schucht,* at 8, *Davis* at 3, 7. The expiration of a lease at the end of a term has exactly the same effect as a release -- it returns the oil and gas rights to the lessor -- and likewise qualifies as

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[7] Moreover, an oil and gas lease is the primary way in which mineral owners seek to develop their oil and gas; one has to wonder what sort of confusion and uncertainty, and what amount of additional litigation, would result if this Court were to find that a recorded lease is not a savings event and thus upset settled expectations about the ownership of mineral rights.

a title transaction. For all practical purposes, it is simply the lease transaction in reverse; if the lease is a title transaction, then so is its termination.

Courts in two other states, Michigan and Nebraska, have specifically addressed whether a lease expiration is a savings event. The Michigan Supreme Court decided the issue in a case that arose under Michigan's Dormant Mineral Act, a model for Ohio's DMA. The relevant facts were strikingly similar to the facts here: the owner of severed oil and gas interests leased those interests in 1951 for a primary term of ten years, and the lease provided that it would terminate after the first year or any year thereafter in which drilling or production did not occur, unless "delay rental" payments were made. The lessee made all of those payments as required, and the lease expired or terminated in 1961. *Energetics, Ltd. v. Whitmill*, 442 Mich. 38, 497 N.W.2d 497, 500-01 (1993).

The question before the Michigan Supreme Court was whether the 20-year period of the Dormant Minerals Act began to run when the lease was executed and recorded, or when the lease terminated. The court held that "a new twenty-year dormancy period commences when the reversionary interest is transferred at the termination of the lease." *Id.* at 504. "Were this not so and defendant's contention accepted, termination of plaintiffs' interests by running of the twenty-year period would have the effect of treating as abandoned those interests which were being actively maintained for nearly a 10-year period of time . . . . This cannot be so. *Herein, the property interests could not commence to become dormant . . . until relinquishment and transfer back to the lessors of said rights.*" *Id.* at 503 (quoting *Mask v. Shell Oil Co.*, 77 Mich. App. 25, 31-32, 257 N.W.2d 256 (Mich. Ct. App. 1977) (emphasis in original)).

In reaching this conclusion, the Michigan Supreme Court found it significant that the Michigan legislature had defined savings events very broadly, not just listing specific types of

transactions (lease, mortgage, etc.), but providing generally that a savings event occurs whenever a mineral interest is "transferred":

> As employed by the Legislature in the dormant minerals act, the words "sold," leased," and "mortgaged" refer to specific types of transactions. However, we find it significant that the Legislature, without providing further guidance, added the broader, more inclusive term "transferred" to its list of preserving events. Where the wording of a statute is ambiguous, we seek to discern the intent of the Legislature in light of the purpose sought to be accomplished . . . . Mindful of this principle of statutory construction, we believe the purpose of the act will best be served by considering the statutory language "transferred by instrument recorded" to include the reversion that occurs at the termination of a recorded lease.

Id. at 502-03 (1993) (citation omitted).

The same analysis applies here. Like the lease in *Energetics*, NACoal's 1984 lease to C.E. Beck had a primary term (five years), and provided that it would terminate unless annual delay rental payments were made. (App. at 15.) Annual delay rental payments were made through 1988. As a result of these payments, the lease did not terminate until January 1989. For five years, NACoal was collecting rent for the oil and gas under the Property, and thus actively maintaining its interest.[8] It would thus make no sense, and be divorced from reality, to hold that NACoal had begun to "abandon" its interest at any time before the termination of the lease and the return to NACoal of its oil and gas rights in 1989. Moreover, the Ohio legislature chose an even "broader, more inclusive term" than the Michigan legislature: "title transaction," – *i.e., any* transaction that "affects" title. R.C. 5301.47(F). It is thus even clearer in Ohio than in Michigan that it would best serve the purposes of the DMA to include in this definition the reversion that occurs at the end of a recorded lease. And that interpretation would be consistent with the

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[8] As in *Energetics,* "[a]nyone checking the status of the title of the subject matter property would have to be on notice of the recorded lease and its expiration date, that being the expiring of the lease at the end of its term." 497 N.W.2d at 502. "The terms of the lease indicate whether further inquiry may be required to determine if the lease continues in force." *Id.* at 504.

legislature's instruction that "[s]ections 5301.47 to 5301.56 [DMA], inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title . . . ." R.C. 5301.55 (App. at 299). The lease and its expiration are both in the chain of title, and leave no doubt that the owner of the mineral rights is maintaining, not abandoning, its interest.

Ohio's statute is also broader than Michigan's statute in providing that a savings event occurs whenever the mineral interest is "the subject of" a title transaction. R.C. 5301.56(B)(3)(a). Here, the oil and gas rights remained the "subject of" a recorded lease from 1984 until 1989, and the 20-year dormancy period could not begin until that 5-year lease term was over. In *Energetics*, the Michigan Supreme Court rejected the argument that the 20-year dormancy period is tolled during the entire period "while the severed interest remains subject to a lease," on the ground that Michigan's legislature – unlike legislators in other states, *see* 497 N.W.2d at 502 (citing N.D. Cent. Code 38-18.1-03(4) (dormancy period does not run while mineral interest is "subject to a lease")) – did not include the words "subject to" a lease in the statute. *Id.* at 502. But Ohio's legislators did include such language in providing that a mineral interest shall not be deemed abandoned if it has been the "subject of" any title transaction. Thus it is again even clearer here than in Michigan that the period of deemed "abandonment" under the DMA cannot start before a recorded oil and gas lease has run its term and expired.

Respondents have argued that the expiration of a lease is not a "title transaction" because it is not separately recorded. But that is immaterial. The expiration need not be recorded separately, because it occurs *pursuant to a recorded document*: the lease. The recorded oil and gas leases provided for, and gave notice of, two transactions: a transfer of the oil and gas interest to the lessee, and a reversion, after a specified term, to the lessor. These two title transactions were both "filed or recorded," as required by the statute, in one document.

The Michigan Supreme Court thus agreed with the trial court's finding in *Energetics* that "two transfers occur when an interest in oil and gas is leased," and that "both of these transfers of interest were evidenced in the recorded lease." *Id.* (quoting the trial court's decision). A "separate act of recording" the termination and reversion is not necessary to preserve the mineral interest, because the recorded lease is sufficient notice of the lease's term and expiration: "[a]nyone checking the status of the title of the subject matter property would have to be on notice of the recorded lease and its expiration date, that being the expiring of the lease at the end of its term." *Id.* "When a lease is recorded, the provisions of the lease are available to anyone who conducts a title search. The terms of the lease indicate whether further inquiry may be required to determine if the lease continues in force." *Id.* at 504.

The District Court correctly found that the Michigan Supreme Court's analysis is "instructive" here. (Dist. Ct. Op. at 21.) Although the Nebraska Supreme Court came to a different result in *Ricks v. Vap*, 280 Neb. 130, 784 N.W.2d 432 (2010), its decision is not pertinent here, because Nebraska's dormant mineral statute contains unique language not found in Ohio's or Michigan's DMA. The Nebraska statute provides that a savings event occurs only when the "record owner of [the] mineral interest has . . . exercised publicly the right of ownership." *Ricks*, 784 N.W.2d at 435. The *Ricks* court found that the owners only "publicly exercised" their ownership when they executed and recorded the oil and gas leases, not when the leases expired, because the expiration "was initiated either by the lessee or simply by operation of law — not by the record owners." *Id.* at 436. Accordingly, the expiration was not a savings event.

The *Ricks* court expressly distinguished the key language of the Nebraska statute from that of Michigan's statute:

> [T]he Michigan court's reasoning [in *Energetics*] was grounded in the unique language of the Michigan statute, which, as set forth above, simply required that an oil or gas interest be "sold, leased, mortgaged, or transferred" to avoid abandonment, without regard

> to who (if anyone) initiated the action. Nebraska's statute, on the other hand, expressly requires "the record owner of such mineral interest" to "exercise publicly the right of ownership by performing one of the actions specified in the statute . . .."

Id.

Ohio's DMA does not contain this "public exercise" requirement, or anything like it. It does not contain a requirement that the "record owner" be the one who takes action – the requirement on which the Nebraska Supreme Court specifically based its decision. Rather, Ohio's DMA, like Michigan's, simply requires a "title transaction," without regard to who initiates the transaction or how it is initiated. The Nebraska Supreme Court's parsing of irrelevant language simply has no bearing on this case.

Respondents advance their misinterpretation of the statute for one reason -- to reap the benefit of a forfeiture. They claim that NACoal forfeited its oil and gas rights even though it leased those rights to an operator, sought to develop them, and collected rent for them. In Ohio, "[f]orfeitures are not favored by the law." *Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St.3d 532, 534 (1992). The Michigan Supreme Court rejected a similar attempt to declare a forfeiture in *Energetics*:

> We find it difficult to believe that the Legislature intended to impose the penalty of a forfeiture in the circumstances presented here. If the mission of the Legislature was to make it possible for a developer to locate the owners of severed oil and gas rights and obtain leases of those interests to facilitate drilling and production of oil and gas, that mission was accomplished in this case.

497 N.W.2d at 503. The Ohio legislature made clear that its mission in enacting the DMA was likewise to facilitate the development of new production sites, and that mission is accomplished by oil and gas leases like those entered into here. It would be inconsistent with the legislative history and purposes of the DMA, as well as general Ohio public policy, to hold that a lessor begins to forfeit his property at the same time he is actively seeking to develop it.

V. CONCLUSION

For the foregoing reasons, the District Court's questions should both be answered in the affirmative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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APPENDIX

FILED

MAR 26 2014

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Chesapeake Exploration, L.L.C., et al.

v.

Kenneth Buell et al.

Case No. 2014-0067

ENTRY

This cause, here on the certification of a state law question from the United States District Court for the Southern District of Ohio, Eastern Division, was considered in the manner prescribed by law. Upon review pursuant to S.Ct.Prac.R. 9.05, the court will answer the following questions:

(1) Is the recorded lease of a severed subsurface mineral estate a title transaction under the ODMA, Ohio Revised Code 5301.56(5)(3)(a)?

(2) Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the ODMA at the time of the reversion?

It is ordered by the court that petitioners shall file their merit brief within 40 days of the date of this entry and the parties shall otherwise proceed in accordance with S.Ct.Prac.R. 16.02 – 16.04; and S.Ct.Prac.R. 9.07.

(U.S. District Court for the Southern District of Ohio, Eastern Division; No. 2:12-CV-916)

Maureen O'Connor
Chief Justice

SIGNED AND ACKNOWLEDGED IN PRESENCE OF:

Robert H. Farber

Ethel Roller

The Muskingum Watershed Conservancy District -seal-

MUSKINGUM WATERSHED CONSERVANCY DISTRICT

By Newton Mansfield, ITS PRESIDENT

By Bryce C. Browning, ITS SECRETARY

STATE OF OHIO, COUNTY OF TUSCARAWAS, ss.

Before me, a notary public in and for said county and state, personally appeared the above named MUSKINGUM WATERSHED CONSERVANCY DISTRICT, by Newton Mansfield its President and Bryce C. Browning, its Secretary, who acknowledged that they did sign the foregoing instrument on behalf of said Corporation and by authority of the Board of Directors of said Corporation, and that the same is the free act and deed of said Corporation, and the free act and deed of each of them personally and as such officers.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 16th day of March, A. D.1942.

Robert H. Farber, Notary Public
My commission expires January 23, 1944

Robert H. Farber Notary Public Coshocton County, Ohio

STATE OF OHIO, HARRISON COUNTY, ss.
Transfer not necessary-March 2, 1943 MH
Received for Record on March 3, 1943 at 3 P. M.
Recorded March 4, 1943
Fee $1.00 paid.

RHF:ER

FRANK R. STEWART, Recorder

#1253

QUIT-CLAIM DEED

THE NORTH AMERICAN COAL CORPORATION TO THE POWHATAN MINING COMPANY

KNOW ALL MEN BY THESE PRESENTS: That THE NORTH AMERICAN COAL CORPORATION, a corporation incorporated under the Laws of Ohio, the GRANTOR, for divers good causes and considerations thereunto moving, and especially for shares of capital stock of The Powhatan Mining Company to be issued to the GRANTOR by THE POWHATAN MINING COMPANY, a corporation incorporated under the laws of Ohio, the GRANTEE, has given, granted, remised, released and forever quit-claimed, and does by these presents absolutely give, grant, remise, release and forever quit-claim unto said GRANTEE, its successors and assigns forever, all such right and title as said GRANTOR has or ought to have in and to the following described parcels of land:

1. Real Estate situated in the County of Harrison in the State of Ohio and in the Township of Archer and bounded and described as follows:

Being the Northwest quarter of Section 9, Township 11, Range 5, in the Steubenville Land District, and containing one hundred sixty-five (165) acres, more or less; being the premises conveyed to The North American Coal Corporation by Robert J. Montgomery et al, by warranty deed dated November 25, 1941 and recorded in records of Harrison County, Ohio, Deed Book 110, p. 20.

Subject to the reservation, unto the Grantors in said warranty deed dated November 25, 1941 and their heirs and assigns, from the above described lands, of all that certain vein of coal known as Cannel Coal, such vein being below or underneath the No. 8 or Pittsburgh vein of coal under said lands, with the right and privilege to mine or strip and remove said vein of coal, with the right of ingress and egress at points most convenient on said land to remove said coal; such rights to be exercised without interference in any way with the stripping, mining and removal of the Pittsburgh or No. 8 vein of coal within and under said lands.

2. Real Estate situated in the County of Harrison in the State of Ohio and in the Township of Archer and bounded and described as follows:

Being a part of the Northeast quarter of Section 9, Township 11, Range 5. Beginning for the same at the original Quarter post between Sections 3 and 9; thence N. 1° 22" E. 93.6 perches to a

Date 2-13-13
Vol. DV 112 Pg. 14-21
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
Tracy L. Boyer
By Deputy

post a white oak 24" N. 52° W. 58 links; thence N. 32½° W. 33.2 perches to a post, a white oak 24 inches N. 66 3/4° W. 34 links; thence S. 67½° W. 42.08 perches to a hickory 12" S. 49° W. 16 links; thence N. 30.8° W. 32.8 perches to a stone; thence N. 89° W. 87.4 perches to a post, a white oak 24" S. 1° W. 37 links; thence S. 1° W. 150.36 perches to a post, a red oak 10" S. 75° E. 4 links; thence S. 89° E. 162.4 perches to the place of beginning, containing 123 acres, 3 roods and 22 perches.

Excepting one-half acre out of Southeast corner of above lands as heretofore sold and deeded to J. H. Devore.

Being the premises conveyed to The North American Coal Corporation by Junius Galbraith by warranty deed dated December 13, 1941 and recorded in records of Harrison County, Ohio, Deed Book 110, p. 51.

3. Real Estate situated in the County of Harrison in the State of Ohio and in the Township of Archer and bounded and described as follows:

Being a part of the West half of Section 4, Township 11, Range 5, and a part of the Southeast quarter of Section 10, Township 11, Range 5, and beginning at the northeast corner of said Southeast quarter of Section 10; thence with the North line N. 85° 00' W. 1766.50 feet to a stake from which a tack in a 12 in. walnut bears S.86° 16' E. 20.94 feet; thence S. 28° 10' E. 664.27 feet to a post; thence N. 89° 20' E. 155.35 feet to a stake; thence S. 19° 12' W. 186.42 feet to a stake; thence S. 28° 10' E. 390.04 feet to a stake in the public road, from which a tack in a 35 in. Red Maple tree bears S. 62° 50' W. 89.00 feet and a tack in a 12 in. Locust tree bears N. 25° 50' W. 21.75 feet; thence with said road N. 54° 36' E. 564.75 feet to a stake on North side of road; thence with said road S. 88° 06' E. 437.87 feet to a stake from which a stone bears S. 3° 30' W. 25.14 feet; thence S. 3° 30' W. 2007.50 feet to a post; thence S. 84° 14' E. 989.16 feet to a stone; thence N. 3° 14' W. 293.34 feet to a dead 10" ash tree; thence N. 7° 11' E. 150.52 feet to a 15 in. Sugar tree; thence N. 13° 15' E. 106.20 feet to a 8 in. Sassafras tree; thence N. 23° 52' E. 174.47 feet to a 15 in. Gum tree; thence N. 7° 57' E. 148.99 feet to a 20 in. Beech tree; thence N. 58° 54' E. 48.28 feet to a stake; thence S. 83 54' E. 1378.35 feet to a stake in the road from which a tack in a 24 in. wild cherry tree bears S. 26° 36' E. 59.0 feet and a tack in a 5 in. wild cherry tree bears N. 47° 18' W. 32.6 feet; thence with said road N. 6° 35' W. 142.45 feet to a stake from which a tack in a 4 in. wild cherry tree bears S. 20° 58' W. 45.0 feet and a tack in a 15 in. wild cherry tree bears N. 25° 37' W. 47.0 feet; thence N. 15° 25' E. 113.80 feet to a stake in the road from which a tack in a 12 in. Locust tree bears N.48° 10' E. 52.15 feet and a tack in a 24 in. Jack Oak tree bears N. 16° 58' E. 54.50 feet; thence N. 31° 05' E. 285.70 feet to a stake in the road from which a tack in a 24 in. Hickory tree bears N. 41° 42' E. 24.73 feet and a tack in a 10 in. Walnut tree bears S. 14° 57' W. 62.60 feet; thence N. 50° 07' E. 384.56 feet to a stake at the forks of the road; thence N. 4° 05' E. 2669.25 feet to a stone; thence N. 44° 36' W. 321.31 feet to a post; thence S. 56° 53' W. 1285.00 feet; thence S. 52° 30' W. 1227.5 feet to a stone on the west side of the road; thence S. 52° 30' W. 254.33 feet to a stake; thence N. 85° 08' W. 330 feet to the place of beginning and containing 213.10 acres, more or less, but subject to all legal highways.

Surveyed by Paul J. McCullouth, Reg. Surveyor #2513.

Being the premises conveyed to The North American Coal Corporation by Clive Hines and Ruth Hines, his wife, by warranty deed dated May 23, 1942, and recorded in records of Harrison County, Ohio, Deed Book 110, p. 531;

Subject to the reservation unto the Grantors in said warranty deed dated May 23, 1942 of the dwelling house on said premises and the saw timber on said premises with right to remove

said dwelling house and timber at any time before the mortgage on said premises to secure deferred payments is paid in full;

Also subject to the reservation unto the Grantors in said warranty deed dated May 23, 1942 of the use of said premises until the mortgage on said premises to secure deferred payments is fully paid; provided, however, that said Grantors shall pay as rental for said premises the taxes on said premises that may become a lien thereon during their use of said premises;

Also subject to a right of way for the construction of lines, poles, and wires granted to The Central District & Printing Telegraph Company of Pennsylvania, and

Subject to a right of way to lay pipe lines for the transportation of gas and to maintain, operate and remove the same, granted to The Natural Gas Company of West Virginia.

4. Real Estate situated in the County of Harrison, in the State of Ohio and in the Township of Archer, and bounded and described as follows:

FIRST TRACT: Being a part of the South East quarter of Section 4, Township 11, Range 5, Steubenville Land District, beginning at a stone at the North East corner of said tract and on the East line of said section at a point which is 15 perches South of the North East corner of the South East quarter thereof; thence South 2 3/4° W. 66.16 perches to a post in the road, a black walnut 24" North 7° West 84 links; thence N. 74 3/4° W. 49.4 perches; thence N. 82½° West 26 perches; thence North 80½° West 33.84 perches to a portion in the road; thence North 59½° West 18 perches to a post in the road; thence north 74½° West 10.72 perches to a post in the road; thence South 80° West 11.4 perches to a post in the road; thence South 66¼° West 22 perches to a post in the road, a black walnut 8" North 34° East 74 links; thence North 3° East 51 perches to a stone; thence South 85 3/4° East 163.32 perches to the beginning, containing 52 acres, 2 roods and 22 perches.

SECOND TRACT: Also a part of the North East Quarter of Section 4, Township 11, Range 5, aforesaid County, State and Land District, beginning for said tract at the South East corner of said Quarter section; running thence North on the Section line 100 perches, more or less; thence West 160 perches, more or less, to the West line of said Quarter Section; thence South on said Quarter line 100 perches, more or less, to the Southwest corner of said Quarter section; thence East 160 perches, more or less, to the section line and place of beginning, containing 100 acres, more or less.

EXCEPTING AND RESERVING therefrom about 10 acres sold to Mandy Ellen Hawk by deed of James Endsley, dated April 25, 1884 and recorded in deed book 35 at pages 274-5 of the deed records of Harrison County, Ohio, to which reference is here made.

The aforementioned 10 acres which is excepted from the Second Tract herein is described as follows:

Being a part of the east half of section 4, Township 11, Range 5, Steubenville Land District: Beginning for the same at a point in the road 990 feet South of the North line of said section and 227.5 feet east of the half section line, where a sugar tree 15 inches is W. 23.6 feet; thence S. 5 deg. 55' W. 375.5 feet to a point in the center of the road; thence S. 15° 02' E. 306/5 feet to a point in the center of the road, where a white oak 16 inches is East 16.65 feet; thence S. 8° 8' W. 337.8 feet to a point in the center of the road; thence S. 21° 23' W. 340 feet to a point in the center of the road; thence S. 40° 23' W. 348.3 feet to a point in the center of the road and on the half section line; thence N. 5° E. 1978 feet to a point in the half section line and in the center of the road; thence S. 45° 57' E. 178.5 feet to a point in the center of the road; thence S. 15° 42' E. 267 feet to the place of beginning, containing 9.79 acres, more or less. Said second tract surveyed June 24, 1942 J. A. Gordon, L. S. No. 2192.

THIRD TRACT: Also a part of the North side of the South East quarter of Section 4, Township 11, Range 5, beginning for the same at the North East corner of said quarter section and thence

South 15 perches to a post; thence West 160 perches to the opposite line of said quarter to a post; thence North on said line 15 perches to a post; thence East on the line of said Quarter 160 perches to the place of beginning, containing 15 acres, more or less.

The foregoing three Tracts being the premises conveyed to The North American Coal Corporation by John C. Arbaugh and wife, Clara Olive Arbaugh, by warranty deed datedJune 16, 1942 and recorded in records of Harrison County, Ohio, Deed Book 111, p. 23.

Subject to a Mortgage Deed dated July 2, 1942 to John G. Worley, Agent, from The North American Coal Corporation, recorded in mortgage records of Harrison County, Ohio, Volume 63, p. 594.

5. Real Estate situated in the County of Harrison in the State of Ohio and in the Township of Archer, and bounded and described as follows:

A part of the West half of Section No. 54, in Township 10, in Range No. 4, beginning at a stone at the center of said section, a white oak 20 inches South 67° East 33 links a white oak 20 inches South 28° West 25½ links; thence South 2¼° West 62.8 perches to a post and corner to lands owned by the heirs or Otho Baker, dec'd; thence North 88° West 158 perches to a post a white oak 28 inches South 6° West 57½ links; thence North 2¼° East 105.2 perches to a post, a white oak 28 inches North 15° East 15 links a white oak 24 inches South 3 3/4° West 9 links; thence South 73° East 163 perches to the beginning, containing eighty-two (82) acres, be the same more or less, being the premises conveyed to The North American Coal Corporation by J. Mitchell Thompson, et al, by warranty deed dated August 6, 1942 and recorded in records of Harrison County, Ohio, Deed Book 111, p. 136.

Excepting and subject to a reservation from the foregoing lands of all the oil and gas within and underlying said lands, together with the right to remove the same, and all rights under a lease for oil and gas to The East Ohio Gas Company, dated Sept. 20, 1940, during the life of sai lease. It being expressly understood that when said lease becomes null and void all rights of Grantors in said warranty deed dated August 6, 1942, to said oil and gas or rental shall cease and determine in said oil and gas, together with rights thereto shall vest in GRANTEE;

Also subject to a reservation of all timber on said premises and the barn located thereon, and all growing crops, together with the right to remove the same. It being understood that such reservations shall in no manner be permitted to interfere with any coal stripping operations or other coal mining operations that Grantee may desire to conduct on said premises;

Also subject to a certain right of way granted by J. M. Thompson to The Central District and Printing Company, dated August 21, 1895, recorded in Lease Book 4, p. 33.

6. Real Estate situated in the County of Harrison in the State of Ohio and in the Township of Archer, and bounded and described as follows:

FIRST TRACT: A part of the East half of Section No. 3, in Township No. 11, in Range No. 5. Beginning at a post on the East line of said section and corner to lands formerly owned by Moses Devore; thence North 3° East 76.28 perches to a post; a white ash 20 inches, South 24½° East 71 links; thence North 87¼° West 164.6 perches to a post on the quarter line, a white oak 28 inches North 7½° East 82 links; thence South 2¾° West 74.72 perches ~~perches~~ to a post a hickory 12 inches South 33½° East 22 links; thence South 86 3/4° East 163.56 perches to the beginning, containing 77 acres and 21 perches, more or less.

SECOND TRACT: Beginning at the Northeast corner of Section No. 3, Township No. 11, Range No. 5, in the Steubenville Land District, and running thence West on the North line of said Section 81 perches to a post; thence South 109.4 perches; thence East 81 perches to the east line of said section; thence North on said line 109.4 perches to the place of beginning, containing 55 acres, 1 rood and 20 perches, more or less.

THIRD TRACT: Being a part of the East half of Section No. 3, Township 11, Range 5, in the Steubenville Land District, beginning at a post on the east line of said section and corner to Robert Smiley; thence South 3° West 77.52 perches to a post, an ash 20 inches South 24½° East 71 links; thence North 86½° West 32 perches to a post in the road a black walnut 10 inches North 15½° West 122 links; thence North 12° East 12 perches in the center of the road; thence North 3¼° East 7 perches in the center of the road; thence North 7½° East 26.5 perches in the center of the road; thence North 17 3/4° East 20 perches in the center of the road; thence North 1¼° East 12.6 perches to a post in the center of the road, a white oak 40 inches North 27½° East 65 links; thence South 86 3/4° East 24.54 perches to the beginning, containing 13 acres, 2 roods and 23 perches.

FOURTH TRACT: A part of the Northwest quarter of Section 33 and a part of the Southwest Quarter of Section 34, in Township 10, Range 4. Beginning at a post on the west line of Section 34, and corner to lands of W. B. Beebe, a white oak 28 inches South 6° West 57½ links; thence South 2 3/4° West 260.8 perches to a post; thence South 88½° East 67.34 perches to a post a hickory 10 inches North 2° West 21 links Jack 10 inches North 46½° West 19 links; thence North 2 3/4° East 260.8 perches a white oak 18 inches North 55° East 12 links; thence North 88° West 67.34 perches to the beginning, containing 110 acres, be the same more or less.

The foregoing four tracts being the premises conveyed to The North American Coal Corporation by Chas. F. Thompson and Jennie Thompson, husband and wife, by warranty deed dated August 18, 1942 and recorded in records of Harrison County, Ohio, Deed Book 111, p. 134.

Subject to a Mortgage Deed dated August 19, 1942, to C. F. Thompson and Jennie Thompson from The North American Coal Corporation, recorded in mortgage records of Harrison County, Ohio, Volume 64, p. 26.

Excepting and subject to a reservation from the foregoing lands of all the oil and gas within and underlying said lands, together with the right to remove the same, and all rights under a lease for oil and gas to The East Ohio Gas Company, dated Sept. 22, 1940, during the life of said lease. It being expressly understood that when said lease becomes null and void all rights of Grantors in said warranty deed dated August 18, 1942, to said oil and gas or rental shall cease and determine and said oil and gas, together with rights thereto, shall vest in GRANTEE,

Also subject to a reservation of all timber on said premises and all buildings located thereon, together with the right to remove the same. It being understood that such reservation shall in no manner be permitted to interfere with any coal stripping operations or other coal mining operations that GRANTEE may desire to conduct on said premises.

Also subject to rights of way for telephone and electric lines.

Also subject to a farm lease agreement with Chas. B. Ryan which expires April 1, 1945, and this deed is made subject to same, with right to harvest and remove wheat sowed in fall of 1942.

7. Real Estate situated in the County of Harrison in the State of Ohio and in the Township of Archer, and bounded and described as follows:

FIRST TRACT: A part of the North half of Section three (3), and a part of the South half of Section four (4) in Township Eleven (11), in Range Five (5), beginning at a post on the East line of the Northwest quarter of Section three and corner to lands of Samuel Holland (1896) a white oak 24" S. 71° W. 27 links; thence S. 1 3/4° W. 50 perches; thence S.87° E. 35 perches, a white oak 30" S. 53 3/4° E. 42 links and another White Oak 15" S. 47° E. 63 links; thence N. 1 3/4° E. 68.36 perches; thence North 80½° W. 35.88 perches; thence North 1 3/4° E. 14 perches; thence N. 80½° W. 40.28 perches to Black Walnut 5½"; thence N. 37° E. 24.7 perches; thence North 18½° E. 17.88 perches; thence N. 1/2° E. 21.72 perches; thence N. 22 3/4° W. 14.8 perches a

chestnut 15" S. 13 3/4° W. 8 links; thence N. 87° W. 86.6 perches, a white oak 18" S. 14° E. 28 links; thence S. 1 3/4° W. 54 perches, a white oak 30" N. 63° W. 21½ links; thence S. 19° E. 20 perches to a post; thence S. 13½° W. 37.76 perches; thence S. 38½° W. 12.36 perches; thence S. 87° E. 125 perches to the beginning, containing 29 acres, more or less.

SECOND TRACT: A part of the North East quarter of Section three (3), in Township eleven (11), Range five (5), beginning at a lime stone at the quarter corner between Sections three and four ; thence S. 86° E. 35.9 perches, a white oak stump 24" N. 40½° W. 43 links; thence S. 3½° W. 42.28 perches; thence N.79° W. 35.4 perches to a post on the quarter section line; thence N. 3° E. 37.6 perches to the beginning, containing eight (8) acres, three (3) roods and thirty-three (33) perches, more or less.

THIRD TRACT: A part of the North West quarter of Section three (3), in Township eleven (11) in Range five (5), beginning at a lime stone at the quarter post between Sections three and four; thence S. 5½° W. 23.6 perches; thence N. 78½° W. 40.68 perches to a black walnut 15" in diameter; thence N. 39° E. 22.85 perches in the road; thence S. 85° E. 26.68 perches to the beginning, containing four (4) acres, two (2) roods and nine (9) perches, more or less.

The foregoing three tracts being the premises conveyed to The North American Coal Corporation by Frank Montgomery and Dora Henderson Montgomery, husband and wife, by warranty deed dated July 6, 1942 and recorded in records of Harrison County, Ohio, Deed Book 110, p. 629.

Subject to a mortgage deed dated July 2, 1942 to Frank Montgomery and Dora Henderson Montgomery from The North American Coal Corporation, recorded in mortgage records of Harrison County, Ohio Volume 63, p. 574.

Excepting and subject to a reservation from the foregoing lands of all the oil and gas within and under said lands, together with the right to remove same, and all rights under a certain lease for oil and gas to The East Ohio Gas Company, dated Sept. 20, 1940, during the life of sa lease, it being understood that when said lease becomes null and void all rights of Grantors in said warranty deed dated July 6, 1942 to said oil and gas or rental on account of same shall cease and determine.

Also subject to a certain right of way granted to Central District Telephone Company April 9, 1913, recorded in Lease Book 18, p. 231, Harrison County, Ohio records, and

Subject to a certain right of way granted to The Central District and Printing Telegraph Company dated August 5, 1896, recorded in Lease Book 4, p. 221, Harrison County, Ohio records.

8. Real Estate situated in the County of Harrison in the State of Ohio and in the Township of Rumley, and bounded and described as follows:

Being a part of Section 18, Township 11, Range 5, Rumley Township, Harrison County, Ohio, and the part herein described being located on and between State Route #151 and the right-of-way of Pennsylvania Railway and bounded and described as follows:

Starting for the same at the stone which marks the Southwest corner of Section 18, and running thence North 87° 31' East 1806.45 feet to an iron pin on the north side of Route #151 which is the place of beginning; thence South 53° 22' East 188.3 feet to a point south of road which point is also on the south line of Section 18; thence with the section line South 88° 56' East 1508.6 feet to a post on the south side of the road; thence North 4° 15' East 71.2 feet to a point on the Pennsylvania Railroad right-of-way; thence North 69° 50' West 360 feet to a point on Pennsylvania Railroad right-of-way; thence North 65° 40' West 303.4 feet to a point on the Pennsylvania Railroad right-of-way; thence North 57° 45' West 300.4 feet to a point of Pennsylvania Railroad right-of-way; thence North 51° 23' West 349.5 feet to a post on Pennsylvania Railroad right-of-way; thence South 35° 16' West 596.0 feet to a post; thence

South 8° 55' West 207.2 feet to a stake; thence South 85° 50' West 318.6 feet to the place of beginning, containing 11.55 acres, more or less, but subject to all legal highways, being the premises conveyed to The North American Coal Corporation by J. Lee Mikesell and Elma Mikesell, his wife, by warranty deed dated November 7, 1941 and recorded in records of Harrison County, Ohio, Deed Book 110, p. 24.

The above survey and description made by R. W. Walker, Registered Surveyor No. 2409;

It is understood and agreed by GRANTEE that no gob pile exceeding five (5) feet in height shall be maintained on the above described premises.

9. Real Estate situated in the County of Harrison in the State of Ohio and in the Township of Rumley, and bounded and described as follows:

Being a part of the North half of the Southwest quarter of Section 36, Township 10, Range 4 of the Steubenville Land District and by metes and bounds described as follows, to-wit:

Beginning at a stone on the Northeast corner of said Quarter section, a plum tree 5" S. 69° E. 9 links; a wild cherry 12" N. 7.5° W. 205 links; thence South 3° West 77.84 perches to a stone corner on the center on the East line of said Quarter section, a white oak 14" S. 30° E. 17 links; thence N.87° 25' W. 159 perches to a stone; thence North 3° East 48.34 perches to a post and Southwest corner to a 5 acre lot of land owned by John Arbaugh; thence South 87.25° East 27.3 perches to John Arbaugh's southeast corner; thence North 3° East 29.5 perches to John Arbaugh's Northeast corner; thence South 87.25° East 131.7 perches to the place of beginning, containing seventy two acres (72) one (1) rood and sixteen (16) perches, more or less, being the premises conveyed to The North American Coal Corporation by Donald E. Liggett and Esther J. Liggett, husband and wife, by warranty deed dated March 16, 1942 and recorded in records of Harrison County, Ohio, Deed Book 110, p. 374.

Subject to the right to mine and remove all the Pittsburgh or No. 8 vein of coal situated upon said real estate and other rights granted in connection with the mining and removal of said coal, all of which were granted to Haverhill Coal Company by The North American Coal Corporation pursuant to an Exchange Agreement dated May 20, 1942.

10. Real Estate situated in the County of Harrison in the State of Ohio and in the township of Rumley, and bounded and described as follows:

Being a part of the Southeast quarter of Section 36, Township 10, Range 4, beginning at a stone at the Northeast corner of said Quarter section; thence North 87° West 158 perches to a stone, a plum tree 5" South 69° East 9 links, a wild cherry tree 12" North 7.5° W. 205 links; thence South 2.5° West 77.84 perches to a stone; thence South 87° East 158 perches to a stone, a white oak 22" North 23° West 63 links; a hickory tree 10" South 27.5° West 16.5 links; thence North 2.5° East 77 perches to the place of beginning, containing seventy-six and one-half (76½) acres, more or less, being the premises conveyed to The North American Coal Corporation by Hazel D. Brickner and George C. Brickner by warranty deeddated March 28, and April 6, 1942 and recorded in Harrison County, Ohio, Deed Book 110, p. 418.

Subject to the right to mine and remove all the Pittsburgh or No. 8 vein of coal situated upon said real estate and other rights granted in connection with the mining and removal of said coal, all of which were granted to Haverhill Coal Company by The North American Coal Corporation pursuant to an Exchange Agreement dated May 20, 1942.

Said parcels of land #9 and #10 also being subject to an Agreement of sale, dated March 17, 1942, between The North American Coal Corporation and Donald E. Liggett.

To have and to hold the premises aforesaid, with the appurtenances thereunto belonging, to the said GRANTEE, its successors and assigns.

IN WITNESS WHEREOF, said Corporation sets its hand and corporate seal, by O. C. Larson, its President and G. A. Troppman, its Assistant Secretary this 30th day of

January, A. D.1943.

Signed in the presence of

Ed H. Rosenow

THE NORTH AMERICAN COAL CORPORATION

By O. C. Larson, President

G. A. Troppman, Asst. Secy.

STATE OF OHIO, CUYAHOGA COUNTY, ss.

BEFORE ME, a Notary Public in and for said County, personally appeared the above named The North American Coal Corporation by O. C. Larson, its President and G. A. Troppman, its Asst. Secretary who acknowledge that they did sign the foregoing instrument and that the same is the free act and deed of said Corporation and the free act and deed of each of them personally and as such officers.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, this 30th day of January, 1943.

Paul A. Kleber, Notary Public
My commission expires Feb. 9, 1945

$136.40 U. S. Rev. stamps attached & cancelled.

STATE OF OHIO, HARRISON COUNTY, ss.
Transferred March 2, 1943 MH
Received for Record on March 2, 1943 at 4:15 P. M.
Recorded March 5, 1943
Fee $7.00 paid.

FRANK R. STEWART, Recorder

#1264

WARRANTY DEED

Frank S. Culbertson, et al to Aubrey Carter et ux

KNOW ALL MEN BY THESE PRESENTS: That Frank S. Culbertson, Allie E. Culbertson, husband and wife and Nora Edith Gaston Clingan (widow) of the Village of Kent, County of Portage and State of Ohio, Grantors, in consideration of the sum of Two ($2.00) Dollars and other valuable considerations to us paid by Aubrey Carter and Betty Carter husband and wife of the Township of Athens, County of Harrison and State of Ohio, Grantees, the receipt whereof is hereby acknowledged, do hereby GRANT, BARGAIN, SELL AND CONVEY to the said Grantees their heirs and assigns forever, the following REAL ESTATE situated in the County of Harrison in the State of Ohio, and in the Township of Athens and bounded and described as follows:

Being a part of the Southwest quarter of Section 34, Township 8 and Range 4 of The Steubenville Land District.

Beginning for the same at a stake in the West line of said section 405 feet North of the stone at the Southwest corner of said section; the stake is witnessed by an elm 16 inches in diameter, which is S. 56° 45' W. 3 feet; thence N. 6° 3½' E. 364 feet to a stone at the corner of Edward's land; thence N. 51° 52' E. 686 feet to a spike in the center of the road, where a locust 18 inches is S. 58½° W. 21 feet; thence S. 32° 02' E. 343.5 feet along the center of the road where a fence post on the East side of the road is 13.5 feet distant; thence S. 56° 45' W. 904;5 feet to the place of beginning, containing 5.51 acres more or less.

EXCEPTION AND RESERVATION: All the Pittsburgh or No. 8 coal underlying the above described tract is excepted and reserved together with the mining rights as set forth in the Deed of the Grantors to the Bitumenous Investment Company, and reference is hereby made to the record of the same as found in vol. 93, page 547 of the Deed Records of Harrison County, Ohio.

As a part of the consideration in this conveyance the Grantees agree to build and keep in repair a good and sufficient fence on the Southeast line of the premises herein conveyed, and at no time shall the Grantors participate in the cost of the same.

The above described tract is a part of the same land as conveyed to Nora EdithGaston, by deed as recorded in Vol. 71, page 520 of the Deed Records of Harrison County, Ohio.

#20381

WARRANTY DEED.

The Powhatan Mining Company. To Clarence & Anna Belle Sedoris.

KNOW ALL MEN BY THESE PRESENTS: THAT THE POWHATAN MINING COMPANY, 12800 Shaker Boulevard, Cleveland 20, Ohio, the GRANTOR, in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration [illegible], to it paid by CLARENCE SEDORIS and ANNA BELLE SEDORIS, Jewett, Ohio, the GRANTEES, the receipt whereof is hereby acknowledged, does hereby GRANT, BARGAIN, SELL AND CONVEY to the said GRANTEES, their heirs and assigns forever, the following REAL ESTATE situated in the County of Harrison, in the State of Ohio, and in the Township of Archer, Township 11, Range 5, and bounded and described as follows;

Being a part of the Northeast quarter of Section 4, Township 11, Range 5, aforesaid County, State and Land District, beginning for the same at the southeast corner of said quarter section; running thence north on the section line 100.0 perches; more or less; thence West 160.0 perches, more or less, to the West line of said quarter section; thence South on said quarter line 100.0 perches more or less, to the Southwest corner of said quarter section; thence East 160.0 perches, more or less, to the section line and place of beginning, containing 100.0 acres, more or less.

Excepting and reserving therefrom about 10.0 acres sold to Mandy Ellen Hawk, by deed of James Endsley, dated April 25, 1884 and recorded in Volume 35, page 274, Harrison County Record of Deeds, to which reference is here made.

The aforementioned 10.0 acres which is excepted herein is described as follows:

Being a part of the East half of Section 4, Township 11, Range 5, Steubenville Land District; Beginning for the same at a point in the road 990.0 feet South of the North line of said Section and 227.5 feet east of the half section line, where a 18" sugar tree bears west 23.6 feet; thence south 5° 55' West 375.5 feet to a point in the center of the road; thence South 13° 02' East 306.5 feet to a point in the center of the road, where a 16" white oak bears East 16.65 feet; thence South 8° 08' West 337.8 feet to a point in the center of the road; thence South 21° 23' West 340.0 feet to a point in the center of the road; thence South 40° 23' West 345.3 feet to a point in the center of the road and on the half section line; thence north 5° 00' East 1976.0 feet to a point on the half section line and in the center of the road; thence South 43° 57' East 178.5 feet to a point in the center of the road; thence South 15° 42' East 267.0 feet to the place of beginning, containing 9.79 acres, more or less, leaving 90.21 acres net to be conveyed by the aforementioned tract. Said part of tract surveyed June 24, 1942 by J.A.Gordon, L.S.No.2192. Said premises are subject to all legal highways.

Being part of the same premises conveyed to The Powhatan Mining Company by The North American Coal Corporation by deed dated January 30, 1943 and recorded in Volume 112, Page 14, Harrison County Record of Deeds.

EXCEPTING AND RESERVING from the above-described premises all the Pittsburgh No.8 (eight) vein of coal remaining on said premises, and all veins of coal below the Pittsburgh or No.eight coal and all oil, gas or other minerals and land at such points and in such manner as may be proper and necessary for the purpose of digging, mining, draining, ventilating and carrying away said coal, oil gas, and other minerals, hereby waiving all surface damages, or damages of any sort arising therefrom or through the removal of all of said coal, oil, gas or other minerals, together with the privileges of mining and removing through and under said described premises other coal, oil, gas or other minerals belonging to said Grantor or which may hereafter be acquired by said Grantor. Any surface required for the mining and removal of coal, oil, gas or other minerals may be acquired by the Grantor, its successors and assigns in a contiguous parcel containing not more than 10% of the total acres within 21 years from the date hereof. In such case the purchase price shall be $10.00 per acre plus the fair market value of any improvements thereon and against such payment the owner shall deliver to the Grantor, its successors or assigns, a warranty deed in fee for the same.

Date 2-13-13
Vol. DV 142 Pg. 330, 33
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
By Tracy L. Boyer

EXCEPTING AND RESERVING all rights of way or easements heretofore granted for electric power lines, telephone lines and public roads, or other utilities.

TO HAVE AND TO HOLD said premises, with all the privileges and appurtenances thereunto belonging to the said GRANTEES, their heirs and assigns forever. And the said GRANTOR, THE POWHATAN MINING COMPANY, for itself and its successors and assigns, does hereby covenant with the said GRANTEES, their heirs and assigns, that it is lawfully seized of the premises aforesaid; that the said premises are free and clear from all incumbrances whatsoever and that it will forever warrant and defend the same, with the appurtenances, unto the said GRANTEES, their heirs and assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said GRANTOR, THE POWHATAN MINING COMPANY, has caused its corporate name to be subscribed by its President and Secretary duly authorized in the premises, this 29th day of October, 1958.

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF: THE POWHATAN MINING COMPANY

Louis Mrnak, Jr.
Violet Stark.

By H.G.Schmidt, President. C.K.T.
By Walter K.Johnson, Secretary.

Form approved 10-7-1958 C.T.
Description Approved 10-21-58 K.L.W.

STATE OF OHIO, COUNTY OF CUYAHOGA, SS:

Before me, a Notary Public, in and for said County, personally appeared Henry G.Schmidt, President and Walter K.Johnson, Secretary, of The Powhatan Mining Company, the corporation which executed the foregoing instrument, who acknowledged that the seal affixed to said instrument is the corporate seal of said corporation; they did sign and seal said instrument as such President and Secretary in behalf of said corporation and by authority of its Board of Directors; and that said instrument is their free act and deed, individually and as such President and Secretary and the free and corporate act and deed of said The Powhatan Mining Company. IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Cleveland, Ohio, this 29th day of October, 1958.

Violet Stark, Notary Public.
Commission Expires February 20, 1960.

NOTARIAL SEAL COUNTY, OHIO

This instrument was prepared by Carter Thornburg.

$1.10 U.S.Rev.stamps attached and cancelled.
THE STATE OF OHIO, HARRISON COUNTY, ss:
Transferred Nov.8, 1958 IR.
Received Nov.8, 1958 at 10:00 A.M.
Recorded Nov.10, 1958 Fee: $2.95 paid. GRACE RUCKSTUHL, Recorder.

#29398

WARRANTY DEED.

Adelia G.Parcell, et vir. To Barbara Jean Poulson, R.D.#2, Uhrichsville, Ohio.

KNOW ALL MEN BY THESE PRESENTS: THAT, Adelia G.Parcell, whose correct name is Gertrude Alice Parcell, and her husband, Roy Parcell who is also known as Roy R.Parcell, the Grantors, for the consideration of One dollar and other good and valuable considerations received to their full satisfaction of Barbara Jean Poulson, unmarried, the Grantee, do GIVE, GRANT, BARGAIN, SELL AND CONVEY unto the said the said Grantee, her heirs and assigns, the following described premises, situated in the Town of Tippecanoe, County of Harrison, and State of Ohio:

Being Lot No.5, in Crumblett's Addition to the Town of Tippecanoe, Ohio. (Prior conveyance, Volume 118, Page 55, Harrison County Deed Records.)

be the same more or less, but subject to all legal highways.

TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee, her heirs and assigns forever. And, Adelia G.Parcell, whose correct name is Gertrude Alice Parcell, and her husband Roy Parcell, who is also known as Roy R.Parcell, the said Grantors, do for themselves and their heirs, executors and administrators, covenant with the said Grantee her heirs and assigns, that at and until the ensealing of these presents, they were well seized of the above described premises, as a good and indefeasible estate in FEE SIMPLE, and have good right to bargain and sell the same in manner and form as above written, and that the same are FREE FROM

33-IF
12/23/58

AGREEMENT FOR MERGER

THIS AGREEMENT, entered into pursuant to Section 1701.84 of the Revised Code of Ohio,

WITNESSETH:

WHEREAS, The North American Coal Corporation, an Ohio corporation, owns all of the outstanding shares of The Powhatan Mining Company, an Ohio corporation, and neither of said companies is insolvent, and said companies desire to merge as hereinafter provided;

NOW, THEREFORE, it is hereby agreed that:

1. The Powhatan Mining Company shall merge into The North American Coal Corporation, the surviving corporation;

2. The parties herein have complied with the conditions of Section 1701.84 of the Revised Code of Ohio and no approval of this agreement by the shareholders of The North American Coal Corporation is required;

3. The merger shall be carried out upon its approval by The North American Coal Corporation as the sole shareholder of The Powhatan Mining Company by the filing of this agreement with the Secretary of State of Ohio. Thereafter, upon the effective date hereinafter provided, all assets and liabilities of The Powhatan Mining Company shall become assets and liabilities of The North American Coal Corporation, the outstanding shares of The Powhatan Mining Company shall be cancelled and the corporate existence of The Powhatan Mining Company shall terminate. Thereafter, copies of this agreement shall be filed for record with the County Recorders of Harrison, Jefferson, Belmont and Monroe Counties, Ohio;

4. There is no change in the Articles of Incorporation or regulations of the surviving corporation and no issuance of shares of the surviving corporation resulting from the merger;

5. The earned surplus of the constituent corporations shall, upon the effective date, constitute earned surplus of The North American Coal Corporation;

6. The merger shall be effective at 12:01 A. M. January 1, 1959.

Signed at Cleveland, Ohio, this 24th day of December, 1958.

THE NORTH AMERICAN COAL CORPORATION

By _____
President

Attest _____
Secretary

THE POWHATAN MINING COMPANY

By _____
President

Attest _____
Secretary

AFFIXED TO BE SURE
A. L. Dougan

ABSENT IN BOND
Nacco 12-19-58
Powhatan 12-24-58

CERTIFICATE OF PRESIDENT AND SECRETARY
OF
THE NORTH AMERICAN COAL CORPORATION

We, Henry G. Schmidt, President, and Arthur L. Dougan, Secretary, of The North American Coal Corporation, a corporation organized and existing under the laws of the State of Ohio, do hereby certify as such President and Secretary, respectively, that the Agreement for Merger to which this certificate is attached, after having been first duly authorized by resolution of the Directors of said Corporation, was signed by the President and Secretary of said Corporation.

WITNESS our hands this 24th day of December, 1958.

President

Secretary

CERTIFICATE OF PRESIDENT AND SECRETARY
OF
THE POWHATAN MINING COMPANY

We, Henry G. Schmidt, President, and Walter K. Johnson, Secretary, of The Powhatan Mining Company, a corporation organized and existing under the laws of the State of Ohio, do hereby certify as such President and Secretary, respectively, that the Agreement for Merger to which this certificate is attached, after having been first duly authorized by resolution of the Directors of said corporation, was signed by the President and the Secretary of said corporation and was then duly approved by written consent of the owner of all of the outstanding shares of said corporation pursuant to Section 1701.54 of the Revised Code of Ohio.

WITNESS our hands this 24th day of December, 1958.

President

Secretary

879 XB

RECEIPT AND CERTIFICATE

№ 2102

THE NORTH AMERICAN COAL CORPORATION

NAME

1116

NUMBER

DOMESTIC CORPORATIONS

- ARTICLES OF INCORPORATION
- AMENDMENT
- ~~MERGER/CONSOLIDATION~~
- DISSOLUTION
- AGENT
- RE-INSTATEMENT
- CERTIFICATES OF CONTINUED EXISTENCE
- MISCELLANEOUS

FOREIGN CORPORATIONS

- LICENSE
- AMENDMENT
- SURRENDER OF LICENSE
- APPOINTMENT OF AGENT
- CHANGE OF PRINCIPAL OFFICE
- RE-INSTATEMENT
- FORM 7
- PENALTY

MISCELLANEOUS FILINGS

- ANNEXATION/INCORPORATION—CITY OR VILLAGE
- RESERVATION OF CORPORATE NAMES
- REGISTRATION OF NAME
- REGISTRATION OF NAME RENEWALS
- REGISTRATION OF NAME—CHANGE OF REGISTRANTS ADDRESS
- TRADE MARK
- TRADE MARK RENEWAL
- SERVICE MARK
- SERVICE MARK RENEWAL
- MARK OF OWNERSHIP
- MARK OF OWNERSHIP RENEWAL
- EQUIPMENT CONTRACT/CHATTEL MORTGAGE
- POWER OF ATTORNEY
- SERVICE OF PROCESS
- MISCELLANEOUS
- ASSIGNMENT—TRADE MARK, MARK OF OWNERSHIP, SERVICE MARK

I certify that the attached document was received and filed in the office of TED W. BROWN, Secretary of State, at Columbus, Ohio, on the 26th day of December A. D. 19 58 and recorded on Roll 899 at Frame 533 of the RECORDS OF INCORPORATION and MISCELLANEOUS FILINGS.

Ted W. Brown

TED W. BROWN,
Secretary of State

Filed by and Returned To: Jones, Day, Cockley and Reavis

1700 Union Commerce Bldg.

Cleveland 14, Ohio

FEE RECEIVED $ 25.00

NAME THE NORTH AMERICAN COAL CORPORATION

RECORDING DATA FOR AGREEMENT FOR MERGER

BELMONT COUNTY

Recorded January 14, 1959
Volume 441 Page 630
Belmont County Record of Deeds

HARRISON COUNTY

Recorded January 12, 1959
Volume Spec. #12 Record Page 142

JEFFERSON COUNTY

Recorded January 14, 1959
Volume 366 Page 150

MONROE COUNTY

Recorded January 13, 1959
Volume 4 Page 497
Monroe County Records of Agreements

OFFICE OF THE SECRETARY OF STATE - COLUMBUS, OHIO

Recorded December 26, 1958
Roll B79 Frame 533
Records of Incorporation and Miscellaneous Filings

WARRANTY DEED

TUTELANX REGISTERED U.S. PAT. OFFICE
Tuttle Law Print Publishers, Rutland, Vt.
Standard Date Form 601

Know all Men by these Presents

That Clarence Sedoris and Annabelle Sedoris, husband and wife

Date 2-13-13
Vol. DV. 161 Pg. 147, 148, 149
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
Tracy L. Boyer
By Tracy L. Boyer Deputy

Recorded

of the Village of Jewett County of Harrison and State of Ohio Grantor s, in consideration of the sum of Ten Dollars and other valuable considerations

to them paid by Jerry Torok and Janice Torok,

of the Village of Jewett County of Harrison and State of Ohio Grantee s, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said Grantee s Jerry Torok and Janice Torok, husband and wife, as joint owners with rights of survivorship and not as tenants in common - - -

their heirs and assigns forever, the following Real Estate situated in the County of Harrison in the State of Ohio, and in the Township of Archer and bounded and described as follows:

Being a part of the Northeast quarter of Section 4, Township 11, Range 5, aforesaid County, State and Land District beginning for the same at the southeast corner of said quarter section; running thence north on the section line 100.0 perches, more or less; thence West 160.0 perches, more or less, to the West line of said quarter section; thence South on said quarter line 100.0 perches, more or less, to the Southwest corner of said quarter section; thence East 160.0 perches, more or less, to the section line and place of beginning, containing 100.0acres, more or less.

Excepting and reserving therefrom about 10.0 acres sold to Mandy Ellen Hawk by deed of James Endsley, dated April 25, 1884 and recorded in Vol. 35, page 274, Harrison County Record of Deeds, to which reference is here made.

The aforementioned 10.0 acres which is excepted herein is described as follows:

Being a part of the East half of Section 4, Township 11, Range 5, Steubenville Land District; Beginning for the same at a point in the road 990.0 feet South of the North line of said Section and 227.5 feet east of the half section line, where a 15" sugar tree bears west 23.6 feet; thence south 5 deg. 55' West 375.5 feet to a point in the center of the road; thence South 13 deg. 02' East 306.5 feet to a point in the center of the road, where a 16" white oak bears East 16.65 feet; thence South 8 deg. 08' West 337.8 feet to a point in the center of the road; thence South 21 deg. 23' West 340.0 feet to a point in the center of the road; thence South 40 deg. 23' West 348.3 feet to a point in the center of the road and on the half section line; thence north 5 deg. 00' East 1978.0 feet to a point on the half section line and in the center of the road; thence South 45 deg. 57' East 178.5 feet to a point in the center of the road; thence South 15 deg. 42' East 267.0 feet to the place of beginning, containing 9.79 acres more or less leaving 90.21 acres net to be conveyed by the aformentioned tract. Said part of tract surveyed June 24, 1942 by J. A. Gordon, L. S. No. 2192. Said premises are subject to all legal highways.

Being part of the same premisesponveyed to The Powhatan Mining Company by The North American Coal Corporation by deed dated January 30, 1943 and recorded in Volume 112, Page 14, Harrison County Record of Deeds.

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EXCEPTING AND RESERVING from the above described premises all the Pittsburgh No. 8 (eight) vein of coal remaining on said premises, and all veins of coal below the Pittsburgh or No. eight coal and all oil, gas or other minerals and land at such points and in such manner as may be proper and necessary for the purpose of digging, mining, draining, ventilating and carrying away said coal, oil, gas, or other minerals, hereby waiving all surface damages, or damages of any sort arising therefrom or through the removal of all of said coal, oil, gas or other minerals, together with the privileges of mining and removing through and under said described premises other coal, oil, gas or other minerals belonging to said Grantor or which may hereafter be acquired by said Grantor. Any surface required for the mining and removal of coal, oil, gas or other minerals may be acquired by the Grantor, its successors and assigns in a contiguous parcel containing not more than 10% of the total acres, within 21 years from the date hereof. In such case the purchase price shall be $10.00 per acre plus the fair market value of any improvements thereon and against such payment the owner shall deliver to the Grantor, its successors or assigns, a warranty deed in fee for the same.

EXCEPTING AND RESERVING all rights of way or easements heretofore granted for electric power lines, telephone lines, and public roads, or other utilities.

Being the same premises conveyed by The Powhatan Mining Company by deed to Clarence Sedoris and Annabelle Sedoris, October 29, 1958, as recorded in Volume 142, Page 330, Deed Records of Harrison County, Ohio.

"DEED CHECKED FOR TRACT DESCRIPTION ONLY"
JAY M. ROTH. HARRISON CO. ENGR.
DATE 4/15/68 BY D.S.

Transferred Apr. 19, 1968
FRANCIS R. PARKER, Auditor
FEE 35 BY

To have and to hold *said premises, with all the privileges and appurtenances thereunto belonging, to the said Grantees* Jerry Torok and Janice Torok, husband and wife, as joint owners with rights of survivorship and not as tenants in common - - their *heirs and assigns forever.*

And the said Grantors Clarence Sedoris and Annabelle Sedoris

for themselves *and* their *heirs do hereby covenant with the said Grantees* Jerry Torok and Janice Torok, husband and wife

their *heirs and assigns, that* they are *lawfully seized of the premises aforesaid; that the said premises are* **Free and Clear from all Incumbrances whatsoever**

This Conveyance has been examined and the Grantor has complied with Section 319.202 of the Revised Code.
FEE $ 0.30
EXEMPT
FRANCIS R. PARKER, County Auditor

5195 Rec'd

LABAN C. BLACKBURN
Harrison Co. Recorder
Received April 18, 1968
at 1:55 o'clock P. M.
Recorded April 23 1968
$3.00 paid

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and that they *will forever* **Warrant and Defend** *the same, with the appurtenances, unto the said Grantees* Jerry Torok and Janice Torok, husband and wife; as joint owners with rights of survivorship and not as tenants in common. their *heirs and assigns against the lawful claims of all persons whomsoever*

In Witness Whereof *the said Grantors* Clarence Sedoris and Annabelle Sedoris, husband and wife

who hereby release their *rights of dower in the premises, have* *hereunto set* their *hands, this* 19th *day of* April *in the year of our Lord one thousand nine hundred and* sixty eight *(1968)*

Signed and acknowledged in presence of

Donna W. Myers — Clarence Sedoris

W. Lawrence Myers — Annabelle Sedoris

The State of Ohio
Harrison **County** } SS.

Be it Remembered *that on this* 19th *day of* April *A.D. 19* 68 *, before me, the subscriber, a* Notary Public *in and for said county, personally came the above named* Clarence Sedoris and Annabelle Sedoris, husband and wife

the Grantors in the foregoing Deed, and acknowledged the signing of the same to be their *voluntary act and deed, for the uses and purposes therein mentioned.*

In Testimony Whereof, *I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.*

W. Lawrence Myers

W. Lawrence Myers, Notary Public
W. LAWRENCE MYERS, NOTARY PUBLIC
MY COMMISSION EXPIRES NOV. 22, 1972

This instrument prepared by Mary Graham, First National Bank, Jewett, O.

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Vol 209 Pg 614

WARRANTY DEED.—No. 104 D. (To a Corporation.)

THE OHIO LEGAL BLANK CO., CLEVELAND

Know all Men by these Presents, That JERRY TOROK AND JANICE TOROK, husband and wife,

Date 2-13-13
Vol. OV 209 Pg. 614, 615, 616
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
By Tracy L. Boyer Deputy
RECORDER

the Grantors,

for the consideration of _____ Dollars

($ _____) received to their full satisfaction of LEVI A. MILLER and NAOMI MILLER, husband and wife, for their joint lives, remainder to the survivor of them, the Grantees

whose TAX MAILING ADDRESS will be Route #1, Box 82, Holmesville, Ohio 44633

do give, grant, bargain, sell and convey unto the said Grantees, their heirs, successors and assigns, the following described premises situated in the Township of Archer

County of Harrison and State of Ohio:

Being a part of the Northeast quarter of Section 4, Township 11, Range 5, aforesaid County, State and Land District beginning for the same at the southeast corner of said quarter section; running thence north on the section line 100.0 perches, more or less; thence West 160.0 perches more or less, to the West line of said quarter section; thence South on said quarter line 100.0 perches, more or less, to the Southwest corner of said quarter section; thence East 160.0 perches, more or less, to the section line and place of beginning, containing 100.0 acres, more or less.

Excepting and reserving therefrom about 10.0 acres sold to Mandy Ellen Hawk by deed of James Endsley, dated April 25, 1884 and recorded in Vol. 35, page 274, Harrison County Deed Records, to which reference is here made.

The aforementioned 10.0 acres which is excepted herein is described as follows: Being a part of the East half of Section 4, Township 11, Range 5, Steubenville Land District; beginning for the same at a point in the road 990.0 feet South of the North line of said Section and 227.5 feet east of the half section line, where a 15" sugar tree bears west 23.6 feet; thence south 5 deg. 55' West 375.5 feet to a point in the center of the road; thence South 13 deg. 02' East 306.5 feet to a point in the center of the road, where a 16" white oak bears East 16.65 feet; thence South 8 deg. 08' West 337.8 feet to a point in the center of the road; thence South 21 deg. 23' West 340.0 feet to a point in the center of the road; thence South 40 deg. 23' WEst 348.3 feet to a point in the center of the road and on the half section line; thence north 5 deg. 00' East 1978.0 feet to a point on the half section line and in the center of the road; thence South 45 deg. 57' East 178.5 feet to a point in the center of the road; thence South 15 deg. 42' East 267.0 feet to the place of beginning, containing 9.79 acres, more or less, leaving 90.21 acres net to be conveyed by the aforementioned tract. Said part of tract surveyed June 24, 1942 by J. A. Gordon, L. S. No. 2192. Said premises are subject to all legal highways.

Being part of the same premises conveyed to The Powhatan Mining Company by The North American Coal Corporation by deed dated January 30, 1943 and recorded in Volume 112, page 14, Harrison County Record of Deeds.

EXCEPTING AND RESERVING from the above described premises all the Pittsburgh No. 8 (eight) vein of coal remaining on said premises, and all veins of coal below the Pittsburgh or No. eight coal and all oil, gas or other minerals and land at such points and in such manner as may be proper and necessary for the purpose of digging, mining, draining, ventilating and carrying away said coal, oil, gas or other minerals, hereby waiving all surface damages, or damages of any sort arising therefrom or through the removal of all of said coal, oil, gas or other minerals, together with the privileges of mining and removing through and under said described premises other coal, oil, gas or other minerals belonging to said Grantor or which may hereafter be acquired by said Grantor. Any surface required for the mining and removal of coal, oil, gas or other minerals may be acquired by the Grantor, its successors and assigns in a contiguous parcel containing not more than 10% of the total acres, within 21 years from the date hereof. In such case the purchase price shall be $10.00 per acre plus the fair market value of any improvements thereon and against such payment the owner shall deliver to the Grantor, its successors or assigns, a warranty deed in fee for the same.

EXCEPTING AND RESERVING all rights of way or easements heretofore granted for electric power lines, telephone lines, and public roads, or other utilities.

Being the same premises conveyed by The Powhatan Mining Company by deed to Clarence Sedoris and Annabelle Sedoris, October 29, 1958, as recorded in Volume 143, page 330, Deed Records of Harrison County, Ohio.

"DEED CHECKED FOR TRACT DESCRIPTIONS ONLY"
HARRISON CO. ENGR.
APPROVED ✓ REJECTED
DATE 3/2/83 BY B.W.

35698 Reg

LABAN C. BLACKBURN
Harrison Co. Recorder
Received MAR 2 1983
at 1:47 o'clock P M.
Recorded MAR 2 1983

$6.00 P.

This conveyance has been examined and the Grantor has complied with Section 319.202 of the Revised Code.

FEE $ 90.00

EXEMPT

MABEL L. LEACH, County Auditor
L.E.J.

Transferred MARCH 2, 1983
MABEL L. LEACH, Auditor
FEE 35¢ PD BY L.E.J.

DEED VOL. 209 PAGE 615

be the same more or less but subject to all legal highways.

TO HAVE AND TO HOLD *the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee~~,xxx~~s, their, heirs, successors and assigns forever. And* we, *the said Grantor~~x~~s, do for* ourselves *and* our *heirs, executors and administrators, covenant with the said Grantee~~,xxx~~s, their heirs, successors and assigns, that at and until the ensealing of these presents,* we are *well seized of the above described premises, as a good and indefeasible estate in FEE SIMPLE, and have good right to bargain and sell the same in manner and form as above written, and that the same are free from all incumbrances whatsoever,*

except easements, restrictions and reservations of record

and that we *will WARRANT AND DEFEND said premises, with the appurtenances thereunto belonging, to the said Grantee~~,xxx~~s, their heirs, successors and assigns, against all lawful claims and demands whatsoever*

And for valuable consideration

Jerry Torok and Janice Torok, husband and wife

do hereby remise, release and forever quit-claim unto the said Grantee~~,xxx~~s, their heirs, successors and assigns, all their *right and expectancy of dower in the above described premises.*

In Witness Whereof, We *have hereunto set* our *hand* s *the* 2nd *day of* March, *in the year of our Lord one thousand nine hundred and* eighty-three (1983).

Signed and acknowledged in the presence of

Jerry Torok by Lillian Imogene Payton

Jerry Torok by Lillian Imogene Payton, Attorney in Fact

Janice Torok by Lillian Imogene Payton

Janice Torok by Lillian Imogene Payton, Attorney in Fact

STATE OF OHIO } ss.
Harrison County }

Before me, a Notary Public *in and for said County and State, personally appeared the above named* Jerry Torok and Janice Torok, husband and wife, by Lilliam Imogene Payton, their attorney in fact

who acknowledged that they *did sign the foregoing instrument and that the same is* their *free act and deed.*

In testimony whereof, *I have hereunto set my hand and official seal, at* CADIZ, OHIO, *this* 2nd *day of* March, *A. D.* 1983

Susan Wilgus

SEAL

DEED VOL. 209 PAGE 616

SUSAN LONG WILGUS Notary Public
State of Ohio
My Commission Expires June 25, 1985

This instrument prepared by,
PETTAY, MOSSER & TABACCHI
Attorneys at Law
Cadiz, Ohio 43907

ESTATE BY THE ENTIRETIES WITH SURVIVORSHIP DEED No. 102-E (Revised 1972) *The Ohio Legal Blank, Co., Cleveland Publishers and Dealers Since 1883*

Know all Men by these Presents

That Levi A. Miller and Naomi Miller, husband and wife

(insert marital status)

of Harrison *County, Ohio,*

for valuable consideration paid, Grant(s), (Covenants, if any), to

Dennis Elias *and* Linda Elias

husband and wife, for their joint lives, remainder to the survivor of them, with general Warranty covenants

whose tax mailing address is 2347 Eldersville Road
Follansbee, West Virginia 26037

the following described Real Property: (Description of land or interest therein and encumbrances, reservations, and exceptions, if any)

Being a part of the Northeast quarter of Section 4, Township 11, Range 5, Harrison County, Archer Township, State of Ohio, beginning for the same at the southeast corner of said quarter section; running thence north on the section line 100.0 perches more or less; thence West 160.0 perches more or less, to the West line of said quarter section; thence South on said quarter line 100.0 perches, more or less, to the Southwest corner of said quarter section; thence East 160.0 perches, more or less, to the section line and place of beginning, containing 100.0 acres, more or less.

Excepting and reserving therefrom about 10.0 acres sold to Mandy Ellen Hawk by deed of James Endsley, dated April 25, 1884 and recorded in Vol. 35, page 274, Harrison County Deed Records, to which reference is here made.

The aforementioned 10.0 acres which is excepted herein is described as follows: Being a part of the East half of Section 4, Township 11, Range 5, Steubenville Land District beginning for the same at a point in the road 990.0 feet South of the North line of said Section and 227.5 feet east of the half section line, where a 15" sugar tree bears west 23.6 feet; thence south 5° 55' West 375.5 feet to a point in the center of the road; thence South 13° 02' East 306.5 feet to a point in the center of the road, where a 16" white oak bears East 16.65 feet; thence South 8° 08' West 337.8 feet to a point in the center of the road; thence South 21° 23' West 340.0 feet to a point in the center of the road; thence South 40° 23' West 348.3 feet to a point in the center of the road and on the half section line; thence north 5° 00' East 1978.0 feet to a point on the half section line and in the center of the road; thence South 45° 57' East 178.5 feet to a point in the center of the road; thence South 15° 42' East 267.0 feet to the place of beginning, containing 9.79 acres, more or less, leaving 90.21 acres net to be conveyed by the aforementioned tract. Said part of tract surveyed June 24, 1942 by J. A. Gordon, L. S. No. 2192. Said premises are subject to all legal Highways.

Being part of the same premises conveyed to The Powhatan Mining Company by The North American Coal Corporation by deed dated January 30, 1943 and recorded in Volume 112, page 14, Harrison County Record of Deeds. SUBJECT TO THE FOLLOWING EXCEPTION:

"EXCEPTING AND RESERVING from the above described premises all the Pittsburgh No. 8 (eight) vein of coal remaining on said premises, and all veins of coal below the Pittsburgh or No. eight coal and all oil, gas or other minerals and land at such points and in such manner as may be proper and necessary for the purpose of digging, mining, draining, ventilating and carrying away said coal, oil, gas or other minerals, hereby waiving all surface damages, or damages of any sort arising therefrom or through the removal of all of said coal, oil, gas or other minerals, together with the

Prior Instrument Reference: *Vol.* 209 *Page* 614, 648 *of the Deed*

Records of Harrison *County, Ohio.*

VOL 214 PAGE 361

This is an Estate by the Entireties with Survivorship Deed*

**See Sections 5301 and 5302.17 of the Revised Code of Ohio as to covenants made and the warranties given by the Estate by the Entireties Survivorship Deed.*

APPROVED REJECTED

privileges of mining and removing through and under said described premises other coal, oil, gas or other minerals belonging to said Grantor or which may hereafter be acquired by said Grantor, Any surface required for the mining and removal of coal, oil, gas or other minerals may be acquired by the Grantor, its successors and assigns in a contiguous parcel containing not more than 10% of the total acres, within 21 years from the date hereof. In such case the purchase price shall be $10.00 per acre plus the fair market value of any improvements thereon and against such payment the owner shall deliver to the Grantor, its successors, or assigns, a warranty deed in fee for the same.

EXCEPTING AND RESERVING all rights of way or easements heretofore granted for electric power lines, telephone lines, and public roads, or other utilities."

Being the same premises conveyed by The Powhatan Mining Company by deed to Clarence Sedoris and Annabelle Sedoris, October 29, 1958, as recorded in Volume 142, page 330, Deed Records of Harrison County, Ohio.

The above quoted EXCEPTION is as contained in a certain deed from The Powhatan Mining Company to Clarence and Anna Belle Sedoris, recorded at Vol. 142, Page 330, dated October 29, 1958.

Transferred 9-17 1984
MABEL L. LEACH, Auditor
FEE 35pd BY gm

This conveyance has been examined and the Grantor has complied with Section 319.202 of the Revised Code.

FEE $ 47.20 pd
EXEMPT _____
MABEL L. LEACH, County Auditor
gm

Levi A. Miller and Naomi Miller wife (husband) of the Grantor releases

all rights of dower therein.

Witness our hand(s) this 23 day of August 1984

Signed and acknowledged in presence of:

X Conrad Miller — Levi A. Miller

X Michael Lee Miller — Naomi Miller

State of Ohio County of ~~Harrison~~ Holmes ss.

Be It Remembered, That on the 23 day of August 1984

before me, the subscriber, a Notary Public Joyce M Gay in and for said county,

personally came Levi A. Miller and Naomi Miller

the Grantor(s) in the foregoing Deed, and acknowledged the signing thereof to be

their voluntary act and deed.

In Testimony Whereof, I have hereunto subscribed

my name and affixed my official seat

on the day and year last aforesaid.

Joyce M. Gay (Notary Public)

Notary Public, State of Ohio
My Commission Expires April 24, 19

Holmesville O.

Date 2-13-13
Vol. OV. 214 Pg. 361, 362, 363
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
Tracy L. Boyer
By Joyce P. Beatty
RECORDER

This instrument was prepared by PETTAY, MOSSER & TABACCHI
Attorneys at Law
Lawyers Building
Cadiz, Ohio 43907
Phone (614) 942-2127

VOL. 214 PAGE 363

Estate by the Entireties with Survivorship Deed
(Statutory Form)

Levi A. Miller and Naomi Miller FROM

TO

Dennis Elias and Linda Elias

Transferred 19

County Auditor

State of Ohio, Harrison County, ss.

Presented for record on the 17th day of September 1984 at 1:56 o'clock, P. M.

Recorded Sept 17 1984 in Deed Book No. 214 Page 361

Gaston C. Blackburn
County Recorder

48507

LABAN C. BLACKBURN
Harrison Co. Recorder
Rec'd on Dec. 4 1989
at 11:50 o'clock A. M.
Recorded Dec. 4 1989

12.00 pd.

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That Linda Elias, unmarried, hereinafter referred to as the Grantor, who claims title by or through instrument of record in Volume 214, Page 361, Harrison County Recorder's office, in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration to her paid by Dennis Elias, hereinafter referred to as Grantee, whose TAX MAILING ADDRESS is 86805 Briar Road, Jewett, Ohio 43986, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE AND FOREVER QUIT-CLAIM unto the said Grantee, his heirs and assigns, the following real estate:

Being a part of the Northeast quarter of Section 4, Township 11, Range 5, Harrison County, Archer Township, State of Ohio, beginning for the same at the Southeast corner of said quarter section; running thence North on the section line 100.0 perches more or less; thence West 160.0 perches more or less, to the West line of said quarter section; thence South on said quarter line 100.0 perches, more or less, to the Southwest corner of said quarter section; thence East 160.0 perches, more or less, to the section line and place of beginning, containing 100.0 acres, more or less.

Excepting and reserving therefrom about 10.0 acres sold to Mandy Ellen Hawk by deed of James Endsley, dated April 25, 1884 and recorded in Volume 35, Page 274, Harrison County Deed Records, to which reference is here made.

The aforementioned 10.0 acres which is excepted herein is described as follows: Being a part of the East half of Section 4, Township 11, Range 5, Steubenville Land District; beginning for the same at a point in the road 990.0 feet South of the North line of said Section and 227.5 feet East of the half section line, where a 15" sugar tree bears West 23.6 feet; thence South 5° 55' West 375.5 feet to a point in the center of the road; thence South 13° 02' East 306.5 feet to a point in the center of the road, where a 16" white oak bears East 16.65 feet; thence South 8° 08' West 337.8 feet to a point in the center of the road; thence South 21° 23' West 340.0 feet to a point in the center of the road; thence South 40° 23' West 348.3 feet to a point in the center of the road and on the half section line; thence North 5° 00' East 1976.0 feet to a point on the half section line and in the center of the road; thence South 45° 57' East 178.5 feet to a point in the center of the road; thence South 15° 42' East 267.0 feet to the place of beginning, containing 9.79 acres, more or less, leaving 90.21 acres net to be conveyed by the aforementioned tract. Said part of tract surveyed June 24, 1942 by J.A. Gordon, L.S. No. 2192. Said premises are subject to all legal highways.

Transferred Dec. 4 1989
PATRICK J. BOURS, Auditor
FEE 50¢ PD

This conveyance has been accepted and Grantor has complied with Section 319.202 of the Revised Code.
FEE
EXEMPT
BY

DEED VOL 231 PAGE 14

CM

Date 2-13-13
Vol. OR 231 Pg. 14-15 file
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
Tracy L. Boyer
By
Recorder

Being a part of the same premises conveyed to The Powhatan Mining Company by The North American Coal Corporation by deed dated January 30, 1943 and recorded in Volume 112, Page 14, Harrison County Record of Deeds. Subject to the following exception:

EXCEPTING AND RESERVING from the above described premises all the Pittsburgh No. 8 (eight) vein of coal remaining on said premises, and all veins of coal below the Pittsburgh or No. eight coal and all oil, gas or other minerals and land at such points and in such manner as may be proper and necessary for the purpose of digging, mining, draining, ventilating and carrying away said coal, oil, gas or other minerals, hereby waiving all surface damages, or damages of any sort arising therefrom or through the removal of all of said coal, oil, gas or other minerals, together with the privileges of mining and removing through and under said described premises other coal, oil, gas or other minerals belonging to said Grantor or which may hereafter be acquired by said Grantor, any surface required for the mining and removal of coal, oil, gas or other minerals may be acquired by the Grantor, its successors and assigns in a contiguous parcel containing not more than 10% of the total acres, within 21 years from the date hereof. In such case the purchase price shall be $10.00 per acre plus the fair market value of any improvements thereon and against such payment the owner shall deliver to the Grantor, its successors, or assigns, a warranty deed in fee for the same.

EXCEPTING AND RESERVING all rights of way or easements heretofore granted for electric power lines, telephone lines, and public roads, or other utilities.

Being the same premises conveyed by The Powhatan Mining Company by deed to Clarence Sedoris and Annabelle Sedoris, October 29, 1958, as recorded in Volume 142, Page 330, Deed Records of Harrison County, Ohio.

The above quoted exception is as contained in a certain deed from The Powhatan Mining Company to Clarence and Anna Belle Sedoris, recorded in Volume 142, Page 330, dated October 29, 1958.

TO HAVE AND TO HOLD said premises, with all the privileges and appurtenances thereunto belonging, to the said Grantee, his heirs and assigns, subject, however, to all legal highways.

IN TESTIMONY WHEREOF, said Linda Ellas, unmarried, has hereunto set her hand this 10th day of August, 1989.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

Michele R. Davis Linda D. Elias
Linda Elias

Margaret L. Prosetti

STATE OF OHIO

SS:

COUNTY OF HARRISON

Before me, a Notary Public in and for said County and State, personally appeared the above-named Linda Elias, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this 10th day of August, A.D. 1989, at Cadiz, Ohio.

NOTARIAL SEAL STATE OF OHIO

Michele R. Davis
Notary Public

MICHELE R. DAVIS, Notary Public
State of Ohio
My Commission Expires May 24, 1993

This instrument prepared by:
BEETHAM LAW OFFICES
146 South Main Street
Cadiz, Ohio 43907

DEED VOL 231 PAGE 16

Form 683 — Survivorship Deed
Rev. 4/1/85

TUTBLANK REGISTERED U. S. PAT. OFFICE
TUTTLE LAW PRINT, PUBLISHERS, RUTLAND, VT 05701

Know All Men By These Presents,

That, DENNIS ELIAS, married
(Marital Status)
Harrison County,
for valuable consideration paid, grant(s), (COVENANTS, IF ANY)

to JEFFREY S. ELIAS
~~XXXXXXXXXXXX~~
JANICE M. ELIAS, husband and wife
(Marital Status)
joint lives, remainder to the survivor of them, whose tax mailing addresses are
JMR 43600 Hanover Ridge Road
Jewett, OH 43986
the following real property:
(Description of land or interest therein and encumbrances, reservations, and exceptions, if any.)

Date 2-13-13 Pg. 204, 205
Vol. OR 17 for Recorded
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
Tracy L. Boyer
By Deputy

Situated in the Township of Archer, County of Harrison, State of Ohio and bounded and described as follows:

Being a part of the Northeast quarter of Section 4, Township 11, Range 5 in the Steubenville Land District.

Being a part of a 90.21 acre tract conveyed to the Grantor by Estate By the Entireties With Survivorship Deed recorded in Volume 214, Page 361 of the Harrison County Deed Records.

Beginning for the same at a 5/8-inch iron pin (set) at the Southwest corner of said Northeast quarter. Thence N. 1° 11′ 38″ E., 58.65 feet to a railroad spike (set) in the center of County Road No. 59. Thence with the road N. 38° 18′ 13″ E., 204.79 feet; thence N. 33° 48′ 50″ E., 82.39 feet; thence N. 23° 38′ 37″ E., 62.82 feet to a railroad spike (set). Thence leaving the road N. 62° 45′ 24″ E., (passing a 5/8-inch iron pin (set) at 30.00 feet), 442.76 feet to a 5/8-inch iron pin (set); thence N. 64° 08′ 49″ E., 347.01 feet to a 5/8-inch iron pin (set). Thence S. 25° 51′ 11″ E., (passing a 5/8-inch iron pin (set) at 398.50 feet), 428.50 feet to a point in the center of County Road No. 17. Thence with the road S. 60° 03′ 13″ W., 141.62 feet; thence S. 42° 35′ 15″ W., 261.82 feet; thence S. 50° 15′ 12″ W., 124.98 feet to a 5/8-inch iron pin (set) in the south line of said Northeast quarter. Thence therewith N. 87° 33′ 40″ W., 696.63 feet to the place of beginning and containing 10.370 acres, more or less, but subject to all legal highways and other existing easements.

Bearings herein contained have been based upon the Ohio State Plane Coordinate System, South Zone.

Survey and description by Robert K. Sterling, Registered Surveyor Number 6513 on February 11, 1995.

Prior Instrument Reference: Volume 15, Page 973

Grantor states that this is a corrective deed, and is being executed for the sole purpose of correcting a defective acknowledgment contained in the original deed conveying the aforedescribed property.

Transfer not necessary
Engineers Office
4/14/95

TRANSFER NOT NECESSARY
DTD 4/14/95
PATRICK J. MOORE, AUDITOR
BY

17 PAGE 204

Wife (Husband) of the grantor, releases all rights of dower therein.

WITNESS their hand this 13th day of April 1995

In Presence of:

Linda L. Eduardo

Laura B. Elson

Dennis Elias
DENNIS ELIAS

Margaret S. Elias
MARGARET S. ELIAS

State of OHIO
Jefferson County, } ss. Before me, a Notary Public in and for said County and State, personally appeared the above named

DENNIS ELIAS and MARGARET S. ELIAS

who acknowledged that they did sign the foregoing instrument, and that the same is their free act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal, at Steubenville, Ohio, this 13th day of April A. D. 1995

David J. Scarpone
NOTARY PUBLIC

David J. Scarpone, Attorney
Notary Public, State of Ohio
My Commission No. Ohio
Section

17 PAGE 205

This instrument prepared by David J. Scarpone, Attorney at Law.

Deed
Survivorship

DENNIS ELIAS
married

To

JEFFREY S. ELIAS
and JANICE M. ELIAS
husband and wife

Batch April 13 1995

Jefferson Co. Auditor
Received April 13, 1995
at 11:00 o'clock A.M.
Recorded April 13, 1995
Receipt #71122 Amount $

LEVINSON, FISHER, BROWN
AND SCARPONE
Attorneys at Law
2017 Sunset Boulevard
Steubenville, OH 43952
(614) 282-1911

Form 103 — Survivorship Deed
Rev. 4/1/93

TUTTLE'S LAW PRINT, RUTLAND, VT 05701 TUTTLE'S REGISTERED U. S. PAT. OFFICE

Know All Men By These Presents,

That, DENNIS M. ELIAS, married
(Marital Status) of
Harrison County,
for valuable consideration paid, grant(s), (COVENANTS, IF ANY)

to JOHN JACKSON
~~(GRANTEE NAME)~~ and
MARILYN J. JACKSON, husband and wife
(Marital Status) for their
joint lives, remainder to the survivor of them, whose tax mailing addresses are
86805 Briar Road
Jewett, OH 43986
the following real property:
(Description of land or interest therein and encumbrances, reservations, and exceptions, if any.)

Situated in the Township of Archer, County of Harrison, and the State of Ohio and described as follows:

Being a part of the Northeast quarter of Section 4, Township 11, Range 5 of the Steubenville Land District.

Being a part of the premises conveyed to the Grantor in Volume 231, Page 14 of the Harrison County Deed Records.

Beginning at a 5/8 inch iron pin (set) at the southeast corner of the northeast quarter of Section 4. Thence with the east line of the Section N. 01° 00' 56" E. 1657.38 feet to a stone; thence with the north line of said Grantors tract N. 87° 41' 54" W. 1404.46 to a 5/8 inch iron pin (set) and the place of beginning.

Thence from said place of beginning S. 04° 07' 53" E. 767.47 feet to a 5/8 inch iron pin (set); thence S. 66° 10' 40" W. 146.06 feet to a 5/8 inch iron pin (set); thence N. 61° 15' 15" W. 200.00 feet to a 5/8 inch iron pin (set); thence S. 75° 44' 05" W. 600.82 feet to a 12 inch white oak tree; thence N. 84° 08' 03" W. 160.51 feet to a railroad spike (set) in County Road No. 59; thence with the said road the following seven (7) courses:

N. 06° 10' 29" E. 124.91 feet to a railroad spike;
N. 00° 25' 53" W. 61.35 feet to a railroad spike;
N. 07° 44' 10" W. 93.41 feet to a railroad spike;
N. 15° 51' 39" W. 116.66 feet to a railroad spike;
N. 16° 41' 41" W. 122.55 feet to a railroad spike;
N. 06° 44' 31" W. 81.61 feet to a railroad spike;
N. 03° 23' 24" E. 314.06 feet to a railroad spike;

Thence with the south line of a 58.78 acre tract recorded in Deed Volume 189, Page 599 S. 87° 41' 54" E. 1054.19 feet to the place of beginning and containing 20.1763 acres, more or less, but subject to all legal highways.

Bearings herein contained based on the Ohio State Plane Coordinate System, South Zone.

Survey and description prepared by Robert K. Sterling, Registered Surveyor No. 6513 on June 17, 1996.

Prior Instrument Reference: Volume ____, Page _____

Date 2-13-13
Vol. OR 33 Pg. 192, 193
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
Tracy L. Boyer
By Tracy L. Boyer Deputy
Rec'd Rel'd

33 PAGE 192

Reg. V C A
9600002548
Filed For Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER
On 10-29-1996 At 03:48 pm.
SURV 14.00
Vol. 33 Page 192

Transferred Oct. 29 1996
PATRICK J. MOORE, Auditor
FEE .50¢ BY

This conveyance has been examined and the grantor has completed with section 319.202 of the revised code.
FEE $ Ned 00
EXEMPT
PATRICK J. MOORE, County Auditor

Wife of the grantor, releases all rights of dower therein.

WITNESS their hand this 21st day of October 1996

In Presence of:

Janice M Elias
Jeffrey S Elias

DENNIS M. ELIAS
M. SUE ELIAS

State of Ohio, Harrison County, ss. Before me, a Notary Public in and for said County and State, personally appeared the above named

DENNIS M. ELIAS and M. SUE ELIAS, married

who acknowledged that they did sign the foregoing instrument, and that the same is their free act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal, at Jewett, Ohio this 21st day of October A. D. 1996

Janice Marie Elias
NOTARY PUBLIC
My Comm Exp 5/21/2000

This instrument prepared by Frank W. Noble, Jr., Attorney at Law

TOKEN CHECKED FOR TRACT DESCRIPTION ONLY
HARRISON CO. ENGR.
APPROVED 10-29-96 BY
DATE

33 PAGE 193

Deed
Survivorship

DENNIS M. ELIAS
married

To

JOHN JACKSON and
MARILYN J. JACKSON
husband and wife

Dated, October 21, 1996

FISHER, BROWN, SCARPONE,
LARUE and ISLA
Attorney at Law
2017 Sunset Boulevard
Steubenville, OH 43952
(614) 282-1911

Instrument Book Page
200800001776 OR 177 634

HARRISON COUNTY AUDITOR
PATRICK J. MOORE
REAL ESTATE TRANSFER BY DLG
COMM.FEE 640.00 EX
TRAN.FEE 6.50 DATE 8-13-08

HARRISON COUNTY ENGINEER'S OFFICE
DEED CHECKED FOR TRACT DESCRIPTION ONLY
APPROVED X REJECTED
DATE 8-13-08 BY DEE
ROBERT STERLING, ENGINEER

200800001776 CAR
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER
08-13-2008 At 01:48 pm.
DEED 28.00
OR Book 177 Page 634 - 635

Date 2-13-13
Vol. OR 177 Pg. 634-635
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original
By Tracy Boyer
Recorder

KNOW ALL MEN BY THESE PRESENTS

That ***JOHN JACKSON AND MARILYN J. JACKSON, HUSBAND AND WIFE***

of Harrison County, State of Ohio, for valuable consideration paid, grant with general warranty covenants, to ***BENJAMIN D. WIKER***

Whose tax mailing address is: *86805 Briar Hill Road*
Jewett, Ohio 43986

The following real property:

Situated in the Township of Archer, County of Harrison, and the State of Ohio and described as follows:

Being a part of the Northeast quarter of Section 4, Township 11, Range 5 of the Steubenville Land District.

Being a part of the premises conveyed in Volume 231, Page 14 of the Harrison County Deed Records.

Beginning at a 5/8 inch iron pin (set) at the Southeast corner of the Northeast quarter of Section 4. Thence with the East line of the Section North 01 ° 00' 56" East 1657.38 feet to a stone; thence with the North line of said Grantors tract North 87° 41' 54" West 1404.46 to a 5/8 inch iron pin (set) and the place of beginning.

Thence from said place of beginning South 04° 01' 53" East 767.47 feet to a 5/8 inch iron pin (set); thence South 66° 10' 40" West 146.06 feet to a 5/8 inch iron pin (set); thence North 61 ° 15' 15" West 200.00 feet to a 5/8 inch iron pin (set); thence South 75° 44' 05" West 600.82 feet to a 12 inch white oak tree; thence North 84° 08' 03" West 160.51 feet to a railroad spike (set) in County Road No. 59; thence with the said road the following seven (7) courses:

North 06° 10' 29" East 124.91 feet to a railroad spike;
North 00° 25' 53" West 61.35 feet to a railroad spike;
North 07° 44' 10" West 93.41 feet to a railroad spike;
North 15° 51' 39" West 116.66 feet to a railroad spike;
North 16° 41' 41" West 122.55 feet to a railroad spike;
North 06° 44' 31 " West 81.61 feet to a railroad spike;
North 03° 23' 24" East 314.06 feet to a railroad spike;

Thence with the South line of a 58.78 acre tract recorded in Deed Volume 189, Page 599 South 87° 41' 54" East 1054.19 feet to the place of beginning and containing 20.1763 acres, more or less, but subject to all legal highways.

Bearings herein contained based on the Ohio State Plane Coordinate System, South Zone.

Survey and description prepared by Robert K. Sterling, Registered Surveyor No. 6513 on June 17, 1996.

Subject to all public streets or roads, to all easements or rights of way of record, to all restrictions and reservations of record, and to all applicable zoning regulations.

Permanent Parcel Number: ~~01-00265-002~~
01-0000265-002

Real Estate Taxes to be pro-rated to the date of delivery of the within instrument.

Prior Instrument Reference: Official Records Volume 33, Page 192

Executed this 13th day of August, 2008.

JOHN JACKSON

MARILYN J. JACKSON

State of Ohio :
: ss.
Jefferson County :

*Before me, a Notary Public, in and for said County and State, personally appeared the above named **JOHN JACKSON AND MARILYN J. JACKSON, HUSBAND AND WIFE** who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.*

***In Testimony Whereof,** I have hereunto set my hand and official seal, at Steubenville, Ohio this 13th day of August, 2008.*

NOTARY PUBLIC

ROBERT CLAYTON HARGRAVE, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
UNDER SEC. 147.03 R. C.

This Instrument Prepared By: Robert C. Hargrave, Esquire – Steubenville, Ohio

Instrument 201100002825 OR | Book Page 190 913

201100002825
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
07-28-2011 At 11:03 am.
SURV DEED 36.00
OR Book 190 Page 913 - 915

201100002825
PREMIER LAND TITLE COMPANY

DEED APPROVED FOR TRANSFER
DATE 7-28-11 BY
ROBERT STERLING
HARRISON COUNTY ENGINEER

HARRISON COUNTY AUDITOR
PATRICK J. MOORE
REAL ESTATE TRANSFER BY SEC
CONV.FEE 596.00 EX
TRAN.FEE 50 DATE 7-28-11

Date 2-13-13
Vol. R 190 Pg 913-915
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
Tracy L. Boyer
By Dawn Boyer Deputy
Recorder

SURVIVORSHIP DEED

(See Section 5302.17 Ohio Revised Code)

Benjamin D. Wiker, Married, of Harrison County, Ohio, for valuable consideration paid, grants with general warranty covenants, to Arieh Ordronneau and Sunni Ordronneau, Husband and Wife, for their joint lives, remainder to the survivor of them, whose tax-mailing address is: 86805 Briar Road, Jewett, Ohio 43986 the following *REAL PROPERTY*:

Situated in the Township of Archer, County of Harrison and the State of Ohio and described as follows:

Being a part of the Northeast quarter of Section 4, Township 11, Range 5 of the Steubenville Land District.

Being a part of the premises conveyed in Volume 231, Page 14 of the Harrison County Deed Records.

Beginning at a 5/8 inch iron pin (set) at the Southeast corner of the Northwest quarter of Section 4. Thence with the East line of the Section North 01 deg. 00' 56" East 1657.38 feet to a stone; thence with the North line of said Grantors tract North 87 deg. 41' 54" West 1404.46 to a 5/8 inch iron pin (set) and the place of beginning.

Thence from said place of beginning South 04 deg. 01' 53" East 767.47 feet to a 5/8 inch iron pin (set); thence South 66 deg. 10' 40" West 146.06 feet to a 5/8 inch iron pin (set); thence North 61 deg. 15' 15" West 200.00 feet to a 5/8 inch iron pin (set); thence South 75 deg. 44' 05" West 600.82 feet to a 12 inch white oak tree; thence North 84 deg. 08' 03" West 160.51 feet to a railroad spike (set) in County Road No. 59; thence with the said road the following seven (7) courses:

North 06 deg. 10' 29" East 124.91 feet to a railroad spike;
North 00 deg. 25' 53" West 61.35 feet to a railroad spike;
North 07 deg. 44' 10" West 93.41 feet to a railroad spike;
North 15 deg. 51' 39" West 116.66 feet to a railroad spike;
North 16 deg. 41' 41" West 122.55 feet to a railroad spike;
North 06 deg. 44' 31" West 81.61 feet to a railroad spike;
North 03 deg. 23' 24" East 314.06 feet to a railroad spike;

Thence with the South line of a 58.78 acre tract recorded in Deed Volume 189, Page 599 South 87 deg. 41' 54" East 1054.19 feet to the place of beginning and containing 20.1763 acres, more or less, but subject to all legal highways.

Bearings herein contained based on the Ohio State Plane Coordinate System, South Zone.

Survey and description prepared by Robert K. Sterling, Registered Surveyor No. 6513 on June 17, 1996.

Subject to all public streets or roads, to all easements or

rights of way of record, to all restrictions and reservations of record and to all applicable zoning regulations.

Parcel No. 01-0000265.002

Prior Instrument Reference: Volume 177, Page 634 Official Records of Harrison County, Ohio.

Subject to the following:

Excepting and reserving from the above described premises all the Pittsburgh No. 8 vein of coal remaining on said premises, and all veins of coal below the No. 8 coal and all oil, gas or other minerals and land at such points and in such manner as may be proper and necessary for the purpose of digging, mining, draining, ventilating and carrying away said coal, oil, gas or other minerals hereby waiving all surface damages, or damages of any sort arising therefrom or through the removal of all of said coal, oil, gas or other minerals, together with the privileges of mining and removing through and under said described premises other coal, oil, gas or other minerals belonging to said Grantor or which may hereafter be acquired by said Grantor.or which may hereafter be acquired by said Grantor. Any surface required for the mining and removal of coal, oil, gas or other minerals may be acquired by the Grantor, its successor and assigns in a contiguous parcel containing not more than 10% of the total acres, within 21 years from the date hereof. In such case the purchase price shall be $10.00 per acre plus the fair market value of any improvements thereon and against such payment the owner shall deliver to the Grantor, its successors, or assigns, a warranty deed in fee for the same as contained in Warranty Deed from Powhatan Mining Company in Volume 142 page 330 filed October 29, 1958.

The real property described herein, is conveyed subject to any items listed above which are exempted from the general warranty covenants, along with the following: items: all reservations, easements, leases, covenants, conditions, restrictions and out conveyances of record; all legal highways; zoning, building and other laws, ordinances and regulations; real estate taxes and assessments not yet due and payable; and discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which are not shown by the public records, but would be shown in a correct survey of the premises.

Taxes will be pro-rated to date of closing.

Teresa G. Wiker the wife of Benjamin D. Wiker hereby releases all her rights of dower therein.

EXECUTED and acknowledged this 27 day of July, 2011.

Benjamin D. Wiker

Teresa G. Wiker

Instrument 201100002825 OR Book 190 Page 915

STATE OF OHIO,
HARRISON COUNTY, SS:

The foregoing instrument was acknowledged before me this 27th day of July, 2011 by Benjamin D. Wiker and Teresa G. Wiker, Husband and Wife.

Annette McCue
Notary Public, State of Ohio
My Commission Expires April 11, 2012

Annette McCue
Notary Public

My Commission Expires: 4-11-12

(seal)

This instrument prepared by:
Attorney D. Brad Zimmerman
New Philadelphia, Ohio

53/667

Form U.S. [illegible]

THIS AGREEMENT, made and entered into this 30th day of January A.D. 19 73, by and between THE NORTH AMERICAN COAL CORPORATION, an Ohio Corporation, of 12800 Shaker Boulevard, Cleveland, Ohio 44120

, hereinafter called the Lessor,

and National Petroleum Corporation, P.O. Box [illegible], Columbus, Ohio [illegible], the Lessee.

1. WITNESSETH, That the said Lessor, in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, and of the covenants and agreements herein contained, does hereby grant unto the Lessee all of the oil and gas and/or the constituents of either, in and under the lands hereinafter described, together with the exclusive rights to drill for, produce and market oil and gas and their constituents and also the right to enter thereon at all times for the purpose of drilling and operating for oil, gas and water and to transport from, across and through said lands oil and gas and their constituents from the subject and other lands and to possess, use and occupy so much of said premises as is necessary and convenient in removing or transporting across said lands the above named products by pipe lines or otherwise for a term of ten (10) years and so much longer thereafter as oil, gas, or their constituents are produced in paying quantities thereon, or operations are maintained on, all of that certain tract of land situated in

Lot No.

Sec. No. __________, Township of Archer, County of Harrison

and State of Ohio, bounded substantially as follows:

On the North by the lands of See Exhibit A, attached hereto

On the East by the lands of

On the South by the lands of

On the West by the lands of

containing Three Thousand Thirty-Three and 12/00 (3,033.12) acres, more or less, being all the land owned by Lessor in said Township, provided, however, that if at the termination of said term, either primary or extended, there is a well in process of being drilled on said lands, then this lease shall continue in force so long as the drilling of such well is continued with reasonable diligence and so much longer thereafter as oil or gas or their constituents are found on said premises in paying quantities, in the judgment of the Lessee. It being understood, however, that no well shall be drilled within two hundred feet of the barn or dwelling on said premises without the consent of Lessor.

2. In consideration of the premises the said parties covenant and agree as follows:
Lessee to deliver to the credit of the Lessor in tanks or pipe lines one-eighth (⅛) of the oil produced and saved from the premises.
Lessor to receive the field market price per thousand cubic feet for one-eighth (⅛) of all gas marketed from said premises, and the same to be paid for on or before the 25th day of the month following in which same is marketed.

3. Lessee to commence a well on said premises within ninety (90) days from this date or pay to Lessor Three Thousand Thirty-Three and 12/00 Dollars ($3,033.12) each year, payable quarterly thereafter until said well is commenced or this lease surrendered; but the completion of a well upon said lands unproductive of oil or gas in paying quantities shall be considered as the equivalent of and regarded as the tender of delay rentals for a period of one year thereafter and in no event shall the written lease expire before one year after the drilling of a dry hole regardless of the primary term provided for in the written lease. In the event gas can be produced, but due to a lack of transmission facilities or lack of refining facilities same cannot be marketed, Lessee shall pay or tender annually at the end of each yearly period during which such gas is not sold or used, as royalty, an amount equal to the delay rental provided in paragraph [illegible] hereof, and while said royalty is so paid or tendered this lease shall be held as a producing lease under paragraph [illegible] hereof. This lease shall become null and void for failure to pay rental for any period when same becomes due and payable, provided however that Lessee or his assigns is given 10 days written notice of his failure to pay said rentals and they are not paid within said 10 days.

4. Lessee shall bury, when so requested by Lessor, all pipe lines used to transport gas or oil off, on, or through the premises and pay all damages to growing crops caused by operations under this lease; said damages, if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the Lessor, one by the Lessee and the third by the two so appointed as aforesaid, and the award of such three persons shall be final and conclusive.

5. Lessor may lay a line to any gas well on said lands and take gas produced from said well for use for light and heat in one dwelling house on said land at Lessor's own risk, subject to the use and the right of abandonment of the well by the Lessee. The first two hundred thousand cubic feet of gas taken in each year shall be free of cost, but all gas in excess of two hundred thousand cubic feet taken in each year shall be paid for at the current published rates in the town nearest the premises above described and the measurements and regulations shall be by meter and regulators set at the tap on the line. This privilege is upon the condition that Lessor shall subscribe to and be bound by the reasonable rules and regulations of the Lessee relating to the use of free gas.

6. The Lessee at any time may notify the Lessor in writing at Lessor's last known address, by registered mail, of the Lessee's intention to use any well located on the leased premises and the leased premises for any and all of the purposes hereinbefore provided of injecting, storing or holding in storage, and removing gas into, in and from any sands, strata or formations underlying the premises, and upon the giving of such notice the Lessee may use any such well and the leased premises for any and all of said purposes. The Lessee shall pay to the Lessor a rental of $200.00 each year for each such well while so used; provided that the rental for the first year for a well so used shall be equivalent to the one-eighth royalty payments to the Lessor, if more than $200.00, for gas produced and marketed from such well during the consecutive periods of time aggregating 180 days next preceding the giving of such notice, and for each year thereafter a rental for each well so used equivalent to first year's rental, if more than $200.00, reduced each year by the amount of $200.00 until reduced to $200.00, and for each year thereafter a rental of $200.00 for each well so used. [illegible]

7. The Lessor hereby grants to the Lessee the right to consolidate the leased premises, or any part thereof, with other lands to form an oil and gas development unit of not more than six hundred forty (640) acres for the purpose of drilling a well thereon, but the Lessee shall in no event be required to drill more than one well on such unit. [illegible]

8. It is agreed that the acreage rentals or royalties on any well, or wells, paid and to be paid as herein provided are and will be accepted by Lessor as adequate and full consideration to render it optional with Lessee as to whether or not it shall drill a well or wells to offset producing wells on adjoining or adjacent premises.

9. Should it be determined that Lessor is not the owner of the entire tract above described then and thereupon Lessor shall receive a proportional amount in accordance with the rentals and royalties for any fraction of the above premises owned.

10. Payments of all moneys due on this lease may be made by cash or check, to Lessor

by deposit to the credit of

and mailed to Above address

11. Lessor agrees that Lessee is to have the privilege of using sufficient oil, gas or water, for fuel, in operating premises and the right at any time to remove any machinery or fixtures placed on said premises and further upon the payment to the Lessor of one dollar and all amounts due hereunder said Lessee shall have the right to surrender this lease or any portion thereof by written notice to Lessor describing the portion of the above tract that it elects to surrender or by returning to Lessor the lease with the endorsement of surrender thereon or recording the surrender of this lease on the margin of the record hereof, either of which shall be a full and legal surrender of this lease, in all of said tract or such portion thereof as said surrender shall indicate and a cancellation of all liabilities under same of each and all parties hereto, to the extent indicated on said surrender, and the acreage rental hereinbefore set forth shall be reduced in proportion to the acreage surrendered. No change in the ownership of the land or assignment of rentals or royalties shall be binding on the Lessee until after the Lessee has been furnished with a written transfer or assignment or a certified copy thereof.

12. All covenants and conditions between the parties hereto shall extend to their heirs, executors, successors and assigns and the Lessor hereby warrants and agrees to defend the title to the land herein described. Lessor further agrees that the Lessee shall have the right at any time to redeem for Lessor, or otherwise acquire by payment, any mortgage or any other liens upon the above described lands which in any manner affect the Lessee's interest therein in the event of default of payment by Lessor and be subrogated in full to all the rights of the holder thereof the same as if Lessee were the original owner of said mortgage or lien.

Any additions to the above agreement that are noted on the reverse side are a part of this lease and are agreed to by the below signed Lessor and the said Lessee.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

Signed and Acknowledged in the Presence of:

THE NORTH AMERICAN COAL CORPORATION

[signature] (Lessor)

[signature] Assistant Secretary   Vice President and Treasurer

NATIONAL PETROLEUM CORPORATION

[signature]
[signature]   By [signature]
[illegible] Vice President

See MTG. Vol-136-PAGE 665 - See Mortgage Vol. 137 Pg. 222 + F.S. #15017
See U.C.C. # 14891-

ASSIGNED Vol-55-P-433

1-17-74 [illegible] Vol 53 PAGE 667

STATE OF _____ } SS. In _____ day of _____ A.D. 19____
County of _____ } before me, a _____ to and for said County
personally appeared the said _____

who acknowledged that _____ did sign and seal the foregoing instrument and that it is _____ free act and deed.

WITNESS my hand and _____ seal, the day and year aforesaid.

_____ Notary Public. (Seal)

STATE OF OHIO } SS. Corporation
County of CUYAHOGA }

Before me, a Notary Public in and for said county and state, personally appeared R. S. Hawkotte and Walter K. Johnson

the Vice President and Assistant Secretary respectively of The North American Coal Corporation the above named corporation, who acknowledged to me that they did execute the foregoing instrument for and on behalf of said corporation, pursuant to authority so to do duly conferred on them by the Board of Directors of said corporation, and that the same is the free act and deed of said corporation and of themselves as such officers, for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Cleveland, Ohio

this 30th day of January 19 74

My Commission Expires: BRIAN, Notary Public
My Commission Expires October 22, 1975

Notary Public

STATE OF _____ } SS. Corporation
County of _____ }

Before me, a Notary Public in and for said county and state, personally appeared _____ and _____

the _____ President and _____ Secretary respectively of _____ the above named corporation, who acknowledged to me that they did execute the foregoing instrument for and on behalf of said corporation, pursuant to authority so to do duly conferred on them by the Board of Directors of said corporation, and that the same is the free act and deed of said corporation and of themselves as such officers, for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at _____

this _____ day of _____ 19____
My Commission Expires:

_____ Notary Public

This instrument prepared by National Petroleum Corporation, Columbus, Ohio.

It is the intent of this document to lease to Lessee all oil and gas mineral rights in Archer Township, Harrison County, Ohio, which rights are owned by Lessor at the date of execution of this lease, whether or not included on Exhibit A, attached hereto. It is understood by the parties hereto that the Lessor owns no surface rights on any of the described properties.

This lease is hereby cancelled and surrendered this _____ day of _____ 19____

Witness _____

VOL. 53 PAGE 668

No. _____ Acres _____

OIL, GAS AND STORAGE LEASE

To National Petroleum Corporation
P.O. Box 28228
Columbus, Ohio 43228

From 16392

By _____

Date _____ 19____

Term _____ Years

LOCATED

Rec'd for Record Feb 6 1974 at 1:15 P.M.
Recorded Feb 6 1974

Book 53 Page 667

Lesha C. Bethem
County Recorder
$4.03 ad.

Exhibit "A"

Archer Township, Harrison County

Tract No.	Acres	Grantor	Date	Vol.	Pg.	Pres. Surface Owner
1	19.98	Merle T Bolitho	9-13-43	113	167	M & L Tabacchi
2	128.98	"	"	"	"	"
3	50.00	"	8-18-43	"	96	"
4	26.28	"	"	"	"	"
5	19.64	"	"	"	"	"
6	158.42	"	"	"	97	D Green & H.Porter
7	99.85	"	"	"	"	J C & Helen Carson
8	77.00	"	"	"	"	D Green & H.Porter
9	15.00	"	"	"	"	"
10	60.00	Otway T. Dunlap	4-14.45	116	395	Nacco
11	13.32	Clarence C Fay	7-30-48	124	523	"
12	102.53	Laura E Freshwater	5-3-43	112	438	"
13	32.76	"	"	"	"	"
14	50.00	"	6-28-43	"	585	Geo Valesko
15	60.00	Ralph E Galbraith	8-24-44	115	168	"
16	71.80	Jesse S Ball	6-19-43	112	539	O H & H D Corban
17	27.28	"	"	"	"	Nacco
18	56.47	Ray V Strausbaugh	9-7-43	113	468	O H & H D Corban
19	0.50	"	"	"	"	
20	35.71	Cleve Hines	5-23-42	110	531	O H & H D Corban
21	22.46	Oakley A Hennis	10-14-43	113	480	Oakley A Hennis
22	20.39	B Frank Thompson	7-2-43	112	620	Nacco
23	34.54	Frank Wright	4-30-46	119	520	"
24	165.29	Robt J Montgomery	11-25-41	110	20	"
25	123.39	Junius Galbraith	12-31-41	110	51	"
26	86.43	J R Thompson etal	10-9-43	113	454	William Campbell
27	9.93	"	"	"	"	"
28	70.21	Cleve Hines	5-23-42	110	531	William Galbreath
29	107.18	"	"	"	"	Nacco
30	79.00	Frank Montgomery	7-6-42	"	629	"
31	5.19	J R Thompson etal	8-17-43	113	85	Jewett Sportsman
32	8.32	"	"	"	"	Farmers Club
33	96.70	"	"	"	"	"
34	15.00	John C Arbaugh	6-16-42	111	23	"
35	52.64	"	"	"	"	"
36	90.21	"	"	"	"	Clarence Sedoris
37	77.13	C F Thompson	"	"	134	Nacco
38	55.38	"	"	"	"	"
39	13.64	"	"	"	"	"
40	110.00	"	"	"	"	"
41	61.90	Jacob F Mattern	4-26-45	116	402	Frank E Dosson
42	8.96	Frank Montgomery	7-6-42	110	629	Nacco
43	4.56	"	"	"	"	"
44	33.96	J R Thompson	8-17-43	113	85	"
45	82.00	J M Thompson	8-6-43	111	136	"
46	19.03	Pgh. Con. Coal	4-30-48	123	504	Jay C Carson
47	50.00	"	"	"	"	"
48	67.75	"	"	"	"	"
49	65.00	John G Worley	7-21-44	115	50	"
50	27.25	"	"	"	"	Nacco
51	132.00	Pgh. Con. Coal	4-30-48	123	504	Edwin E Mills
52	55.99	Asbury Freshwater	"	"	147	Max Edwards
53	40.00	Pgh. Con. Coal	4-30-48	"	504	Nacco
54	36.18	"	"	"	"	"

3,033.12 Acres Total

VOL 53 PAGE 669

ASSIGNMENT OF OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, NATIONAL PETROLEUM CORPORATION, an Ohio corporation, with offices at 6161 Busch Blvd., Columbus, Ohio 43229, hereinafter called Assignor, for and in consideration of Ten ($10.00) Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over unto AMERICAN EXPLORATION COMPANY, with offices at 6660 North High Street, Worthington, Ohio 43085, hereinafter called Assignee, all of its right, title and interest, subject to the below described overriding royalty reservation, in and to the oil and gas lease, together with the rights incident thereto and personal property thereon, appurtenant thereto or used in connection therewith, all located in Harrison County, Archer Township, State of Ohio, and acquired by the original lessee, by lease from North American Coal Corporation, dated January 30, 1974, recorded in Volume 53, Page 667, of the Harrison County Records, covering 3,033.12 acres, more or less.

Assignor herein expressly excepts, reserves and retains title to an undivided one and one-half percent (1.5%) of all oil, gas and casinghead gas produced, saved, and marketed from the above described land under the provisions of the aforesaid lease, or any extension or renewal thereof, as an overriding royalty, free and clear of any cost and expense of the development and operation thereof, excepting taxes applicable to said interest and the production therefrom.

This assignment is made subject to all terms and conditions of the lease described above. This assignment is made without warranty of title.

IN WITNESS WHEREOF, this instrument is executed this 12th day of May, 1975.

Witnesses:

NATIONAL PETROLEUM CORPORATION

By

John C. Hawbaker, President

VOL 55 433

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

Be it remembered that on this 12th day of May, 1975, before me, the undersigned, a Notary Public, in and for said county and state, came John C. Hawbaker, President of National Petroleum Corporation, an Ohio corporation, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

Sarah L. Fudge, Notary Public
Franklin County, Ohio
My Commission Expires: 10/22/75

This instrument prepared by National Petroleum Corporation, Columbus, Ohio.

Return to: American Exploration Comapny
6660 North High Street
Worthington, Ohio 43085

18956 Rec M.E.

LABAN C. BLACKBURN
Harrison Co. Recorder
Received MAY 27 1975
at 9:55 o'clock A. M.
Recorded MAY 27 1975

$3.00
M.E. 50¢

-2-

3.50

68 p. 59-78

Assigned Lease Vol 74 pg 317

OIL AND GAS LEASE

Agreement: Made and entered into the 16th day of January 1984 by and between THE NORTH AMERICAN COAL CORPORATION, an Ohio Corporation

of 12800 Shaker Boulevard, Cleveland, Ohio 44120 hereinafter called lessor (whether one or more), and D. B. Beck

of 32 National Transit Building, Oil City, Pennsylvania 16301 hereinafter called lessee:

1. Witnesseth: That lessor, for and in consideration of Ten and More Dollars cash in hand paid, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased and let, and by these presents does grant, demise, lease and let unto lessee, exclusively, for the purposes of prospecting and exploring by geological and other methods, drilling, mining, operating for and producing oil and gas, and of laying pipelines, building and maintaining roadways and of building tanks, power stations and structures thereon to produce, treat, store, ship for and remove said production, all that certain tract of land shown in the Township of Archer County of Harrison State of Ohio described as follows, to wit:

See Exhibit "A", attached hereto and made a part hereof, for a description of the premises leased herein.

of Section ____, Township ____, Range ____, and containing 3,033.12 acres, more or less, and including all lands and interests therein, contiguous or appurtenant to said described land and owned or claimed by lessor, whether or not specifically described above.

2. It is agreed that this lease shall remain in force for a primary term of Five (5) years from this date and if lessee shall commence to drill within said primary term or any extension thereof, lessee shall have the right to continue drilling to completion with reasonable diligence; said term shall extend so long thereafter as oil and gas, or either of them is or can be produced by lessee from said land or from a communitized unit as hereinafter provided.

3. In consideration of the premises lessee covenants and agrees:

To deliver to the credit of lessor, free of cost, into tank reservoirs or into the pipe line to which lessee may connect wells on said land, the equal one-eighth (1/8) part of all oil produced and saved from the leased premises.

To pay lessor one-eighth (1/8) of the gross proceeds at the wellhead, payable quarterly, for the gas from each well where gas is found, while the same is being used off the premises, and if used in the manufacture of gasoline a royalty of one-eighth (1/8), payable monthly at the prevailing market rate for gas at the wellhead. Where such gas is not sold or used for a period of one year, and there is no producing gas or oil well on said land or on a communitized unit, as hereinafter provided, including said land, lessee may pay or tender to royalty the sum of One Dollar ($1.00) multiplied by the number of acres subject to the lease at the end of each such one year period, payable annually at the end of each such year during which gas is not sold or used, and while such royalty is so paid or tendered this lease shall be held as a producing property under the above paragraph setting forth the primary term hereof.

To pay lessor for gas produced from any oil well and used off the premises or in the manufacture of gasoline or any other product a royalty of one-eighth (1/8) of the proceeds, payable monthly at the prevailing market rate at the wellhead.

Lessor agrees to pay one-eighth (1/8) of any and all taxes levied or assessed upon the production of oil or gas from said land, and lessee is hereby authorized to pay such taxes and assessments on behalf of lessor and to deduct the amount so paid from any monies payable to lessor hereunder.

4. If no well be commenced on said land on or before the 31st day of January 1985, this lease shall terminate as to both parties, unless lessee shall on or before that date pay or tender to lessor or lessor's credit in the at the address above Bank or its successors, or to lessor's agent, which shall continue as the depository regardless of changes in ownership of said land, the sum of Three Thousand Thirty-Three and 12/100 dollars which shall operate as a rental and cover the privilege of deferring the commencement of a well for 12 months from said date. The payment herein referred to may be made in currency, draft, or check at the option of lessee and the depositing of such currency, draft or check in any postoffice, with sufficient postage and properly addressed to lessor, or said bank, on or before said last mentioned date, shall be deemed payment as herein provided. In like manner and upon like payments or tenders, the commencement of a well may be further deferred for like periods of the same number of months successively during the term of this lease. It is understood and agreed that the consideration first recited herein, the down payment, covers not only the privilege granted in the date which said first rental is payable as aforesaid, but also lessee's option of extending that period as aforesaid and any and all other rights conferred. Any payment or tender which is required or is customary in whole or in part to be paid, payments, or depositories shall be sufficient to extend the time within which operations for drilling may be commenced in the same manner as though a proper payment had been made provided, however, Lessee shall express such error within thirty (30) days after Lessee has received written notice thereof from Lessor.

5. If during the primary term of this lease and prior to the discovery of oil or gas, lessee shall drill a dry hole or holes on this land or land communitized therewith, or, if during the primary term of this lease production on this land or on land communitized therewith shall cease from any cause, this lease shall not terminate provided, within 12 months from the expiration of the last rental period for which rentals have been paid or before the next ensuing rental paying date, whichever occurs later in time, operations for the drilling of a well shall be commenced or lessee tenders the payment of rentals in the manner and amount hereinbefore provided.

6. If lessor owns a less interest in the above described land than the entire undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid to lessor only in the proportion which lessor's interest bears to the whole and undivided fee.

7. Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for lessee's operations thereon except water from the wells of lessor. When requested by lessor, lessee shall bury lessee's pipe line below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of lessor. Lessee shall pay for damages caused by lessee's operations to growing crops on said land. Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

8. For the purpose of oil and/or gas development and production under this lease, lessor does hereby grant to lessee the right to pool or communitize said premises, or any part thereof, with other land to constitute an oil and/or gas development unit of not more than approximately One Hundred Sixty (160) acres but lessee shall in no event be required to drill more than one well on said unit. Such unit may be created by lessee's recording in the Register Of Deeds Office within the county or counties in which said unit is situated, an instrument identifying the unit so created. If such oil or gas well shall not be drilled on the premises herein leased it shall nevertheless be deemed to be upon the leased premises within the meaning of all the covenants, expressed or implied, in this lease, and lessor shall participate in the one-eighth (1/8) royalty from such oil and/or gas development unit only in the proportion that the number of acres owned by lessor within the limitation of such development unit bears to the total number of acres included therein. At the option of lessee, a diagonal well spacing pattern may be followed.

9. Notwithstanding anything to the contrary herein contained or implied by law, all present and future rules and regulations of any governmental agency pertaining to well spacing, drilling or production units, use of material and equipment or otherwise shall be binding on the parties hereto with like effect as though incorporated herein in length.

10. If the estate of either party hereto is assigned — and the privilege of assigning in whole or in part is expressly allowed — the covenants hereof shall extend to their heirs, successors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be binding on lessee until 30 days after lessee has been furnished with a written transfer or assignment or a true copy thereof, and rentals shall be advanced in accordance with such change of ownership or assignment at the next succeeding rental anniversary after receipt by lessee of evidence satisfactory to lessee of such change of ownership or assignment. It is hereby agreed that in the event this lease shall be assigned as to a part or as to parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease insofar as to create a part or parts of said lands upon which the said lessee or any assignee thereof shall make the payments of said rentals.

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11. Whenever any well or wells on said lands shall be used by lessor for the injection of water brine or other fluids produced from lands other than said leased premises for disposal as a conservation measure, lessor shall pay to lessee the sum of One Hundred Dollars ($100.00) per year for each well so used in addition to all other considerations specified in this lease. The injection of water, brine, or other fluids into subsurface strata shall be made only into strata below those containing domestic fresh water and lessee agrees to protect adequately lessor's fresh water supply from injury as a result of any of its operations.

12. If the leased premises are now or shall hereafter be owned in severalty or in separate tracts, the premises, nevertheless, shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each separate owner bears to the entire leased acreage. Provided, however, if the leased premises consist of two or more non-abutting tracts, this paragraph shall apply separately to each non-abutting tract, and further provided that if a portion of the leased premises is hereafter consolidated with other lands for the purpose of operating the consolidated tract as one lease, this paragraph shall be inoperative as to such portion so consolidated. There shall be no obligation on the part of the lessee to offset wells on separate tracts into which the land covered by this lease may be hereafter divided by sale, devise, or otherwise, or to furnish separate measuring or receiving tanks.

13. Lessor hereby warrants and agrees to defend the title to said land to hereinbefore described and agrees that lessee shall have the right at any time to redeem for lessor, by payments, any mortgages, taxes or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof, and the undersigned lessors for themselves and their heirs, successors, and assigns, hereby surrender and release all rights of dower and homestead in the premises herein described, insofar as said right of dower and homestead may in any way affect the purposes for which this lease is made as recited herein.

14. Lessee may at any time surrender this lease as to all or any part of the lands covered thereby, by delivering or mailing a release thereof to lessor, if the lease is not recorded, or by placing a release thereof of record in the proper county, if the lease is recorded; and if surrendered only as to a part of said lands, any delay rentals or acreage payments which may thereafter be payable hereunder shall be reduced proportionately.

15. Lessee shall have the exclusive right to use any stratum or strata underlying the premises for the storage of gas or liquids and may, for such purpose, reopen and return to operation any and all abandoned wells on the premises and may drill new wells thereon for the purpose of injecting and storing gas or liquids in such stratum or strata and withdrawing such gas or liquids therefrom. If Lessee intends to use the premises for such purpose or determines that it is so using the premises, Lessee may deliver to Lessor or have recorded in the county or counties in which this lease is recorded a declaration that the premises are being used, or from a specified date will be used for gas or liquid storage, and thereafter Lessee shall have the exclusive right to use the premises for such gas or liquid storage until such time as Lessee may deliver to Lessor or have recorded in such county or counties a surrender of the right granted to Lessee by this paragraph or until Lessee shall intentionally abandon the right to use the premises for such storage. During the period or periods that Lessee shall utilize the premises for the storage of gas or liquids, the royalties herein provided to be paid to Lessor shall accrue and become payable only on such gas and liquids as shall have been taken from such premises by Lessee over and above the amount thereof which Lessee therefore shall have stored in such stratum or strata. For and during the period or periods that Lessee uses said premises for such storage, Lessee shall pay to Lessor a minimum royalty of One Dollar ($1.00) per acre per year on the number of acres covered by this lease, such payment to be made not later than sixty (60) days from and after the end of each twelve-month period during which the premises are utilized for storage. Lessee is expressly granted the right to use so much of the surface of the premises as is reasonably necessary in the exercise of the rights granted to Lessee by this paragraph. The rights granted to Lessee by this paragraph shall continue in force for the period of time hereinabove specified, but this lease, insofar as it grants to Lessee the right to prospect, explore and produce oil and gas from stratum or strata other than those employed in such storage, shall not be continued in force solely by the storage of oil or liquid as provided in this paragraph.

16. For additional terms and conditions see ADDENDUM, attached hereto and made a part hereof.

IN TESTIMONY WHEREOF WE SIGN. This the 26th day of January 1984

Signed and Acknowledged in the Presence of:

Robert E. Uhley
Andrew S. Good

THE NORTH AMERICAN COAL CORPORATION

BY: Otes Bennett, Jr., Chairman and Chief Executive Officer

BY: Thomas A. Koza, Secretary

C.E. Beck, Lessee

CORPORATION ACKNOWLEDGEMENT

STATE OF OHIO
COUNTY OF CUYAHOGA } ss.

Before me this 26th day of January 19 84 before me a Notary Public, the undersigned, personally appeared Otes Bennett, Jr. and Thomas A. Koza who acknowledged themselves to be the Chairman and Chief Executive Officer and Secretary of The North American Coal Corporation and that they as such officers being authorized to do so executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by themselves as Chairman and Chief Executive Officer and Secretary.

SHIRLEY PROCHNOW, NOTARY PUBLIC
My Commission Expires March 8, 1988

STATE OF PENNSYLVANIA } ss.
COUNTY OF VENANGO

ACKNOWLEDGMENT TO THE LEASE

On this 26th day of January A.D., 19 84 before me, the undersigned, a Notary Public in and for said county, in the State aforesaid, personally appeared C. E. Beck

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he had executed the same and desired the same to be his free act and deed.

S. JAMES HITCHCOCK, Notary Public
Oil City, Venango Co., Pa.
My Commission Expires October 24, 1985

Notary Public County.
Acting in County.

Prepared by C. E. Beck, 32 National Transit Building, Oil City, PA 16301

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Exhibit "A"

Attached to and made a part of that certain Oil and Gas Lease by and between THE NORTH AMERICAN COAL CORPORATION, Lessor, and C. E. BECK, Lessee, dated January 16, 1984, covering the following described lands, to wit:

Archer Township, Harrison County, State of Ohio

Tract No.	Acres	Grantor	Date	Vol.	Pg.	Pres. Surface Ow
1	19.98	Merle T Bolitho	9-13-43	113	167	M & L Tabacchi
2	128.98	"	"	"	"	"
3	50.00	"	9-18-43	"	96	"
4	26.28	"	"	"	"	"
5	19.64	"	"	"	97	D Green & H.For
6	158.42	"	"	"	"	J C & Helen Car
7	99.85	"	"	"	"	D Green & H.For
8	77.00	"	"	"	"	"
9	15.00	"	4-14.45	116	395	Nacco
10	60.00	Otway T. Dunlap	7-30-48	124	523	"
11	13.32	Clarence C Fay	5-3-43	112	438	"
12	102.53	Laura E Freshwater	"	"	"	"
13	32.76	"	6-28-43	"	585	Geo Valesko
14	50.00	"	8-24-44	115	168	"
15	60.00	Ralph E Galbraith	6-19-43	112	539	O H & H D Corb
16	71.80	Jesse S Hall	"	"	"	Nacco
17	27.28	"	9-7-43	113	468	O H & H D Corb
18	56.47	Ray V Strausbaugh	"	"	"	"
19	0.50	"	5-23-42	110	531	O H & H D Corb
20	35.71	Cleve Hines	10-14-43	113	480	Oakley A Henni
21	22.46	Oakley A Hennis	7-2-43	112	620	Nacco
22	20.39	B Frank Thompson	4-30-46	119	520	"
23	34.54	Frank Wright	11-25-41	110	20	"
24	165.29	Robt J Montgomery	12-31-41	110	51	"
25	123.39	Junius Galbraith	10-9-43	113	454	William Campbe
26	86.43	J R Thompson etal	"	"	"	"
27	9.93	"	5-23-42	110	531	William Galbre
28	70.21	Cleve Hines	"	"	"	Nacco
29	107.18	"	7-6-42	"	629	"
30	79.00	Frank Montgomery	8-17-43	113	85	Jewett Sports
31	5.19	J R Thompson etal	"	"	"	Farmers Club
32	8.32	"	"	"	"	"
33	95.70	"	6-16-42	111	23	"
34	15.00	John C Arbaugh	"	"	"	"
35	52.64	"	"	"	"	Clarence Sedo
36	90.21	"	"	"	134	Nacco
37	77.13	C F Thompson	"	"	"	"
38	55.38	"	"	"	"	"
39	13.64	"	"	"	"	"
40	110.00	"	4-26-45	116	402	Frank E Dosso
41	61.90	Jacob F Mattern	7-6-42	110	629	Nacco
42	6.96	Frank Montgomery	"	"	"	"
43	4.56	"	8-17-43	113	85	"
44	33.95	J R Thompson	8-6-43	111	136	"
45	82.00	J M Thompson	4-30-48	123	504	Jay C Carson
46	18.03	Pgh. Con. Coal	"	"	"	"
47	50.00	"	"	"	"	"
48	67.75	"	7-21-44	115	50	"
49	65.00	John G Worley	"	"	"	Nacco
50	27.25	"	4-30-48	123	504	Edwin E Hills
51	132.00	Pgh. Con. Coal	"	"	147	Max Edwards
52	55.99	Asbury Freshwater	4-30-48	"	504	Nacco
53	40.00	Pgh. Con. Coal	"	"	"	"
54	36.18	"				

3,033.12 Acres Total

signed for identification this 16th day of January, 1984:

THE NORTH AMERICAN COAL CORPORATION

BY: Otes Bennett, Jr., Chairman and Chief Executive Officer

ATT: Thomas A. Kozs, Secretary

C. E. Beck, Lessee

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ADDENDUM

Attached to and made a part of that certain Oil and Gas Lease by and between THE NORTH AMERICAN COAL CORPORATION, Lessor, and C. E. Beck, Lessee, dated January 16, 1984, and effective January 31, 1984, covering lands situate in Archer Township, Harrison County, State of Ohio.

16. Notwithstanding any other provision of this lease to the contrary, each gas well or drilling well will excuse the payment of delay rentals only as to the 160 acres allocated to each such gas well or drilling well, and 40 acres to each oil well, and rentals must be paid on the remaining acreage covered hereby in order that Lessee's rights hereunder continue in effect as to such remaining acreage. Production of oil or gas on a portion of the leased premises or lands unitized therewith will extend this lease beyond its primary term only as to such portions of the leased premises as may be included in a producing unit or units, provided, however, this lease shall not terminate if actual drilling operations are being conducted on the leased premises or lands unitized therewith, and such operations shall continue to maintain this lease in force and effect beyond its primary term so long as actual drilling operations are being conducted with no cessation of more than ninety (90) consecutive days from the completion of one well and the commencement of drilling of another well.

17. Location of drillsites shall be determined by the mutual consent of the parties hereto; however, such consent shall not be unreasonably withheld by Lessor.

~~18. It is the intent of this document to lease to Lessee all oil and gas mineral rights in Archer Township, Harrison County, Ohio, which rights are owned by Lessor at the date of execution of this lease, whether or not included on Exhibit "A", attached hereto and made a part hereof. It is understood by the parties hereto that the Lessor owns no surface rights on any of the described premises.~~

18. Notwithstanding any other provision of this lease to the contrary, it is specifically understood and agreed by Lessee that Lessor owns no surface rights on any of the above described properties and that Lessor grants to Lessee all of the foregoing rights and privileges only to the extent that Lessor owns and has the right to grant the same.

19. Lessee warrants that it will comply with any and all restrictions, servitudes and other encumbrances of record applicable to the oil and gas hereby leased.

Lessee further warrants that it will indemnify and hold harmless Lessor, its past and present directors, officers, employees, agents, affiliates, successors and assigns from and against any and all claims, demands, actions, causes of action, suits, liability, loss or damage, including the expense of defending the same, arising from or in any way relating to Lessee's failure to comply with any and all such restrictions, servitudes and encumbrances.

Signed for identification this 16th day of January, 1984:

THE NORTH AMERICAN COAL CORPORATION

BY: Otan Bennett, Jr., Chairman and Chief Executive Officer

BY: Thomas A. Kozu, Secretary

C. E. Beck, Lessee

37388

LABAN C. BLACKBURN
Harrison Co. Recorder
Received FEB 6 1984
at 10:45 o'clock A.M.
Recorded FEB 6 1984

$14.00 PA

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ASSIGNMENT OF OIL AND GAS LEASES

33792

LABAN C. BLACKBURN
Harrison Co. Recorder
Received MAY 30 1985
at 10:50 o'Clock A M
Recorded MAY 30 1985

KNOW ALL MEN BY THESE PRESENTS:

THAT THE UNDERSIGNED,

C. E. BECK
32 National Transit Building
Oil City, Pennsylvania 16301

(hereinafter called Assignor), for and in consideration of One Dollar ($1.00), the receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over unto

CARLESS RESOURCES, INC.
1002 McFarland Boulevard
North Port, Alabama 35476

(hereinafter called Assignee), all his interest in and to the Oil and Gas Leases located in

Harrison County, Ohio,

identified and described in Exhibit "A" attached hereto and made a part hereof, together with the rights incident thereto and the personal property thereon, appurtenant thereto, or used or obtained in connection therewith.

AND FOR THE SAME CONSIDERATION, the Assignor covenants with the Assignee, its heirs or assigns: That the Assignor is the lawful owner of and has good title to the interests above assigned in and to said leases, estates, rights and property, free and clear from all liens, encumbrances or adverse claims; that said leases are valid and subsisting leases on the lands therein described and all rentals and royalties thereunder have been paid and all conditions necessary to keep the same in full force have been duly performed. This assignment is made without warranty of title, except as to liens, charges and encumbrances caused, suffered or created by, through or under Assignor.

EXECUTED THIS 11th day of April, 1985.

WITNESSES:

M. J. Hitchcock

Gayle H. Smith

C.E. Beck

M.S. Beck

ACKNOWLEDGMENT

STATE OF PENNSYLVANIA)
COUNTY OF VENANGO)

I, the undersigned Notary Public, in and for said County, in the State aforesaid do hereby certify that C.E. Beck and M.S. Beck, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, and desired the same to be recorded as such.

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Given under my hand and seal this 11th day of April, 1985.

My commission expires:

M. JAMES HITCHCOCK, Notary Public
Oil City, Venango Co., Pa.
My Commission Expires October 24, 1985

LEASE SCHEDULE

EXHIBIT "A" PAGE ONE OF TWO STATE OF OHIO COUNTY OF HARRISON

LEASE NO.	LESSOR	LESSEE	DATE	DESCRIPTION	RECORDED BOOK	RECORDED PAGE
445-A	Carl Schaney and Theresa Schaney, husband and wife	Electro-Seise Inc.	10-28-78	An approximate 386 acre tract located in Green Township, Harrison County, Ohio, as further described in the lease.	60	36
445-B	Martin Schaney and Corrine Schaney, husband and wife	"	10-28-78	An approximate 386 acre tract located in Green Township, Harrison County, Ohio, as further described in the lease.	60	28
445-C	Melvin Schaney and Nellie Schaney	"	10-28-78	An approximate 386 acre tract located in Green Township, Harrison County, Ohio, as further described in the lease.	60	30
445-D	Charlene Schaney, unmarried	"	10-28-78	An approximate 386 acre tract located in Green Township, Harrison County, Ohio, as further described in the lease.	60	32
445-E	Frances Cunningham and Samuel D. Cunningham, husband and wife	"	10-28-78	An approximate 386 acre tract located in Green Township, Harrison County, Ohio, as further described in the lease.	60	34
450	Henderson L. Adams, and Gladys Adams, husband and wife and Pauline A. Hargrave, a widow and Robert C. Hargrave and Susan G. Hargrave, husband and wife	"	11-21-78	An approximate 81.923 acre tract located in Green Township, Harrison County, Ohio, as further described in the lease.	59	473
454	Zelma Kentqri	"	2-23-79	An approximate 70 acre tract located in Green Township, Harrison County, Ohio, as further described in the lease.	60	140
010047	Hugh Garvin and Jane H. Garvin, husband and wife	C. E. Beck	3-25-83	An approximate 127 acre tract located in Green and Archer Townships, Harrison County, Ohio, as further described in the lease.	68	109
486	Kathleen Birney, single and Kenneth E. Birney and Dawn Birney, his wife, and Clarence V. Birney and Roberta Birney, his wife	"	3-26-83	An approximate 121.14 acre tract located in Green Township, Harrison County, Ohio, as further described in the lease.	68	107

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LEASE SCHEDULE

EXHIBIT "A" PAGE TWO OF TWO STATE OF OHIO COUNTY OF HARRISON

LEASE NO.	LESSOR	LESSEE	DATE	DESCRIPTION	RECORDED BOOK	RECORDED PAGE
010455	Veronica V. Cargo and Douglas B. Cargo, her husband	C. E. Beck	8-26-83	An approximate 177.64 acre tract located in Archer Township, Harrison County, Ohio, as further described in the lease.	68	378
010453	George E. Valesko and Linda Valesko, his wife	"	9-9-83	An approximate 68.85 acre tract located in Archer Township, Harrison County, Ohio, as further described in the lease.	68	428
010451-A	John H. Eagle, single	"	9-20-83	An approximate 161.203 acre tract located in Green Township, Harrison County, Ohio, as further described in the Lease.	68	447
010451-B	Robert C. Keene and Lois Ann Miller Keene, his wife	"	9-20-83	An approximate 161.203 acre tract located in Green Township, Harrison County, Ohio, as further described in the Lease.	68	451
010451-C	Catharin R. Johnson and C. Harold Johnson, her husband	"	9-20-83	An approximate 161.203 acre tract located in Green Township, Harrison County, Ohio, as further described in the lease.	68	449
140001	The North American Coal Corp. an Ohio Corporation	"	1-16-84	An approximate 3,033.12 acre tract located in Archer Township, Harrison County, Ohio, as further described in the lease.	68	597

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FORM 148 2-71

CERTIFICATE OF AMENDMENT OF
AMENDED ARTICLES OF INCORPORATION OF
THE NORTH AMERICAN COAL CORPORATION

The undersigned, being the duly elected Vice President and Assistant Secretary, respectively, of The North American Coal Corporation, an Ohio corporation (the "Corporation"), do hereby certify that the following resolution amending the Amended Articles of Incorporation was duly adopted and approved by the sole shareholder on June 28th, 1988 pursuant to Section 1701.54 of the Ohio Revised Code:

WHEREAS, the Board of Directors of the Corporation has heretofore approved the amendment of the Corporation's Amended Articles of Incorporation to change Article I thereof so that, as amended, said Article I shall be and read as set forth below:

I. The name of the corporation (the "Corporation") shall be Bellaire Corporation.

NOW, THEREFORE, BE IT RESOLVED, that the foregoing amendment be, and it hereby is consented to, adopted and approved.

IN WITNESS WHEREOF, we have hereunto set our respective hands this 28th day of June, 1988.

THE NORTH AMERICAN COAL CORPORATION

By Thomas A. Koza
Thomas A. Koza
Vice President

By Daniel G. Mitchell
Daniel G. Mitchell
Assistant Secretary

Instrument Book Page
200800002641 OR 172 1135

HARRISON COUNTY ENGINEER
TRANSFER NOT NECESSARY
DATE 12-16-08 INT DZ

200800002641 CAPS
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER
12-16-2008 AT 12:16 pm.
QUIT CLAIM 28.00
OR Book 172 Page 1135 - 1139

HARRISON COUNTY AUDITOR
PATRICK J. MOORE
REAL ESTATE TRANSFER BY D.G.
CONV.FEE _____ EX ✓
TRAN.FEE 24.00 DATE 12-16-08

200800002641
BELLAIRE CORP
361 HWY 7 NORTH
FORKTON PT OH 43963

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, BELLAIRE CORPORATION, an Ohio corporation formerly known as The North American Coal Corporation ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby REMISE, RELEASE AND QUITCLAIM to NORTH AMERICAN COAL ROYALTY COMPANY, a Delaware corporation ("Grantee"), all of Grantor's right, title and interest in and to oil, gas (including coalbed methane gas, coalbed gas, coalseam gas and gob gas) and other minerals in, under and that may be produced from lands in Archer Township, Harrison County, Ohio, including, without limitation, the lands listed on Exhibit A, which is attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the Grantor has caused this deed to be executed by its duly authorized officer on this 24th day of November, 2008.

ATTEST

Controller

BELLAIRE CORPORATION

By: Thomas A. Koza
Thomas A. Koza, its Vice-President – Law and Administration, and Secretary

ACKNOWLEDGEMENT

STATE OF TEXAS)
) ss:
COUNTY OF DALLAS)

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared Thomas A. Koza, known to me (or satisfactorily proven) to be the person and officer whose name is subscribed to the within instrument and acknowledged that the same was the act of said Bellaire Corporation and that he executed the same for the purposes therein expressed and in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 24th day of November, 2008.

BELINDA COLEMAN
Notary Public, State of Texas
My Commission Expires
November 22, 2009

Belinda Coleman
Notary Public

CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the Grantee herein is 2000 Schafer Street, Suite D, Bismarck, North Dakota 58501-1204.

For Grantee

Exhibit A

Archer Township, Harrison County, State of Ohio

Tract No.	Mineral Acres	Vol.	Pg.	Parcel ID	Surface Acres	S	T	R	QTR.
1	19.98	113	167	01-0000244000	19.98	17	11	5	SE
2	29.27	113	167	01-0000269000	29.27	16	11	5	NE
	99.71	113	167	01-0000252000	part of 217.36	16	11	5	NE
3	50.00	113	96	01-0000252000	part of 217.36	16	11	5	SE
4	26.28	113	96	01-0000252000	part of 217.36	16	11	5	SE
5	19.64	113	96	01-0000252000	part of 217.36	16	11	5	SE
6	151.94	113	97	01-0000233000	151.944	10	11	5	NW
	6.48	113	97	0-0000253000	6.476	10	11	5	NW
7	99.85	113	97	01-0000152000	99.85	10	11	5	NE
8	77.00	113	97	01-0000234000	part of 99.00	10	11	5	SW
9	15.00	113	97	01-0000234000	part of 99.00	10	11	5	SW
10	60.00	116	395	01-0000645000	part of 128.90	33	10	4	SW
11	13.32	124	523	01-0000632000	part of 136.42	34	10	4	NW
12	102.53	112	438	01-0000614000	part of 435.056	3	11	5	NW
13	19.07	112	438	01-0000609000	part of 435.056	3	11	5	NW
	13.69	112	438	01-0000609000	part of 329.76	9	11	5	NE
14	39.60	112	585	01-0000022000	part of 99.60	33	10	4	SW
	10.40	112	585	01-0000020000	part of 78.04	32	10	4	NW
15	60.00	115	168	01-0000022000	part of 99.60	33	10	4	SW
16	71.80	112	539	01-0000101000	71.80	10	11	5	SE
17	27.28	112	539	01-0000609000	part of 329.49	9	11	5	NE
18	56.47	113	468	01-0000102000	part of 56.97	10	11	5	SE
19	0.50	113	468	01-0000102000	part of 56.97	10	11	5	SE
20	35.71	110	531	01-0000100000	35.71	10	11	5	SE
21	22.46	113	480	01-0000180000	part of 31.46	10	11	5	NE
22	20.39	112	620	01-0000625000	part of 65.31	10	11	5	SW
23	34.54	119	520	01-0000625000	part of 65.31	10	11	5	SW
24	165.29	110	20	01-0000609000	part of 329.49	9	11	5	NW
25	123.39	110	51	01-0000609000	part of 329.49	9	11	5	NE
26	5.57	113	454	01-0000263000	5.57	10	11	5	NE
	51.69	113	454	01-0000584000	51.69	4	11	5	NW
	3.39	113	454	01-0000513000	3.392	4	11	5	NW
	25.78	113	454	01-0000497000	part of 31.088	4	11	5	NW
27	9.93	113	454	01-0000497000	part of 31.088	4	11	5	NW
28	70.21	110	531	01-0000143000	70.21	4	11	5	NW
29	107.18	110	531	01-0000611000	part of 135.64	4	11	5	SW
30	34.54	110	629	01-0000611000	part of 135.64	4	11	5	SW
	44.46	110	629	01-0000614000	part of 435.056	3	11	5	NW
31	5.19	113	85	01-0000171000	part of 187.72	4	11	5	SW
32	8.32	113	85	01-0000171000	part of 187.72	4	11	5	SE
33	96.70	113	85	01-0000171000	part of 187.72	4	11	5	SE
34	15.00	111	23	01-0000171000	part of 187.72	4	11	5	SE
35	52.64	111	23	01-0000171000	part of 187.72	4	11	5	SE
36	59.66	111	23	01-0000265000	59.66	4	11	5	NE
	10.37	111	23	01-0000265001	10.37	4	11	5	NE
	20.18	111	23	01-0000265002	20.18	4	11	5	NE
37	77.13	111	134	01-0000614000	part of 435.056	3	11	5	SE
38	55.38	111	134	01-0000614000	part of 435.056	3	11	5	NE
39	13.64	111	134	01-0000614000	part of 435.056	3	11	5	NE
40	68.90	111	134	01-0000645000	part of 128.90	33	10	4	NW
	41.10	111	134	01-0000632000	part of 136.42	34	10	4	SW
41	51.03	116	402	01-0000247000	51.03	3	11	5	SE
	7.50	116	402	01-0000247001	7.5	3	11	5	SE
	2.37	116	402	01-0000229000	part of 42.67	2	11	5	NE
	1.00	116	402	01-0000246000	1.00	2	11	5	NE
42	8.96	110	629	01-0000614000	part of 435.056	3	11	5	NE
43	4.56	110	629	01-0000614000	part of 435.056	3	11	5	NW
44	33.96	113	85	01-0000614000	part of 435.056	3	11	5	NE
45	82.00	111	136	01-0000632000	part of 136.42	34	10	4	SW
46	19.03	123	504	01-0000042000	part of 409.589	2	11	5	NW
47	50.00	123	504	01-0000147000	50.00	2	11	5	NW
48	67.75	123	504	01-0000150000	part of 132.75	8	11	5	NE
49	65.00	115	50	01-0000150000	part of 132.75	8	11	5	NE
50	27.25	115	50	01-0000632000	27.25	8	11	5	NE
51	124.37	123	504	01-0000510000	part of 126.94	8	11	5	NW
	3.17	123	504	01-0000510001	3.17	8	11	5	NW
	1.92	123	504	01-0000501000	1.92	8	11	5	NW
	0.92	123	504	01-0000502000	.918	8	11	5	NW
	0.90	123	504	01-0000500000	.897	8	11	5	NW
	0.72	123	504	01-0000485000	.715	8	11	5	NW
52	25.10	123	147	01-0000542000	part of 26.0259	8	11	5	SW
	22.22	123	147	01-0000542001	2.2198	8	11	5	SW
	2.14	123	147	01-0000542002	2.141	8	11	5	SW
	1.09	123	147	01-0000528001	1.093	8	11	5	SW
	13.91	123	147	01-0000528000	13.907	8	11	5	SW
	11.53	123	147	01-0000543000	11.533	8	11	5	SW
53	40.00	123	504	01-0000621000	part of 76.18	8	11	5	SE
54	36.18	123	504	01-0000621000	part of 76.18	8	11	5	SE

3033.13 Acres Total

OIL & GAS LEASE

Lease No. _____

4/08 - PA

This Lease made this 28th day of January, 2009, by and between **NORTH AMERICAN COAL ROYALTY COMPANY**, hereinafter called "Lessor", with offices at 361 Highway 7 North, Powhatan Point, Ohio 43942-1033, and the **MOUNTAINEER NATURAL GAS COMPANY**, maintaining a mailing address of P.O. Box 4001, Morgantown, West Virginia 26505, hereinafter called "Lessee".

WITNESSETH, that for and in consideration of the premises, and of the mutual covenants and agreements hereinafter set forth, the Lessor and Lessee agree as follows:

LEASING CLAUSE. Lessor hereby leases exclusively to Lessee all the oil and gas (not including coal seam gas, coalbed methane gas, coalbed gas, methane gas, gob gas, occluded methane/natural gas and all associated natural gas and other hydrocarbons and non-hydrocarbons contained in, associated with, emitting from, or produced/originating within any formation, gob area, mined-out area, coal seam, and all communicating zones), and their liquid or gaseous constituents, whether hydrocarbon or non-hydrocarbon, underlying the land herein leased, together with such exclusive rights as may be necessary or convenient for Lessee, at its election, to explore for, develop, produce, measure, and market production from the Leasehold, and from adjoining lands, using methods and techniques which are not restricted to current technology, including the right to conduct geophysical and other exploratory tests; to drill, maintain, operate, cease to operate, plug, abandon, and remove wells; to use or install roads, electric power and telephone facilities, and to construct pipelines with appurtenant facilities, including data acquisition, compression and collection facilities for use in the production and transportation of products from the Leasehold or from neighboring lands across the Leasehold, to use non-domestic water sources, free of cost, to store gas of any kind underground, regardless of the source thereof, including the injecting of gas therein and removing the same therefrom; to protect stored gas; to operate, maintain, repair, and remove material and equipment.

DESCRIPTION. The Leasehold is located in the Township of Archer, in the County of Harrison, in the State of Ohio, and described on Exhibit "A" attached hereto and made a part hereof, consisting of a total of 3,033.12 acres, whether actually more or less, and including contiguous lands owned by Lessor. This Lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor, by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land.

LEASE TERM. This Lease shall remain in force for a primary term of Five (5) years from 12:00 A.M. January 28, 2009 (effective date) to 11:59 P.M. January 27, 2014 (last day of primary term) and shall continue beyond the primary term as to the entirety of the Leasehold if any of the following is satisfied: (i) operations are conducted on the Leasehold or lands pooled/unitized therewith in search of oil, gas, or their constituents, or (ii) a well deemed by Lessee to be capable of production is located on the Leasehold or lands pooled/unitized therewith, or (iii) oil or gas, or their constituents, are produced from the Leasehold or lands pooled/unitized therewith, or (iv) if the Leasehold or lands pooled/unitized therewith is used for the underground storage of gas, or for the protection of stored gas, or (v) if prescribed payments are made, or (vi) if Lessee's operations are delayed, postponed or interrupted as a result of any coal, stone or other mining or mining related operation under any existing and effective lease, permit or authorization covering such operations on the leased premises or on other lands affecting the leased premises, such delay will automatically extend the primary or secondary term of this oil and gas lease without additional compensation or performance by Lessee for a period of time equal to any such delay, postponement or interruption. If there is any dispute concerning the extension of this Lease beyond the primary term by reason of any of the alternative mechanisms specified herein, the payment to the Lessor of the prescribed payments provided below shall be conclusive evidence that the Lease has been extended beyond the primary term.

EXTENSION OF PRIMARY TERM. Lessee has the option to extend the primary term of this Lease for one additional term of five (5) years from the expiration of the primary term of

this Lease; said extension to be under the same terms and conditions as contained in this Lease. Lessee may exercise this option to extend this Lease if on or before the expiration date of the primary term of this Lease, Lessee pays or tenders to the Lessor or to the Lessor's credit an amount equal to the initial consideration given for the execution hereof. Exercise of this option is at Lessee's sole discretion and may be invoked by Lessee where no other alternative of the Lease Term clause extends this Lease beyond the primary term.

NO AUTOMATIC TERMINATION OR FORFEITURE.

(A) CONSTRUCTION OF LEASE: The language of this Lease (including, but not limited to, the Lease Term and Extension of Term clauses) shall never be read as language of special limitation. This Lease shall be construed against termination, forfeiture, cancellation or expiration and in favor of giving effect to the continuation of this Lease where the circumstances exist to maintain this Lease in effect under any of the alternative mechanisms set forth above. In connection therewith, (i) a well shall be deemed to be capable of production if it has the capacity to produce a profit over operating costs, without regard to any capital costs to drill or equip the well, or to deliver the oil or gas to market, and (ii) the Lessee shall be deemed to be conducting operations in search of oil or gas, or their constituents, if the Lessee is engaged in geophysical and other exploratory work including, but not limited to, activities to drill an initial well, to drill a new well, or to rework, stimulate, deepen, sidetrack, frac, plug back in the same or different formation or repair a well or equipment on the Leasehold or any lands pooled/unitized therewith (such activities shall include, but not be limited to, performing any preliminary or preparatory work necessary for drilling, conducting internal technical analysis to initiate and/or further develop a well, obtaining permits and approvals associated therewith and may include reasonable gaps in activities provided that there is a continuum of activities showing a good faith effort to develop a well or that the cessation or interruption of activities was beyond the control of Lessee, including interruptions caused by the acts of third parties over whom Lessee has no control or regulatory delays associated with any approval process required for conducting such activities).

(B) LIMITATION OF FORFEITURE: This Lease shall never be subject to a civil action or proceeding to enforce a claim of termination, cancellation, expiration or forfeiture due to any action or inaction by the Lessee, including, but not limited to making any prescribed payments authorized under the terms of this Lease, unless the Lessee has received written notice of Lessor's demand and thereafter fails or refuses to satisfy or provide justification responding to Lessor's demand within 60 days from the receipt of such notice. If Lessee timely responds to Lessor's demand, but in good faith disagrees with Lessor's position and sets forth the reasons therefore, such a response shall be deemed to satisfy this provision, this Lease shall continue in full force and effect and no further damages (or other claims for relief) will accrue in Lessor's favor during the pendency of the dispute, other than claims for payments that may be due under the terms of this Lease.

PAYMENTS TO LESSOR. In addition to the bonus paid by Lessee for the execution hereof, Lessee covenants to pay Lessor, proportionate to Lessor's percentage of ownership, as follows:

(A) DELAY RENTAL: On or before the first anniversary of this Lease and on each anniversary thereafter until Lessor receives Royalty under this Lease, Lessee shall pay Lessor as Delay Rental the sum of Five Dollars ($5.00) per net acre payable in advance.

(B) ROYALTY: To pay Lessor as Royalty, less all taxes, assessments, and adjustments on production from the Leasehold, as follows:

1. OIL: To deliver to the credit of Lessor, free of cost, a Royalty equal to one-eighth part of all oil and any constituents thereof produced and marketed from the Leasehold.

2. GAS: To pay Lessor an amount equal to one-eighth part of the gas produced, saved and marketed from each and every well drilled on the Property, with said royalty equal to one-eighth part to be valued at the price received by Lessee at the wellhead at the time of production, for said gas in its natural state after deducting from such proceeds, severance, ad valorem and other applicable taxes. Lessee may withhold Royalty payment until such time as the total withheld exceeds fifty dollars ($50.00).

(C) DELAY IN MARKETING: In the event that Lessee drills a well on the Leasehold or lands pooled/unitized therewith that Lessee deems to be capable of production, but does not market producible gas, oil, or their constituents therefrom and there is no other basis for extending this Lease, Lessee shall pay until such time as marketing is established (or Lessee surrenders the Lease) a Delay in Marketing payment equal in amount and frequency to the annual Delay Rental payment, and this Lease shall remain in full force and effect to the same extent as payment of Royalty.

(D) SHUT-IN: In the event that production of oil, gas, or their constituents is interrupted and not marketed for a period of twelve months, and there is no producing well on the Leasehold or lands pooled/unitized therewith, Lessee shall thereafter, as Royalty for constructive production, pay a Shut-in Royalty equal in amount and frequency to the annual Delay Rental payment until such time as production is re-established (or lessee surrenders the Lease) and this Lease shall remain in full force and effect. During Shut-in, Lessee shall have the right to rework, stimulate, or deepen any well on the Leasehold or to drill a new well on the Leasehold in an effort to re-establish production, whether from an original producing formation or from a different formation. In the event that the production from the only producing well on the Leasehold is interrupted for a period of less than twelve months, this Lease shall remain in full force and effect without payment of Royalty or Shut-in Royalty.

(E) DAMAGES: Lessee will remove unnecessary equipment and materials and reclaim all disturbed lands at the completion of activities, and Lessee agrees to repair any damaged improvements to the land and pay for the loss of growing crops or marketable timber.

(F) MANNER OF PAYMENT: Lessee shall make or tender all payments due hereunder by check, payable to Lessor, at the following address:

North American Coal Royalty Company
Signature Place II
14785 Preston Road, Suite 1100
Dallas, Texas 75254-7891
Attention: Accounting Department

With a copy to:

North American Coal Royalty Company
361 Highway 7 North
Powhatan Point, Ohio 43942-1033
Attention: Manager

Payment may be tendered by mail or any comparable method (e.g., Federal Express), and payment is deemed complete upon mailing or dispatch.

(G) CHANGE IN LAND OWNERSHIP: Lessee shall not be bound by any change in the ownership of the Leasehold until furnished with such documentation as Lessee may reasonably require. Pending the receipt of documentation, Lessee may elect either to continue to make or withhold payments as if such a change had not occurred.

(H) TITLE: If Lessee receives evidence that Lessor does not have title to all or any part of the rights herein leased, Lessee may immediately withhold payments that would be otherwise due and payable hereunder to Lessor until the adverse claim is fully resolved.

(I) LIENS: Lessee may at its option pay and discharge any past due taxes, mortgages, judgments, or other liens and encumbrances on or against any land or interest included in the Leasehold; and Lessee shall be entitled to recover from the debtor, with legal interest and costs, by deduction from any future payments to Lessor or by any other lawful means.

(J) CHARACTERIZATION OF PAYMENTS: Payments set forth herein are covenants, not special limitations, regardless of the manner in which these payments may be invoked. Any failure on the part of the Lessee to timely or otherwise properly tender payment can never result

in an automatic termination, expiration, cancellation, or forfeiture of this Lease. Lessor recognizes and acknowledges that oil and gas lease payments, in the form of rental, bonus and royalty, can vary depending on multiple factors and that this Lease is the product of good faith negotiations. Lessor hereby agrees that the payment terms, as set forth herein, and any bonus payments paid to Lessor constitute full consideration for the Leasehold. Lessor further agrees that such payment terms and bonus payments are final and that Lessor will not seek to amend or modify the lease payments, or seek additional consideration based upon any differing terms which Lessee has or will negotiate with any other lessor/oil and gas owner.

(K) PAYMENT REDUCTIONS: If Lessor owns a lesser interest in the oil or gas than the entire undivided fee simple estate, then the rentals (except for Delay Rental payments as set forth above), royalties and shut-in royalties hereunder shall be paid to Lessor only in the proportion which Lessor's interest bears to the whole and undivided fee.

UNITIZATION AND POOLING. Lessor grants Lessee the right to pool, unitize, or combine all or parts of the Leasehold with other lands, whether contiguous or not contiguous, leased or unleased, whether owned by Lessee or by others, at a time before or after drilling to create drilling or production units either by contract right or pursuant to governmental authorization. Pooling or unitizing in one or more instances shall not exhaust Lessee's pooling and unitizing rights hereunder, and Lessee is granted the right to change the size, shape, and conditions of operation or payment of any unit created. Lessor agrees to accept and receive out of the production or the revenue realized from the production of such unit, such proportional share of the Royalty from each unit well as the number of Leasehold acres included in the unit bears to the total number of acres in the unit. Otherwise, as to any part of the unit, drilling, operations in preparation for drilling, production, or shut-in production from the unit, or payment of Royalty, Shut-in Royalty, Delay in Marketing payment or Delay Rental attributable to any part of the unit (including non-Leasehold land) shall have the same effect upon the terms of this Lease as if a well were located on, or the subject activity attributable to, the Leasehold. In the event of conflict or inconsistency between the Leasehold acres ascribed to the Lease and the local property tax assessment calculation of the lands covered by the Lease, Lessee may, at its option, rely on the latter as being determinative for the purposes of this paragraph.

FACILITIES. Lessee shall not drill a well within 200 feet of any structure located on the Leasehold without Lessor's written consent. Lessor shall not erect any building or structure, or plant any trees within 200 feet of a well or within 25 feet of a pipeline without Lessee's written consent. Lessor shall not improve, modify, degrade, or restrict roads and facilities built by Lessee without Lessee's written consent.

TITLE AND INTERESTS. Lessor covenants that Lessee shall have quiet enjoyment hereunder and shall have benefit of the doctrine of after acquired title. Should any person having title to the Leasehold fail to execute this Lease, the Lease shall nevertheless be binding upon all persons who do execute it as Lessor.

LEASE DEVELOPMENT. There is no implied covenant to drill, prevent drainage, further develop or market production within the primary term or any extension of term of this Lease. There shall be no Leasehold forfeiture, termination, expiration or cancellation for failure to comply with said implied covenants. Provisions herein, including, but not limited to the prescribed payments, constitute full compensation for the privileges herein granted.

COVENANTS. This Lease and its expressed or implied covenants shall not be subject to termination, forfeiture of rights, or damages due to failure to comply with obligations if compliance is effectively prevented by federal, state, or local law, regulation, or decree, or the acts God and/or third parties over whom Lessee has no control.

ARBITRATION. In the event of a disagreement between Lessor and Lessee concerning this Lease, performance thereunder, or damages caused by Lessee's operations, the resolution of all such disputes shall be determined by arbitration in accordance with the rules of the American Arbitration Association. All fees and costs associated with the arbitration shall be borne equally by Lessor and Lessee.

ENTIRE CONTRACT. The entire agreement between Lessor and Lessee is embodied

herein. No oral warranties, representations, or promises have been made or relied upon by either party as an inducement to or modification of this Lease.

SURRENDER. Lessee, at any time, and from time to time, may surrender and cancel this Lease as to all or any part of the Leasehold by recording a Surrender of Lease and thereupon this Lease, and the rights and obligations of the parties hereunder, shall terminate as to the part so surrendered.

SUCCESSORS. All rights, duties, and liabilities herein benefit and bind Lessor and Lessee and their successors, and assigns.

FORCE MAJEURE. When drilling, reworking, production or other operations hereunder, or Lessee's fulfillment of its obligations hereunder are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production, or by any other cause not reasonably within Lessee's control, this Lease shall not terminate because of such prevention or delay, and, at Lessee's option, the period of such prevention or delay shall be added to the term hereof. Lessee shall not be liable for breach of any provisions or implied covenants of this Lease when drilling, production or other operations are so prevented or delayed.

SEVERABILITY. If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

COUNTERPARTS. This Lease may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Lease and all of which, when taken together, will be deemed to constitute one and the same agreement.

MUTUAL AGREEMENT FOR DEVELOPMENT OF PROPERTY. Notwithstanding anything hereinabove provided, it is understood and agreed that all well locations, roads, and pipelines to be constructed on the property shall be located by the mutual agreement of the parties. Lessee shall mark the proposed wells, roads, and pipelines on the property and thereafter notify Lessor for the purpose of obtaining their consent, which consent shall not be unreasonably withheld. If Lessor does not object to Lessee's proposed location on the property within 10 days after being notified of Lessee's designation on the property, Lessor shall be deemed to have consented.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease as of the day and year first above written.

LESSOR:

NORTH AMERICAN COAL ROYALTY COMPANY

Witness

By: _____
JAMES F. MELCHIOR, its President

LESSEE:

MOUNTAINEER NATURAL GAS COMPANY

Witness

By: _____
BRIAN L. TESLOVICH, its President

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF BURLEIGH)

On this 28th day of January, 2009, before me personally appeared JAMES F. MELCHIOR, known to me to be the President of NORTH AMERICAN COAL ROYALTY COMPANY, the corporation that is described in and that executed the within instrument and acknowledged to me that such corporation executed the same.

Karen A. Mosbrucker
Notary Public

WARREN A MOSBRUCKER
Notary Public
State of North Dakota
My Commission Expires June 22, 2012

My commission expires:

WARREN A MOSBRUCKER
Notary Public
State of North Dakota
My Commission Expires June 22, 2012

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF WASHINGTON :

On this, the 9th day of April, 2009, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned individual, personally appeared, BRIAN L. TESLOVICH, who acknowledged himself to be the person who signed the foregoing instrument, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name as president to the instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Kathleen A. Pace
Notary Public

My commission expires: 2-28-13

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Kathleen A. Pace, Notary Public
City of Washington, Washington County
My Commission Expires Feb. 28, 2013
Member, Pennsylvania Association of Notaries

Instrument 201000000737 OR | Book 183 | Page 810

Exhibit A

Archer Township, Harrison County, State of Ohio

Tract No.	Mineral Acres	Vol.	Pg.	Parcel ID	Surface Acres	S	T	R	QTR.
1	19.98	113	167	01-0000244000	19.98	17	11	5	SE
2	29.27	113	167	01-0000280000	29.27	16	11	5	NE
	99.71	113	167	01-0000252000	part of 217.36	16	11	5	NE
3	50.00	113	96	01-0000252000	part of 217.36	16	11	5	SE
4	26.28	113	96	01-0000252000	part of 217.36	16	11	5	SE
5	19.64	113	96	01-0000252000	part of 217.36	16	11	5	SE
6	151.94	113	97	01-0000233000	151.944	10	11	5	NW
	6.48	113	97	0-0000253000	6.476	10	11	5	NW
7	99.85	113	97	01-0000152000	99.85	10	11	5	NE
8	77.00	113	97	01-0000234000	part of 99.00	10	11	5	SW
9	15.00	113	97	01-0000234000	part of 99.00	10	11	5	SW
10	60.00	116	395	01-0000645000	part of 128.90	33	10	4	SW
11	12.32	124	525	01-0000652000	part of 136.42	34	10	4	NW
12	102.53	112	438	01-0000614000	part of 435.056	3	11	5	NW
13	19.07	112	438	01-0000609000	part of 435.056	3	11	5	NW
	13.69	112	438	01-0000609000	part of 329.76	9	11	5	NE
14	39.60	112	585	01-0000022000	part of 99.60	33	10	4	SW
	19.60	112	585	01-0000030000	part of 38.04	32	10	4	NW
15	60.00	115	168	01-0000022000	part of 99.60	33	10	4	SW
16	71.80	112	539	01-0000101000	71.80	10	11	5	SE
17	27.28	112	539	01-0000609000	part of 329.49	9	11	5	NE
18	36.47	113	468	01-0000102000	part of 56.97	10	11	5	NE
19	0.50	113	468	01-0000102000	part of 56.97	10	11	5	SE
20	35.71	110	331	01-0000100000	35.71	10	11	5	SE
21	22.46	113	480	01-0000180000	part of 31.46	10	11	5	NE
22	28.39	112	620	01-0000625000	part of 68.31	10	11	5	SW
23	34.54	119	530	01-0000625000	part of 65.31	10	11	5	SW
24	165.39	110	20	01-0000609000	part of 329.49	9	11	5	NW
25	123.39	110	51	01-0000609000	part of 329.49	9	11	5	NE
26	5.57	113	434	01-0000263000	5.57	10	11	5	NE
	51.69	113	454	01-0000584000	51.69	4	11	5	NW
	3.39	113	434	01-0000513000	3.392	4	11	5	NW
	23.78	113	434	01-0000497000	part of 31.088	4	11	5	NW
27	9.93	113	454	01-0000497000	part of 31.088	4	11	5	NW
28	78.21	110	531	01-0000143000	78.21	4	11	5	NW
29	107.18	110	531	01-0000611000	part of 135.64	4	11	5	SW
30	34.54	110	629	01-0000611000	part of 135.64	4	11	5	SW
	44.46	110	629	01-0000614000	part of 435.056	3	11	5	NW
31	5.19	113	85	01-0000171000	part of 187.72	4	11	5	SW
32	8.32	113	85	01-0000171000	part of 187.72	4	11	5	SE
33	96.70	113	85	01-0000171000	part of 187.72	4	11	5	SE
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49	65.00	115	30	01-0000150000	part of 132.75	8	11	5	NE
50	27.25	115	30	01-0000632000	27.25	8	11	5	NE
51	124.37	123	504	01-0000310000	part of 126.94	8	11	5	NW
	3.17	123	504	01-0000310001	3.17	8	11	5	NW
	1.92	123	504	01-0000301000	1.92	8	11	5	NW
	0.92	123	504	01-0000500000	.918	8	11	5	NW
	0.90	123	504	01-0000500000	.897	8	11	5	NW
	0.72	123	504	01-0000485000	.715	8	11	5	NW
52	25.10	123	147	01-0000543000	part of 26.0329	8	11	5	SW
	22.22	123	147	01-0000542001	2.2196	8	11	5	SW
	2.14	123	147	01-0000542002	2.141	8	11	5	SW
	1.09	123	147	01-0000528001	1.093	8	11	5	SW
	13.91	123	147	01-0000528000	13.907	8	11	5	SW
	11.53	123	147	01-0000543000	11.533	8	11	5	SW
53	40.00	123	504	01-0000621000	part of 76.18	8	11	5	SE
54	36.18	123	504	01-0000621000	part of 76.18	8	11	5	SE
	3033.13 Acres Total								

201000000737
MOUNTAINEER NATURAL GAS
PO BOX 4001
MORGANTOWN WVA 26505

201000000737 C P
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
05-05-2010 At 12:22 pm.
LEASE 88.00
OR Book 183 Page 804 - 810

Instrument 0 3 0 Book Page
201000000972 OR 183-2107

201000000972
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BEVER, RECORDER
06-14-2010 At 12:17 pm.
ASSIGN LEAS 72.00
OR Book 183 Page 2107 - 2111
DALE PROPERTY SERVICES PENN LP

ASSIGNMENT OF OIL AND GAS LEASES

State of Ohio }
County of Harrison }

This Assignment of Oil and Gas Leases (this "Assignment"), is made by **MOUNTAINEER NATURAL GAS COMPANY**, with a notice address of P.O. Box 4001, Morgantown, West Virginia, 26505 ("Assignor"), to **Dale Property Services Penn, LP**, a Texas limited partnership, with a notice address of 2100 Ross Avenue, Suite 1570 LB-9, Dallas, TX 75201, ("Assignee").

For and in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby **GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER AND DELIVER** unto Assignee, all of Assignor's right, title and interest in and to all of the oil and gas leases described in Exhibit "A" attached hereto and made a part hereof, as extended or amended, and the lands covered thereby, subject to the terms, reservations and limitations set forth below, together with all rights incident thereto and appurtenances thereon (the "Leases").

Assignor further grants to Assignee all rights as are reasonably necessary or convenient to carry out the terms of this Assignment, including but not limited to the right of surface access, use and occupancy, the right of ingress and egress, the right to conduct geophysical and other exploratory activities, and the right to drill through said depths and to conduct operations therein.

It is the intent of Assignor to convey and this Assignment hereby conveys to Assignee, all of Assignor's right, title, and the interest in and to the lands described on Exhibit "A", subject to the terms, reservations and limitations set forth above, regardless of the omission of any oil and gas lease, errors in description, any incorrect or misspelled names or any transcribed or incorrect recording references.

TO HAVE AND TO HOLD all and singular such Leases together with all rights, titles, interests, estates, remedies, powers and privileges thereunto appertaining unto Assignee and Assignee's successors and assigns forever; subject to the following matters:

(1) All Lessors' royalties, overriding royalties and other burdens, reversionary interests and similar burdens as shown of record;

(2) All easements, rights-of-way, servitudes, permits, surface leases and other rights in respect of surface operations;

(3) The terms and conditions of the Leases;

(4) All rights reserved to or vested in any municipality or governmental, tribal, statutory or public authority to control or regulate the Leases in any manner, and all applicable laws, rules and orders of governmental and tribal authority.

Assignor conveys the Leases free and clear of any outstanding mortgage, taxes, deed of trust, lien, or encumbrance created by the Assignor, but not otherwise.

Assignor also hereby grants and transfers to Assignee, its successors and assigns, to the extent so transferable, the benefit of, and the right to enforce, the covenants and warranties contained in the Leases, if any, which Assignor is entitled to enforce with respect to Assignor's predecessors in title to the Leases.

In addition to this Assignment, Assignor shall execute, acknowledge, and deliver to Assignee, in a timely manner and without further consideration, any documents or instruments that Assignee may reasonably require, including, without limitation, further

This Assignment shall bind and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned has executed this instrument on the date of the acknowledgment annexed hereto. The effective date of this Term Assignment of Oil and Gas lease is 5/6/2010

ASSIGNOR: MOUNTAINEER NATURAL GAS COMPANY

Brian Tastovich
President

ASSIGNEE: Dale Property Services Penn, LP

By: DPS Penn GP, LLC its general partner

Barnett A. Wood Jr.
President

CORPORATE ACKNOWLEDGMENT

STATE OF PA
COUNTY OF Washington } SS:

On this the 6th day of May, 2010, before me, the undersigned authority, personally appeared Brian Teslovich, who acknowledged himself to be the President of Mountaineer Natural gas Company, and that he as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
LORENZO COLA, Notary Public
City of Uniontown, Fayette County
My Commission Expires July 17, 2012

My Commission Expires: July 17, 2012
Signature/Notary Public:
Name/Notary Public (print): Lorenzo Cola

CORPORATE ACKNOWLEDGMENT

STATE OF PA
COUNTY OF Washington } SS:

On this the 8th day of June, 2010, before me, the undersigned authority, personally appeared Barnett A. Wood Jr., President of DFS Penn GP, LLC, a Texas limited liability company, General Partner of Dale Property Services Penn, LP, a Texas limited partnership, as the act and deed of such limited liability company on behalf of said limited partnership.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Sarah D. Wolcott, Notary Public
Cecil Twp., Washington County
My Commission Expires October 14, 2013

My Commission Expires: 10/14/13
Signature/Notary Public:
Name/Notary Public (print): Sarah D. Wolcott

Exhibit "A"

North American Coal Royalty Corp. Harrison County, Archer Township

Net Mineral Acres	Source Deed (s)	Parcel ID	Surface Acreage	S	T	R	QTR.
10.4	112/585	01-0000020000	78.04	32	10	4	NW
99.6	112/585 & 115/168	01-0000023000	part of 99.6	33	10	4	SW
60	112/585 & 115/168	01-0000022000	part of 99.6	33	10	4	SW
19.09	123/504	01-0000042000	409.589	2	11	5	NW
35.71	123/531	01-0000100000	35.75	10	11	5	SE
71.8	112/539	01-0000101000	71.8	10	11	5	SE
56.47	112/468	01-0000102000	part of 56.97	10	11	5	SE
0.5	112/468	01-0000102000	part of 56.97	10	11	5	SE
70.21	110/581	01-0000143000	70.22	4	11	5	NW
50	123/504	01-0000147000	50	2	11	5	NW
87.75	123/504 & 115/50	01-0000150000	part of 132.75	3	11	5	NE
45	123/504 & 115/50	01-0000150000	part of 132.75	3	11	5	NE
99.85	115/97	01-0000152000	99.85	10	11	5	NE
3.19	113/85 & 111/23	01-0000171000	part of 187.72	4	11	5	SW
8.32	113/85 & 111/23	01-0000171000	part of 187.72	4	11	5	SE
96.7	113/85 & 111/23	01-0000171000	part of 187.72	4	11	5	SE
13	113/85 & 111/23	01-0000171000	part of 187.72	4	11	5	SE
52.64	113/85 & 111/23	01-0000171000	part of 187.72	4	11	5	SE
22.46	113/480	01-0000180000	31.24	10	11	5	NE
2.37	116/402	01-0000229000	42	2	11	5	NE
181.94	113/97	01-0000233000	153.94	10	11	5	NW
77	113/97	01-0000234000	part of 92	10	11	5	SW
15	113/97	01-0000234000	part of 92	10	11	5	SW
19.98	113/157	01-0000244000	19.98	17	11	5	SE
1	116/402	01-0000245000	1	2	11	5	NE
51.09	116/402	01-0000247000	51.09	3	11	5	SE
7.5	116/402	01-0000247001	7.5	3	11	5	SE
99.71	113/96	01-0000252000	part of 217.33	16	11	5	NE
50	113/96	01-0000252000	part of 217.33	16	11	5	SE
28.38	113/96	01-0000252000	part of 217.33	16	11	5	SE
19.64	113/96	01-0000252000	part of 217.33	16	11	5	SE
5.48	113/97	01-0000333000	5.48	10	11	5	NW
5.57	113/353	01-0000263000	5.57	10	11	5	NE
59.66	111/23	01-0000265003	60.24	4	11	5	NE
10.37	111/23	01-0000265001	10.37	4	11	5	NE
20.18	111/23	01-0000265002	20.18	4	11	5	NE
29.27	113/157	01-0000269000	29.27	15	11	5	NE
0.72	123/504	01-0000485000	0.715	8	11	5	NW
23.74	113/354	01-0000497000	part of 31.088	4	11	5	NW
9.93	113/354	01-0000497000	part of 31.088	4	11	5	NW
0.9	123/504	01-0000500000	0.897	8	11	5	NW
1.92	123/504	01-0000501000	1.918	8	11	5	NW
0.93	123/504	01-0000502000	0.913	8	11	5	NW
124.37	123/504	01-0000510000	126.04	8	11	5	NW
3.17	123/504	01-0000510001	3.17	8	11	5	NW
3.392	113/454	01-0000513000	4.31	8	11	5	NW
13.907	123/542	01-0000528000	13.907	8	11	5	SW
1.09	123/147	01-0000528001	1.093	8	11	5	SW
25.1	123/147	01-0000542000	26.0259	8	11	5	SW
2.21	123/147	01-0000542001	2.2198	8	11	5	SW
2.14	123/147	01-[illegible]542002	2.1413	8	11	5	SW
11.53	123/147	01-[illegible]2003	11.583	8	11	5	SW
51.68	113/454	01-[illegible]3000	51.68	8	11	5	NW
19.07	113/438	01-[illegible]	part of 322.45	8	11	5	NW

13.63	112/438	01-0000609000	part of 329.49	9	11	5	NE
27.28	112/438	01-0000609000	part of 329.49	9	11	5	NE
165.29	112/438	01-0000609000	part of 329.49	9	11	5	NE
123.39	112/438	01-0000609000	part of 329.49	9	11	5	NE
187.38	130/531	01-0000611000	part of 135.64	4	11	5	NW
34.54	130/531	01-0000611000	part of 135.64	4	11	5	SW
10.07	112/438	01-0000614000	part of 135.64	4	11	5	SW
102.53	112/438	01-0000614000	435.056	3	11	5	NE/SE
44.46	112/438	01-0000614000	435.056	3	11	5	NW
4.56	112/438	01-0000614000	435.056	3	11	5	NW
40	123/405	01-0000621000	435.056	3	11	5	NW
36.18	123/405	01-0000621000	part of 76.18	8	11	5	SE
20.99	112/620	01-0000625000	part of 76.18	8	11	5	SE
24.34	112/620	01-0000625000	part of 65.32	10	11	5	SW
13.93	124/323	01-0000632000	part of 65.32	10	11	5	SW
41.1	124/323	01-0000632000	part of 136.42	34	10	4	NW
17.25	124/323	01-0000632000	part of 136.42	34	10	4	NW
80	112/383	01-0000645000	part of 136.42	8	11	5	NE
68.9	112/395	01-0000645000	part of 128.9	33	10	4	SW
			part of 128.9	33	10	4	NW
2,772.12	Net Mineral Acreage Total						

Instrument Book Page
201000002248 OR 186 96

201000002248
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. SOVER, RECORDER
11-15-2010 At 02:05 pm.
ASSIGN LEAS 92.00
OR Book 186 Page 96 - 100

201000002248
DALE PROPERTY SERVICES FORM LP

COMMONWEALTH OF OHIO

COUNTY OF HARRISON

JULY 12, 2010

ASSIGNMENT OF OIL AND GAS LEASES

CONVEYANCE

Dale Property Services Fenn, LP, a Texas Limited Partnership, (herein called "Grantor"), for Ten Dollars and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), subject to the exception and reservation set forth below, does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER, AND DELIVER unto Ohio Buckeye Energy, L.L.C., (herein called "Grantee"), whose address is 6100 N. Western Avenue, Oklahoma City, OK 73118, all of Grantor's right, title and interest in and to the oil and gas leases described in Exhibit A attached hereto and made a part hereof (the "Leases").

There is hereby SAVED AND EXCEPTED from this Conveyance, and reserved to Grantor, an overriding royalty on all oil, gas and associated hydrocarbons produced, saved and marketed from the lands covered by the Leases (the "ORRI"), as follows:

On Leases listed on Exhibit A:

> There is hereby SAVED AND EXCEPTED from this Conveyance, and reserved to Grantor, an ORRI equal to 1.25% of 8/8ths.

Except as provided herein to the contrary, the ORRI shall be paid or delivered to Grantor in the same manner, by the same method, at the same time, and under the same conditions as is provided in the Leases for the payment and delivery of royalty to the lessors under the applicable Lease.

The ORRI shall be free and clear of all cost, risk and expense of drilling for and production of oil, gas and associated hydrocarbons produced from the Leases, but shall bear its proportion of all off lease post production costs, severance, production, or any other taxes now or hereafter applicable thereto or affecting same, and shall be computed only after deducting its proportionate share of all oil, gas and associated hydrocarbons used for operations upon the lands covered by the Leases, or upon any unit comprising all or any portion of same.

In the event the Leases, or any one of them, cover less than One Hundred Percent (100%) of mineral estate in and to the lands covered by such Lease(s), then the ORRI, as to the lands in which such Lease(s) do not cover such One Hundred Percent (100%), shall be reduced to the proportion thereof which the mineral interest percentage covered by such Lease(s) in such lands bears to One Hundred Percent (100%).

In the event Grantor owns less than One Hundred Percent (100%) interest in the Leases, or in any one of them, then the ORRI shall be reduced to the proportion thereof which the interest in such Lease(s) owned by Grantor bears to One Hundred Percent (100%).

Grantee shall have the right, at its election, to pool the Leases, or any of them, with each other or with other leases or lands , in the manner and with the same effect as authorized under the terms of the Leases as now constituted or as hereafter amended or as may be hereafter authorized by the lessor thereof. If pooling occurs, the ORRI attributable to production from such pooled unit shall be in the proportion that the amount of acreage subject to the ORRI included in such pooled unit bears to the total amount of acreage in such pooled unit.

The ORRI shall apply to any new lease, renewal or extension of any of the Leases that may be acquired by Grantee, its successors or assigns, within one (1) year after the expiration of such Lease. For the purpose of this provision "extension" is defined as an amendment to any of the Leases extending the term of such Lease and "new lease" or "renewal" are defined as a new lease acquired by Grantee covering all or any portion of the same mineral rights and interests now covered by any of the Leases.

TO HAVE AND TO HOLD the Leases unto Grantee, and its successors and assigns, forever.

GRANTOR AGREES TO WARRANT AND FOREVER DEFEND TITLE TO THE LEASES UNTO GRANTEE AND ITS SUCCESSORS AND ASSIGNS, AGAINST THE CLAIMS AND DEMANDS OF ALL PERSONS CLAIMING, OR TO CLAIM THE SAME, OR ANY PART THEREOF BY, THROUGH OR UNDER GRANTOR, BUT NOT OTHERWISE. THE EXPRESS WARRANTY OF TITLE SET FORTH ABOVE IS EXCLUSIVE, AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND GRANTOR EXPRESSLY DISCLAIMS ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES.

By acceptance of this Conveyance, Grantee has agreed (i) to assume, and to timely pay and perform, all duties, obligations and liabilities relating to the ownership and/or operation of the Leases and (ii) to indemnify and hold Grantor, its affiliates, and its and their respective directors, officers, employees, attorneys, contractors and agents harmless from and against any and all claims, actions, causes of action, liabilities, damages, losses, costs or expenses (including, without limitation, court costs and attorneys' fees) of any kind or character arising out of or otherwise relating to the ownership and/or operation of the Leases. THE FOREGOING ASSUMPTIONS AND INDEMNIFICATIONS SHALL APPLY WHETHER OR NOT SUCH DUTIES, OBLIGATIONS OR LIABILITIES, OR SUCH CLAIMS, ACTIONS, CAUSES OF ACTION, LIABILITIES, DAMAGES, LOSSES, COSTS OR EXPENSES ARISE OUT OF (i) NEGLIGENCE (INCLUDING SOLE NEGLIGENCE, SINGLE NEGLIGENCE, CONCURRENT NEGLIGENCE, ACTIVE OR PASSIVE NEGLIGENCE, BUT EXPRESSLY NOT INCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF GRANTOR OR ANY OTHER INDEMNIFIED PARTY, OR (ii) STRICT LIABILITY.

The terms and provisions of this Conveyance shall be binding on and inure to the benefit of Grantor and Grantee and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF this Conveyance is executed by the parties hereto on the dates of their respective acknowledgments, but made effective for all purposes as of the date of each Lease as set forth on Exhibit "A" or, if applicable, such later date on which such lease or interest therein was acquired by Assignor.

DALE PROPERTY SERVICES PENN, LP
By: DPS Penn GP, LLC, its general partner.

By: _____

Name: BENNETT WOOD, JR

Title: PRESIDENT

OHIO BUCKEYE ENERGY, L.L.C.

By: _____

Henry J. Hood, Senior Vice President –
Land and Legal & General Counsel

Acknowledgments

COMMONWEALTH OF PENNSYLVANIA §
§
COUNTY OF WASHINGTON §

Before me, the undersigned, a Notary Public, in and for said County and State, on this 5th day of October, 2010, personally appeared Bennett Wood Jr., as President of DPS Penn GP, LLC, general partner of Dale Property Services Penn, LP, a Texas Limited Partnership, as the act and deed of such limited liability company on behalf of said limited partnership, personally known to me to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my official seal the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Katherine Elizabeth Wolcott, Notary Public
Cecil Township, Washington County
My Commission Expires May 22, 2014

(Stamp/Printed Name of Notary and Date Commission Expires)

Katherine Elizabeth Wolcott
Notary Public, Commonwealth of Pennsylvania

Katherine Elizabeth Wolcott
Printed Name

STATE OF OKLAHOMA §
§
COUNTY OF Oklahoma §

Before me, the undersigned, a Notary Public, in and for said County and State, on this 15th day of October, 2010, personally appeared Henry Hood as Sr. V.P. of Ohio Buckeye Energy, L.L.C. personally known to me to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my official seal the day and year first above written.

CHARITY A. MATHIS
Notary Public
State of Oklahoma
Commission # 10002121 Expires 04/15/14

(Stamp/Printed Name of Notary and Date Commission Expires)

Charity A. Mathis
Notary Public, State of Oklahoma

Charity A. Mathis
Printed Name

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Ohio Buckeye Energy, LLC, dated July 12, 2010.

SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000[illegible]	.516000	0.516000	03-0000006.000	HARRISON	ARCHER	1-301948-000	003	57	11	5.5W
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000828	168.550000	168.550000	03-0000535.000	HARRISON	ARCHER	1-301946-000	003	57	11	5.5W
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	02-Jun-10	201000000826	46.250000	46.250000	03-0000385.000	HARRISON	ARCHER	1-301948-000	003	57	11	5.5W
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000[illegible]	18.438000	18.438000	23-0000316.002	HARRISON	ARCHER	1-301948-000	003	57	10	4.5W
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000[illegible]	1.780000	1.780000	24-0000733.001	HARRISON	ARCHER	1-301948-000	003	57	11	5.5W
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000875	50.470000	50.470000	03-0000219.000	HARRISON	ARCHER	1-301953-000	003	57	10	4.5W
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000875	.720000	0.720000	03-0000222.000	HARRISON	ARCHER	1-301951-000	003	57	10	4.5W
DONALD DWAINE ROSE ETUX	DALE PROPERTY SERVICES PENN, LP	02-Jun-10	16-Jun-10	201000001076	48.154000	48.154000	03-0000237.000	HARRISON	ARCHER	1-301951-000	003	57	11	5.5W
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000827	.290000	0.290000	03-0000803.000	HARRISON	CADIZ	1-301945-001	003	57	9	4.5W
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000827	23.945000	23.945000	05-0000803.000	HARRISON	CADIZ	1-301945-001	003	57	9	4.5W
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000827	18.880000	18.880000	05-0000358.000	HARRISON	CADIZ	1-301945-001	003	57	9	4.5W
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000827	34.540000	6.910000	05-0000803.000	HARRISON	CADIZ	1-301945-001	003	57	9	4.5W
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000875	13.950000	2.790000	06-0000404.000	HARRISON	CADIZ	1-301945-001	003	57	9	4.5W
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000875	.550000	0.550000	13-0000600.001	HARRISON	STEWART	1-301951-000	003	57	10	4.5W
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000875	81.130000	81.130000	11-0000173.000	HARRISON	STEWART	1-301951-000	003	57	10	4.5W
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000875	84.520000	84.520000	11-0000174.000	HARRISON	STEWART	1-301951-000	003	57	10	4.5W
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000875	81.468000	81.468000	03-0000182.000	HARRISON	BURLEY	1-301949-000	003	57	11	5.5W
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000875	6.022800	6.022800	03-0000183.001	HARRISON	BURLEY	1-301949-000	003	57	11	5.5W
	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000875	18.970000	18.970000	23-0000317.000	HARRISON	BURLEY	1-301951-000	003	57	10	4.5W

2010-737 OR 183 pg 804
2010-928 OR 183 pg 1767
2010-926 OR 183 pg 1761
2010-976 OR 183 pg 2039
2010-975 OR 183 pg 2035
2010-1026 OR 183 pg 2269
2010-927 OR 183 pg 1764
2010-976 OR 183 pg 2039
2010--975 OR 183 pg 2035

Instrument 201000002748 OR Book Page 184 103

10615196

PRIORITY DOCUMENT TRANSMITTAL

TO: LOC DATE: 10/17/11

FROM: Nikki Church Lemon

RE: Partial Assn

SELECT ACTION

* ALL BOLDED ITEMS REQUIRED PER ACTION *

☒ RECORD or E-RECORD: # ASN 001-0919

COUNTY / PARISH & STATE: Harrison, OH

WELL / PROSPECT / COST CENTER NO.:

SPECIAL DISTRIBUTION INSTRUCTIONS:

Instructions/Comments:

☐ IMAGE: #

☐ LEASE: # RECEIVED

PAYMENT SET UP NEEDED / RESPONSIBLE PARTY: OCT 17 2011

Instructions/Comments: Land Administration

☐ CONTRACT: #

LEASE BY LEASE ACREAGE BREAKDOWN (GROSS/CHK NET) or AS RECORDS REQUIRED

ASN SUBJECT TO ASN OR OTHER CONTRACT: #

PAYMENT SET UP NEEDED / RESPONSIBLE PARTY:

AMOUNT NOW PAID PER ACRE: $

Instructions/Comments:

RECEIVED

FEB 29 2012

LAND ADMIN

Instrument Book Page
201100004860 OR 193 271

201100004860
Filed for Record In
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
10-28-2011 At 02:27 pm.
PART ASSN L 84.00
OR Book 193 Page 271 - 276

201100004860
CHEASAPEAKE OPERATING INC
PO BOX 18496
OKLAHOMA CITY OK 73154

ASN 001-2018

PARTIAL ASSIGNMENT OF OIL AND GAS LEASES WITHOUT WARRANTY

L0615196

STATE OF OHIO)
) §
COUNTY OF HARRISON)

KNOW ALL MEN BY THESE PRESENTS:

For and in consideration of Ten Dollars and no/100 ($10.00) and Other Valuable Consideration, the receipt and sufficiency of which are hereby acknowledged, **Ohio Buckeye Energy, L.L.C.**, an Oklahoma limited liability company, whose mailing address is P.O. Box 18496, Oklahoma City, Oklahoma 73154-0496, hereinafter referred to as "Assignor", does hereby grant, bargain, sell, convey, assign and deliver unto **Larchmont Resources, L.L.C.**, an Oklahoma limited liability company, whose mailing address is P.O. Box 18756, Oklahoma City, Oklahoma 73154, hereinafter referred to as "Assignee", an undivided portion of Assignor's interest in and to the oil and gas leases (as may have been amended, ratified or modified) described in Exhibit "A" attached hereto ("the Leases"), in an amount sufficient to vest Assignee with 2.5% working interest in the associated wells also listed on Exhibit "A" ("the Wells") and the land included in the related production unit, whether voluntary or statutory, as shown on the well location map attached hereto as Exhibit "B" ("the Unit"), including all oil and gas produced therefrom and all downhole and surface equipment associated therewith:

PROVIDED HOWEVER, if Assignor's ownership in the Leases is not uniform as to all depths, zones or formations and the foregoing partial assignment would cause Assignor's remaining working interest in any depths, zones or formations covered by the Leases (determined after consideration of any carried or reversionary interest) to be less than twelve and one half percent (12.5%) on an eight-eighths basis, then the interest

assigned hereunder to the Assignee as to such depths, zones or formations only shall not be the full two and one half percent (2.5%) working interest in the Wells and Unit as stated above, but instead shall be proportionately reduced to the same extent as Assignor's reduced interest as of the date of spud of the Wells with respect to such depths, zones or formations.

The interests assigned hereunder shall derive proportionately from all working interest owned or claimed by Assignor in the Leases, or any other source of ownership in the Unit, contractual or otherwise, as of the effective date of this assignment, including any interests acquired via farmout, non-consent elections, force poolings, etc. To the extent any portion of Assignor's title or ownership interest is reduced after payout or after the assessment of non-consent penalties, or is limited to the wellbore of the Wells, Assignee's title or ownership conveyed hereunder shall be proportionately reduced thereby in the same manner as Assignor's title; provided, however, a reduction of ownership on a wellbore only basis in the Wells after payout or the assessment of non-consent penalties shall not reduce Assignee's interest in the Unit, or subsequent wells, it being the intent herein to convey an undivided 2.5% interest in the Unit.

Assignor delivers to Assignee the above-described interest at the same net revenue interest owned by Assignor, proportionately reduced to the interest assigned. The interest assigned shall bear a proportionate share of all applicable delay rentals, royalties and other obligations burdening the Leases and shall bear a proportionate share of all costs associated with the drilling, completing, operating and/or plugging and abandonment of any well hereafter drilled on the Leases or land pooled or unitized therewith.

This assignment is made subject to all the terms and the express and implied covenants and conditions of the Leases and any intervening assignments and agreements affecting same, whether recorded or unrecorded, which terms, covenants and conditions the Assignee hereby assumes and agrees to perform with respect to the interest assigned. The terms, covenants and conditions of said leases, assignments and agreements shall be binding upon the Assignee, not only in favor of the lessor(s) and any prior assignors and their respective successors and assigns, but also in favor of the Assignor herein and its successors and assigns.

This assignment is made and accepted without any representation or warranty of title of any kind, either express or implied. In the event that title to all or any portion of the interest assigned should fail, then and in such event, the percentages of the interest assigned herein shall be reduced in the proportion to which the failed portion of the interest bears to the entire interest.

In witness whereof, this instrument is dated the 6th day of October, 2011, but effective as of the applicable spud dates of the Wells as shown on Exhibit "A".

Ohio Buckeye Energy, L.L.C.,
an Oklahoma limited liability company

By: _____
Henry J. Hood, Senior Vice President –
Land and Legal & General Counsel

ACKNOWLEDGMENT

STATE OF OKLAHOMA)
) §
COUNTY OF OKLAHOMA)

On the 6th day of October in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared Henry J. Hood, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public _____

My Commission Expires:

5/17/14

Prepared by: _____
Ohio Buckeye Energy, L.L.C.
P.O. Box 18496
Oklahoma City, OK 73154-0496

Revised 9/29/2011

EXHIBIT "A"

Attached to and made a part of that certain Partial Assignment of Oil and Gas Leases from **Ohio Buckeye Energy, L.L.C.,** as Assignor, to **Larchmont Resources, L.L.C.,** as Assignee, dated October 5, 2011, covering lands located in Harrison County, Ohio. The leases and/or agreements set forth below are included in this assignment only to the extent they cover or pertain to the associated wells and the lands included in the production unit for the wells as shown as Exhibit "B".

Well No. /Name: **832724/Kenneth Buell**
Spud Date: **12/14/2010**

OH0000009-001

Lessor:	NORTH AMERICAN COAL ROYALTY COMPANY
Lessee:	MOUNTAINEER NATURAL GAS COMPANY
Lease Date:	01/28/2009
Recorded:	Book 183 Page 804
Tax Parcel:	See Exhibit "C"
Township:	ARCHER

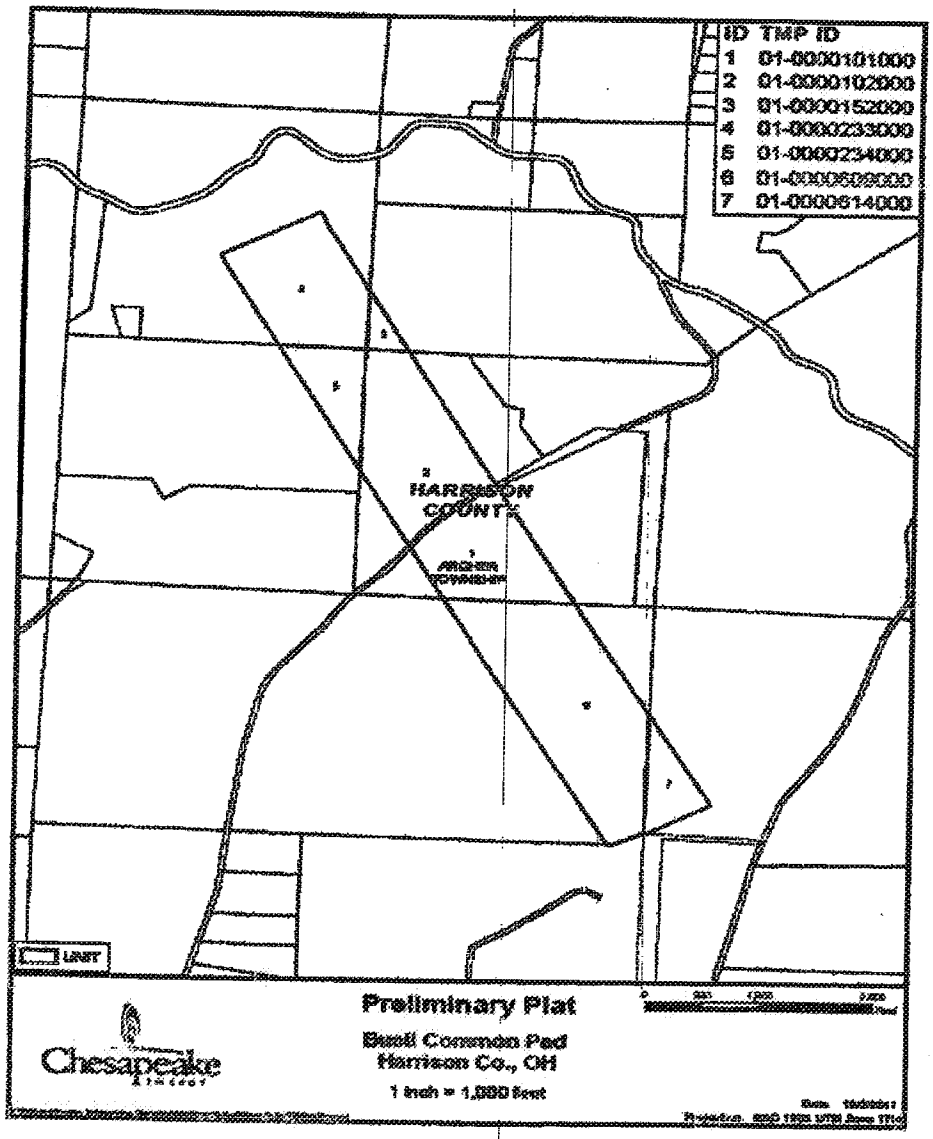
Operating Agreement dated January 11, 2011 between Chesapeake Appalachia, L.L.C., as Operator, and Larchmont Resources, L.L.C., as Non-Operator, covering Archer Township, Harrison County, OH (JOA 001-0014)

THIS ASSIGNMENT INCLUDES ANY WELL, UNIT, LEASEHOLD, CONTRACT OR PROPERTY RIGHTS DERIVING FROM ANY NON-CONSENT OR DEFAULT INTERESTS PURSUANT TO THE ABOVESAID UNIT ORDER, FARMOUT AGREEMENT, JOINT OPERATING AGREEMENT, OR OTHER SIMILAR AGREEMENT FOR SUCH UNIT.

IT IS ASSIGNOR'S INTENT TO CONVEY TO ASSIGNEE A PROPORTIONATE SHARE OF ALL OF ASSIGNOR'S RIGHT, TITLE AND INTEREST, AS LIMITED ABOVE IN AND TO THE SUBJECT LANDS, UNIT AND WELL, REGARDLESS OF THE OMISSION OF ANY PARTICULAR LEASE OR LEASES, ERRORS IN DESCRIPTION, INCORRECT OR MISSPELLED NAMES OR INCORRECT RECORDING REFERENCES.

END OF EXHIBIT "A"

EXHIBIT "B"



Page 5 of 6

EXHIBIT "C"

Parcel ID	Section	Township	Range	Quarter
01-0000101000	10	11	5	SE
01-0000102000	10	11	5	NE, SE
01-0000152000	10	11	5	NE
01-0000233000	10	11	5	NW
01-0000234000	10	11	5	SW
01-0000609000	9	11	5	NE, NW
01-0000614000	3	11	5	NE, SE, NW

Record & Return To:
Chesapeake Operating, Inc.
P.O. Box 18496
Oklahoma City, OK 73154

Instrument Book Page
201100002372 OR 189 2267

201100002372
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
06-28-2011 At 12:39 pm.
A ROY INT G 140.00
OR Book 189 Page 2267 - 2278

201100002372
DPS

STATE OF OHIO

COUNTY OF HARRISON

JUNE 13, 2011

A1

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **DALE PROPERTY SERVICES PENN, LP**, a Texas limited partnership, ("Assignor") hereby bargains, grants, assigns, sells and conveys unto **DALE PENNSYLVANIA ROYALTY, LP**, a Texas limited partnership, whose address is 2100 Ross Avenue, Suite 1870, Dallas, Texas, 75201, ("Assignee") all of the right, title and interest in and to that certain overriding royalty interest reserved by Assignor under and by virtue of that certain Conveyance from Assignor to Ohio Buckeye, L.L.C. recorded as Instrument Number 201000002268 and Book 186 Page 96 of the Official Public Records of Harrison County, Ohio (the "Chesapeake Conveyance"), said overriding royalty interest being equal to the following percentages of all oil, gas and other minerals produced, saved and marketed from the lands covered by the oil and gas leases described in the Chesapeake Conveyance (the "Subject Leases"):

On leases listed on Exhibit A:

> An ORRI equal to 1.25 % of 8/8ths percentages of all oil, gas and other minerals produced, saved and marketed from the "Subject Leases."

This Assignment shall include all rights and benefits reserved by, or which inure to the benefit of, Assignor under and by virtue of the Chesapeake Conveyance, to the extent the same pertain to said overriding royalty interest, and shall be subject to all of the terms of the Chesapeake Conveyance, to the extent the same pertain to said overriding royalty interest.

TO HAVE AND TO HOLD the interest assigned herein unto Assignee and its successors and assigns in accordance with the terms hereof; and for the same consideration Assignor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND all and singular said interest unto Assignee and its successors and assigns against the claims and demands of all parties claiming the same or any part thereof or interest therein by, through or under Assignor, but not otherwise.

With respect to the interest assigned herein, this Assignment is made with

full substitution and subrogation of Assignee and its successors and assigns, in and to all covenants, warranties and indemnities given or made by Assignor's predecessors in interest and with full subrogation of all rights accruing under the statutes of limitation or prescription under the laws of the Commonwealth of Pennsylvania and all rights of action of warranty against all former owners of the interest herein assigned.

The terms and provisions hereof shall inure to the benefit of, be binding upon, and be applicable to, the parties hereto and their respective successors and assigns.

With respect to each Subject Lease, this instrument shall be effective as of the date of such Subject Lease as set forth in the Chesapeake Conveyance or, if applicable, such later date on which such lease or interest therein was first acquired by Assignor; provided, however, that for division order purposes the effective date of this instrument for each well producing from the Subject Leases or lands pooled therewith shall be the date of first production of such well.

[Signature pages to follow.]

DALE PROPERTY SERVICES PENN, LP
By: DPS Penn GP, LLC its general partner

By: _____
Bennett Wood Jr., President

Acknowledgment

COMMONWEALTH OF PENNSYLVANIA §
§
COUNTY OF ALLEGHENY §

Before me, the undersigned, a Notary Public, in and for said County and State, on this 15th day of June, 2011, by Bennett Wood Jr., President of DPS Penn GP, LLC, a Texas limited liability company, General Partner of Dale Property Services Penn, LP, a Texas limited partnership, as the act and deed of such limited liability company on behalf of said limited partnership.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my official seal the day and year first written above.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Lucia D. Frohling, Notary Public
City of Canonsburg, Washington County
My Commission Expires April 29, 2013

_____
(Stamp/Printed Name of Notary and Date Commission Expires)

_____
Notary Public, State of Pennsylvania

Lucia D. Frohling
Printed Name

Exhibit "A" – Subject Leases

Prepared By/Return To: Dale Property Services Penn, LP, 3 Robinson Plaza, Ste. 330, Pittsburgh, PA 15205

Instrument 201100002372 OR Book 189 Page 2270

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 6/13/2011.

NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	78.0400	10.4000	01-0000020.000	HARRISON	ARCHER	A-201030-003	001	32	10	4 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	99.6000	99.6000	01-0000022.000	HARRISON	ARCHER	A-201030-003	001	33	10	4 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	409.5890	19.0300	01-0000042.000	HARRISON	ARCHER	A-201030-003	001	2	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	35.7300	35.7100	01-0000100.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	71.8000	71.8000	01-0000101.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	56.9700	56.9700	01-0000102.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	70.2100	70.2100	01-0000143.000	HARRISON	ARCHER	A-201030-003	001	4	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	50.0000	50.0000	01-0000147.000	HARRISON	ARCHER	A-201030-003	001	2	11	5 NW

Instrument 201100002372 OR Book 189 Page 2271

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 5/13/2011.

NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	132.7500	132.7500	01-0000150.000	HARRISON	ARCHER	A-201030-003	001	8	11	5	NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	99.8500	99.8500	01-0000152.000	HARRISON	ARCHER	A-201030-003	001	10	11	5	NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	187.7200	177.8500	01-0000171.000	HARRISON	ARCHER	A-201030-003	001	4	11	5	SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	31.8400	22.4600	01-0000180.000	HARRISON	ARCHER	A-201030-003	001	10	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	42.0000	2.3700	01-0000229.000	HARRISON	ARCHER	A-201030-003	001	2	11	5	NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	151.9400	151.9400	01-0000233.000	HARRISON	ARCHER	A-201030-003	001	10	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	92.0000	92.0000	01-0000234.000	HARRISON	ARCHER	A-201030-003	001	10	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	19.9800	19.9800	01-0000244.000	HARRISON	ARCHER	A-201030-003	001	17	11	5	SE

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 6/13/2011.

NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	1.0000	1.0000	01-0000246.000	HARRISON	ARCHER	A-201030-003	001	2	11	5	NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	51.0300	51.0300	01-0000247.000	HARRISON	ARCHER	A-201030-003	001	3	11	5	SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	7.5000	7.5000	01-0000247.001	HARRISON	ARCHER	A-201030-003	001	3	11	5	SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	217.3600	195.6300	01-0000252.000	HARRISON	ARCHER	A-201030-003	001	16	11	5	SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	6.4800	6.4800	01-0000253.000	HARRISON	ARCHER	A-201030-003	001	10	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	5.5700	5.5700	01-0000263.000	HARRISON	ARCHER	A-201030-003	001	10	11	5	NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	59.6600	59.6600	01-0000265.000	HARRISON	ARCHER	A-201030-003	001	4	11	5	NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	10.3700	10.3700	01-0000265.001	HARRISON	ARCHER	A-201030-003	001	4	11	5	NE

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 6/13/2011.

NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	30.1800	20.1800	01-0000265.002	HARRISON	ARCHER	A-201030-003	001	4	11	5	NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	29.2700	29.2700	01-0000269.000	HARRISON	ARCHER	A-201030-003	001	16	11	5	NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	0.7200	0.7200	01-0000485.000	HARRISON	ARCHER	A-201030-003	001	8	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	35.7100	35.7100	01-0000497.000	HARRISON	ARCHER	A-201030-003	001	4	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	0.9000	0.9000	01-0000500.000	HARRISON	ARCHER	A-201030-003	001	8	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	1.9200	1.9200	01-0000501.000	HARRISON	ARCHER	A-201030-003	001	8	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	0.9200	0.9200	01-0000502.000	HARRISON	ARCHER	A-201030-003	001	8	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	126.9400	124.3700	01-0000510.000	HARRISON	ARCHER	A-201030-003	001	8	11	5	NW

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 6/13/2011.

NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	3.1700	3.1700	01-0000510.001	HARRISON	ARCHER	A-201030-003	001	8	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	4.3100	3.3920	01-0000513.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	13.9070	13.9070	01-0000528.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	1.0900	1.0900	01-0000528.001	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	26.0259	25.1000	01-0000542.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	2.2100	2.2100	01-0000542.001	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	2.1400	2.1400	01-0000542.002	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	11.5300	11.5300	01-0000543.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 6/13/2011.

NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	51.6900	51.6900	01-0000584.000	HARRISON	ARCHER	A-201030-003	001	4	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	348.7200	348.7200	01-0000609.000	HARRISON	ARCHER	A-201030-003	001	3	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	141.7200	141.7200	01-0000611.000	HARRISON	ARCHER	A-201030-003	001	4	11	5	SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	435.0560	161.6200	01-0000614.000	HARRISON	ARCHER	A-201030-003	001	3	11	5	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	76.1800	76.1800	01-0000621.000	HARRISON	ARCHER	A-201030-003	001	8	11	5	SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	65.3200	54.9300	01-0000625.000	HARRISON	ARCHER	A-201030-003	001	10	11	5	SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	136.4200	81.6700	01-0000632.000	HARRISON	ARCHER	A-201030-003	001	34	10	4	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	128.9000	128.9000	01-0000645.000	HARRISON	ARCHER	A-201030-003	001	33	10	4	SW

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 6/13/2011.

SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	5/19/2010	6/2/2010	201000000928	0.9180	0.9180	01-0000036.000	HARRISON	ARCHER	1-301946-000	001	17	11	5	SW
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	5/19/2010	6/2/2010	201000000928	168.5500	168.5500	01-0000505.000	HARRISON	ARCHER	1-301946-000	001	17	11	5	SW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/2/2010	201000000916	40.2500	40.2500	01-0000261.000	HARRISON	ARCHER	1-301948-000	001	11	11	5	SW
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000976	18.4280	18.4280	23-0000816.002	HARRISON	ARCHER	1-301949-000	001	29	10	4	NW
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000976	1.7800	1.7800	24-0000531.001	HARRISON	ARCHER	1-301949-000	001	5	11	5	NW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000975	50.4790	50.4790	01-0000219.000	HARRISON	ARCHER	1-301951-000	004	35	10	6	SE
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000975	0.7200	0.7200	01-0000222.000	HARRISON	ARCHER	1-301951-000	004	29	0	4	NW
DONALD DWAINE ROSE ETUX	DALE PROPERTY SERVICES PENN, LP	6/2/2010	6/16/2010	201000001026	49.1640	49.1640	01-0000237.000	HARRISON	ARCHER	1-301954-000	001	2	11	5	NW

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 6/13/2011.

SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	5/19/2010	6/2/2010	201000000927	0.2900	0.2900	05-0001801.000	HARRISON	CADIZ	1-301945-001	002	35	9	4	SW
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	5/19/2010	6/2/2010	201000000927	28.9451	28.9451	05-0001802.000	HARRISON	CADIZ	1-301945-001	002	35	9	4	SW
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	5/19/2010	6/2/2010	201000000927	18.8800	18.8800	05-0002358.000	HARRISON	CADIZ	1-301945-001	002	34	9	4	NE
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	5/19/2010	6/2/2010	201000000927	34.5400	6.9080	05-0001803.000	HARRISON	CADIZ	1-301945-001	003	35	9	4	SW
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	5/19/2010	6/2/2010	201000000927	13.9500	2.7900	05-0001804.000	HARRISON	CADIZ	1-301945-001	003	45	9	4	SW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000975	0.5550	0.5550	11-0000090.001	HARRISON	GERMAN	1-301951-000	003	35	10	4	SE
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000975	81.1300	81.1300	11-0000173.000	HARRISON	GERMAN	1-301951-000	003	29	10	4	SW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000975	94.5000	94.5000	11-0000174.000	HARRISON	GERMAN	1-301951-000	003	29	10	3	SW

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 6/13/2011.

CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000976	81.4684	81.4684	01-0000182.000	HARRISON	RUMLEY	1-301949-000	002	11	11	5 SW
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000976	6.0228	6.0228	01-0000183.001	HARRISON	RUMLEY	1-301949-000	002	5	11	5 SW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	5/27/2010	6/9/2010	201000000975	38.9780	18.9780	23-0000217.000	HARRISON	RUMLEY	1-301951-000	002	35	10	4 NE

201135600573

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
12/22/2011	201135600573	MERGER/DOMESTIC (MER)	125.00	300.00	.00	.00	.00

Receipt

This is not a bill. Please do not remit payment.

CT CORPORATION SYSTEM
4400 EASTON COMMONS WAY, STE. 125
ATTN: JAMES H. TANKS III
COLUMBUS, OH 43219

STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Jon Husted

1947363

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

CHESAPEAKE EXPLORATION, L.L.C.

and, that said business records show the filing and recording of:

Document(s)	Document No(s):
MERGER/DOMESTIC	**201135600573**

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 22nd day of December, A.D. 2011.

United States of America
State of Ohio
Office of the Secretary of State

Jon Husted
Ohio Secretary of State

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
12/22/2011	201135600573	MERGED OUT OF EXISTENCE (MEX)	.00	.00	.00	.00	.00

Receipt

This is not a bill. Please do not remit payment.

CT CORPORATION SYSTEM
4400 EASTON COMMONS WAY, STE. 125
ATTN: JAMES H. TANKS III
COLUMBUS, OH 43219

STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Jon Husted

1933620

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

OHIO BUCKEYE ENERGY, L.L.C.

and, that said business records show the filing and recording of:

Document(s)	Document No(s):
MERGED OUT OF EXISTENCE	**201135600573**

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 22nd day of December, A.D. 2011.

United States of America
State of Ohio
Office of the Secretary of State

Jon Husted
Ohio Secretary of State

OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF MERGER

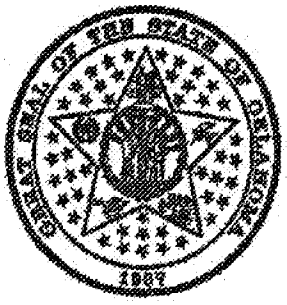
WHEREAS,

CHESAPEAKE EXPLORATION, L.L.C.

a limited liability company organized under the laws of the State of OKLAHOMA, has filed in the office of the Secretary of State duly authenticated evidence of a merger whereby said limited liability company is the survivor, as provided by the laws of the State of Oklahoma.

NOW THEREFORE, I, the undersigned Secretary of State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this Certificate evidencing such merger.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Oklahoma.



Filed in the City of Oklahoma City this 22nd day of December, 2011.

Secretary Of State

FILED - Oklahoma Secretary of State 12/22/2011

CERTIFICATE OF MERGER OF
OHIO BUCKEYE ENERGY, L.L.C.
INTO CHESAPEAKE EXPLORATION, L.L.C.

Pursuant to Section 2054 of the Oklahoma Limited Liability Company Act and Section 1705.38 of the Ohio Revised Code,

Chesapeake Exploration, L.L.C., as the surviving limited liability company, hereby states and certifies as follows:

1. The name and jurisdiction of formation or organization of the domestic limited liability company and the foreign limited liability company which are to merge are:

Name	Jurisdiction of Formation/Organization
Chesapeake Exploration, L.L.C.	Oklahoma
Ohio Buckeye Energy, L.L.C.	Ohio

2. An agreement of merger has been approved and executed by Ohio Buckeye Energy, L.L.C. and Chesapeake Exploration, L.L.C.

3. The name of the surviving domestic limited liability company is Chesapeake Exploration, L.L.C.

4. The articles of organization of the surviving limited liability company shall be the articles of organization of Chesapeake Exploration, L.L.C.

5. The effective date of the merger will be December 22, 2011, the date of filing of this Certificate of Merger with the Oklahoma Secretary of State.

6. The agreement of merger is on file at the principal place of business of Chesapeake Exploration, L.L.C. at 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

7. A copy of the agreement of merger will be furnished by Chesapeake Exploration, L.L.C. on request and without cost, to any person holding an interest in Ohio Buckeye Energy, L.L.C. or any person holding an interest in Chesapeake Exploration, L.L.C.

[Signature Page Follows]

12/22/2011 12:00 PM
OKLAHOMA SECRETARY OF STATE
503
162494820002

IN WITNESS WHEREOF, Chesapeake Exploration, L.L.C., as the surviving limited liability company, has caused this Certificate of Merger to be executed this 22nd day of December, 2011.

CHESAPEAKE EXPLORATION, L.L.C.,
an Oklahoma limited liability company

By: _____
Marc D. Rome, Vice President

Instrument
201200002343 OR Book Page
197 2350

201200002343
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
05-04-2012 At 01:45 pm.
ASSN & SALE 7372.00
OR Book 197 Page 2350 - 2497

201200002343
CHESAPEAKE OPERATING INC
CALL WHEN DONE SCAN CATER
405-202-1842

ASSIGNMENT, BILL OF SALE AND CONVEYANCE

STATE OF OHIO §
§
COUNTY OF HARRISON §

THIS ASSIGNMENT, BILL OF SALE AND CONVEYANCE (this "Assignment"), dated effective as of November 1, 2011 at 7:00 a.m. Central Time (the "Effective Time"), is made by **CHESAPEAKE EXPLORATION, L.L.C.**, an Oklahoma limited liability company, with a notice address of 6100 North Western Avenue, Oklahoma City, Oklahoma 73118 ("Assignor"), to **TOTAL E&P USA, INC.**, a Delaware corporation, with a notice address of 1201 Louisiana, Suite 1800, Houston, Texas 77002 ("Assignee"). This Assignment is executed and delivered in connection with and pursuant to the terms of that certain Purchase and Sale Agreement dated December 30, 2011 (the "Agreement"), by and among Assignor, EnerVest Energy Institutional Fund IX, L.P., EnerVest Energy Institutional Fund IX-WI, L.P., EnerVest Energy Institutional Fund XI-A, L.P., EnerVest Energy Institutional Fund XI-WI, L.P., CGAS Properties, L.P., Belden and Blake Corporation, and Assignee.

1. Assignment. For and in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby **GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER AND DELIVER** unto Assignee, the Assignee's Proportionate Share (as hereinafter defined) of all of Assignor's (including the right, title and interest of Chesapeake AEC Acquisition, L.L.C. and Ohio Buckeye Energy, L.L.C., each of whom has been merged into Assignor) and its Affiliates' right, title and interest as of the Effective Time (or, with respect to the Contract PSA Leases, as of December 30, 2011 (the "Closing Date")) in and to the following in the Utica Area (but excluding Assignor's Excluded Assets) subject to the terms and reservations hereof:

1.1 All oil, gas and mineral leases, leasehold interests, operating rights, working interests and net revenue interests, and other rights to crude oil, natural gas, casinghead gas, condensate, sulfur, natural gas liquids, and other gaseous hydrocarbons (collectively, "Hydrocarbons"), including those interests and rights described in Exhibit "A" attached hereto and made a part hereof, which are owned by (i) Assignor (including the right, title and interest of Chesapeake AEC Acquisition, L.L.C. and Ohio Buckeye Energy, L.L.C., each of whom has been merged into Assignor) or any of its Affiliates as of the Effective Time or (ii) Assignor (including the right, title and interest of Chesapeake AEC Acquisition, L.L.C. and Ohio Buckeye Energy, L.L.C., each of whom has been merged into Assignor) or any of its Affiliates with respect to the Contracted PSA Leases as of the Closing Date, in each case, whether producing or non-producing; and the lands covered by the leases and interests, including those described in Exhibit "A" even though such rights might be omitted from or incorrectly described on Exhibit "A" (collectively, the "Lands"):

1.2 (i) All of the oil and gas wells listed in Exhibit "A" (the "Wells"), (ii) all Lease Owned well heads, casing, tubing, pumps, motors, gauges, valves, heaters and treaters constituting part of or connected to the Wells or located on the PSA Leases, (iii) Lease Owned automation equipment constituting part of or connected to the Wells or located on the PSA Leases, (iv) all Lease Owned gathering lines and improvements, water lines, vessels, tanks, boilers, separators, treating equipment, compressors and other equipment used in connection with the Wells or PSA Leases, (v) all Lease Owned power lines, telephone and communication lines used in connection with the Wells or PSA Leases, (vi) all Lease Owned injection wells and water disposal facilities, and (vii) all other Lease Owned appurtenances owned and used in connection with the production, treating, storing, transportation or marketing of Hydrocarbons from the Wells or PSA Leases (the property described in subsections (ii) through (vii) of this subpart 1.2 being collectively, the "Equipment");

1.3 All presently existing unitization, pooling and/or communitization agreements, declarations or designations and contractually, statutorily, judicially or administratively created drilling, spacing and/or production units, insofar as the same are attributable or allocated to the Lands, and all of Assignor's and its Affiliates' interest in and to the properties covered or units created thereby (collectively, "Unitization Acreage");

1.4 All presently existing and valid Hydrocarbon sales agreements, operating agreements (excluding any operating rights or duties), gathering agreements, transportation agreements, farmout and farmin agreements, unitization, pooling and communitization agreements, purchase agreements, exploration agreements, area of mutual interest agreements, exchange and processing contracts and agreements and any other contracts, agreements and instruments insofar as the above agreements cover, are attributable to or relate to the Lands or the Wells or any interests pooled, communitized or unitized therewith, including those contracts and agreements described on Exhibit "C-1" attached to the Agreement (collectively, the "Contracts");

1.5 All Hydrocarbons in, on, under or produced from or attributable to the Lands or the Unitization Acreage from and after the Effective Time and the proceeds thereof and inventory purchased from Assignor or its Affiliates pursuant to Section 2.5(a) of the Agreement;

1.6 All easements, surface leases, servitudes, rights of way and all other rights and appurtenances situated on or used in connection with the production of Hydrocarbons from the Lands or the Unitization Acreage, including leases, easements or rights-of-way with respect to surface fee interests included in Assignor's Excluded Assets and (i) used or held for use for the location of or access to Wells or Equipment or (ii) necessary for the development or operation of any of the Properties (collectively, the "Easements");

1.7 Subject to the rights and restrictions of Third Parties, copies of Assignor's books, records and files, including all Contracts and any and all title files, lease files, land files, wells files, including Geological and Geophysical Information which is not an Excluded Asset of Assignor and which is not covered by the Seismic License delivered by Assignor to Assignee on the Closing Date, well logs and other well data, maps, division order files, abstracts, production files, technical, engineering and maintenance files, environmental and safety records and information to the extent related to the items listed in subparts 1.1 through 1.6 hereof, and, to the extent available, in an industry standard or already existing electronic format as reasonably requested by Assignee, excluding, except to the extent of current ad valorem and severance Tax returns, accounting and tax records for all periods prior to the Effective Time; and

1.8 Rights and interests in proceeds under any policy or agreement of insurance or rights and interests under any agreement of indemnity (including any rights, claims or causes of action of Assignor or its Affiliates against Third Parties under any indemnities or hold harmless agreements and any indemnities received in connection with Assignor's or its Affiliates' prior acquisition of any of the Properties) to the extent and only to the extent such rights and interests relate to losses, damages, claims, liabilities, debts, obligations or expenses that are Assumed Obligations under the Agreement.

All rights, titles and interests transferred and assigned to Assignee pursuant to this Section 1 being collectively called the "Conveyed Interests". It is the intent of Assignor to convey and this Assignment hereby conveys to Assignee, subject to the reservations and conditions herein contained, the Conveyed Interests, regardless of errors in description, any incorrect or misspelled names, or any transcribed or incorrect recording references. As used in this Assignment, the term "Assignee's Proportionate Share" shall mean an undivided 89.2857%.

TO HAVE AND TO HOLD all and singular the Conveyed Interests together with all rights, titles, interests, estates, remedies, powers, and privileges thereunto appertaining unto Assignee and Assignee's successors and assigns forever.

2. Development Agreement. The Conveyed Interests are subject to the Development Agreement.

3. Special Warranty of Defensible Title. Assignor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular Defensible Title to the Conveyed Interests unto Assignee and Assignee's successors and assigns, against every Person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Assignor, but not otherwise. This special warranty of Defensible Title will continue after the delivery of this Assignment for a period of five (5) years and shall thereafter be of no further force or effect except with respect to any claim under such special warranty of Defensible Title that has been asserted prior to the end of such five (5) year period, which shall survive until such claim with respect thereto is resolved. The intended effect of such termination is to bar, from and after the date of termination, any claim or cause of action with respect to such special warranty of Defensible Title. Further, Assignee is specifically assigned, and subrogated to, the rights or actions on title warranties given or made by Assignor's or its Affiliate's predecessors in title, with respect to the Conveyed Interests and to the extent Assignor may legally assign such rights and grant such subrogation.

4. Special Retained Liabilities. Reference is hereby made to that certain (i) Amended and Restated Royalty Agreement dated as of December 1, 2011, by and among Assignor, CHK Utica, L.L.C. ("CHK Utica"), Chesapeake Appalachia L.L.C., Chesapeake AEC Acquisition, L.L.C., Ohio Buckeye Energy, L.L.C. (collectively, the "Chesapeake Parties") and Utica Royalty Partners, LP (the "Royalty Company I") and (ii) Royalty Agreement dated as of December 1, 2011, by and among the Chesapeake Parties and Utica Royalty Partners II LP ("Royalty Company II" and such agreements collectively, the "Royalty Agreements"). Assignor does hereby acknowledge and agree that the Conveyed Interests shall not be burdened by the Royalty Agreements or any overriding royalty interests or other rights granted to the Royalty Company I or Royalty Company II pursuant thereto, including, without limitation, the overriding royalty interests and other rights assigned pursuant to the Conveyances of Overriding Royalty Interest described in Exhibit "B" attached hereto (collectively, the "Special Retained Liabilities"), and that such interests and rights shall exclusively burden and be carved out of Assignor's rights, titles and interests in the Properties that do not constitute Conveyed Interests. Furthermore, Assignor does hereby agree to pay, defend, indemnify, reimburse and hold harmless Assignee for, from and against any loss, damage, diminution in value, claim, liability, debt, obligation or expense (including interest, reasonable legal fees, and expenses of litigation and attorneys fees in enforcing this indemnity) incurred, suffered, paid by or resulting to Assignee and which result from, arise out of or in connection with, is based upon, or exist by reason of, any claims made against Assignee pursuant to or on account of the Royalty Agreements or the Special Retained Liabilities.

5. Limitations on Representations and Warranties.

5.1 EXCEPT FOR THE EXPRESS AND SPECIFIC REPRESENTATIONS AND WARRANTIES OF ASSIGNOR IN THE AGREEMENT AND ASSIGNOR'S CERTIFICATE DELIVERED AT CLOSING PURSUANT THERETO AND EXCEPT FOR THE SPECIAL WARRANTY OF DEFENSIBLE TITLE CONTAINED IN THIS ASSIGNMENT, ASSIGNEE ACKNOWLEDGES THAT ASSIGNOR HAS NOT MADE, AND ASSIGNOR HEREBY EXPRESSLY DISCLAIMS AND NEGATES, AND ASSIGNEE HEREBY EXPRESSLY WAIVES, ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE RELATING TO (i) PRODUCTION RATES, RECOMPLETION OPPORTUNITIES, DECLINE RATES, GAS BALANCING INFORMATION, OR THE QUALITY, QUANTITY OR VOLUME OF THE RESERVES OF HYDROCARBONS, IF ANY, ATTRIBUTABLE TO THE PROPERTIES, (ii) THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY RECORDS, INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) NOW, HERETOFORE OR HEREAFTER FURNISHED TO ASSIGNEE BY OR ON BEHALF OF ASSIGNOR, AND (iii) THE ENVIRONMENTAL CONDITION OF THE PROPERTIES.

5.2 EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF ASSIGNOR IN THE AGREEMENT AND ASSIGNOR'S CERTIFICATE DELIVERED AT CLOSING PURSUANT THERETO AND EXCEPT FOR THE SPECIAL WARRANTY OF DEFENSIBLE TITLE CONTAINED IN THIS ASSIGNMENT, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ASSIGNOR EXPRESSLY DISCLAIMS AND NEGATES, AND ASSIGNEE HEREBY WAIVES, AS TO PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES CONSTITUTING A PART OF THE PROPERTIES, (i) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (ii) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (iii) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (iv) ANY RIGHTS OF PURCHASERS UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION OR RETURN OF THE PURCHASE PRICE, (v) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM DEFECTS, WHETHER KNOWN OR UNKNOWN, (vi) ANY AND ALL IMPLIED WARRANTIES EXISTING UNDER APPLICABLE LAW, AND (vii) ANY IMPLIED OR EXPRESS WARRANTY REGARDING ENVIRONMENTAL LAWS, THE RELEASE OF SUBSTANCES, WASTES OR MATERIALS INTO THE ENVIRONMENT, OR PROTECTION OF THE ENVIRONMENT OR HEALTH, IT BEING THE EXPRESS INTENTION OF ASSIGNEE AND ASSIGNOR THAT THE PERSONAL PROPERTY, EQUIPMENT, INVENTORY, MACHINERY AND FIXTURES IN WHICH ASSIGNOR HAS ANY INTEREST ARE BEING ACCEPTED BY ASSIGNEE, SUBJECT TO THE TERMS OF THE AGREEMENT, "AS IS, WHERE IS, WITH ALL FAULTS" AND IN THEIR PRESENT CONDITION AND STATE OF REPAIR.

5.3 ASSIGNOR AND ASSIGNEE AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE DISCLAIMERS OF CERTAIN WARRANTIES CONTAINED IN THIS SECTION 5 ARE "CONSPICUOUS" DISCLAIMERS FOR THE PURPOSES OF ANY APPLICABLE LAW, RULE OR ORDER.

6. Miscellaneous.

6.1. Cooperation. In addition to this Assignment, Assignor shall execute, acknowledge, and deliver to Assignee, in a timely manner and without further consideration, any documents or instruments that Assignee may reasonably require, including, without limitation, further assignments or conveyances required by any state or federal authority, deeds, and consents to further evidence the assignment and conveyance of the Conveyed Interests by Assignor to Assignee.

6.2. Counterparts. This Assignment may be executed in multiple counterparts, each of which will be an original instrument, but all of which will constitute one instrument; provided, however, that to facilitate recording or filing of this Assignment, each recorded or filed counterpart may contain only a portion of Exhibit "A" as provided in Section 6.4 of this Assignment.

6.3. Successors and Assigns. This Assignment shall bind and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

6.4. Recording of Assignment. To facilitate recording or filing of this Assignment, the counterpart filed with a county agency or office may contain only that portion of Exhibit "A" that describes property under the jurisdiction of that agency or office. Assignor, on the one hand, and Assignee, on the other hand, have each retained a counterpart of this Assignment containing a full description of all of the Conveyed Interests.

6.5. Capitalized Terms. Except as otherwise defined herein, all capitalized terms used in this Assignment which are defined in the Agreement will have the same meanings herein as defined in the Agreement; *provided, however, that*, notwithstanding any provision of this Assignment, CHK Utica will not be considered an "Affiliate" of the Assignor for purposes of this Assignment.

6.6. Conflicts. If there is a conflict between the provisions of the Agreement and this Assignment, the provisions of the Agreement shall control.

6.7. Choice of Law. THIS ASSIGNMENT AND THE LEGAL RELATIONS AMONG THE PARTIES SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO.

6.8. Arbitration. Any disputes, claims, counterclaims, demands, causes of action, controversies and other matters in question between the parties hereto arising out of or relating to this Assignment or the alleged breach hereof, regardless of whether (a) allegedly extra-contractual in nature, (b) sounding in contract, tort or otherwise, (c) provided for by Law or otherwise, or (d) seeking damages or any other relief, whether at Law, in equity or otherwise, shall be resolved through final and binding arbitration in accordance with Section 13 of the Agreement, the terms of which are incorporated by reference as if set out in full herein.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of Assignor and Assignee has executed this instrument on the date of its respective acknowledgment annexed hereto, but effective for all purposes as of the Effective Time.

ASSIGNOR:

CHESAPEAKE EXPLORATION, L.L.C.,
an Oklahoma limited liability company

By: _____
Douglas J. Jacobson
Executive Vice President

ASSIGNEE:

TOTAL E&P USA, INC.,
a Delaware corporation

By: _____
Fabien Colmet Dunge
Vice President Business Development & Strategy

This instrument was prepared by:

Jeremy A. Mouton
Commercial Law Group, P.C.
5520 North Francis Avenue
Oklahoma City, OK 73118

ASSIGNOR ACKNOWLEDGMENT

STATE OF OKLAHOMA §
§
COUNTY OF OKLAHOMA §

This instrument was acknowledged before me on this 30th day of December, 2011, by Douglas J. Jacobson, as Executive Vice President of Chesapeake Exploration, L.L.C., an Oklahoma limited liability company, as the act and deed and on behalf of such limited liability company.

Lian D. Louisey
Notary Public

My Commission Expires: 6-11-15
Commission Number: 03008905

LINN D. YOUISEY NOTARY # 03008905 EXP. 06/11/15 PUBLIC STATE OF OKLAHOMA

ASSIGNER ACKNOWLEDGMENT

STATE OF OKLAHOMA §
§
COUNTY OF OKLAHOMA §

This instrument was acknowledged before me on this 30th day of December, 2011, by Fabien Colmet Daage, as Vice President Business Development & Strategy of Total E&P USA, Inc., a Delaware corporation, as the act and deed and on behalf of such corporation.

Notary Public

My Commission Expires: 08-11-15
Commission Number: 09009905

LINN D. YOUSEY NOTARY PUBLIC # 09009905 EXP. 08/11/15 STATE OF OKLAHOMA

ANSEXFUSMGS
20120000022243 088

EXHIBIT "A"

Attached to and made a part of that certain Assignment, Bill of Sale and Conveyance dated effective November 1, 2011 from Chesapeake Exploration, L.L.C., as Assignor to Total E&P USA, Inc., as Assignee

Lease No	Lessor	Lessee	Lease Date	Legal Description	Township	County	State	Book	Page	Entry
10230 00HR	MARTHA A. HEAVILIN, TRUSTEE	CHESAPEAKE EXPLORATION, L.L.C.	8/14/2011	NE 24-10N-5W SE/4 25-10N-5W	ARCHER	HARRISON	OH	67	5	
10474 00HR	NORTH AMERICAN COAL ROYALTY COMPANY	CHESAPEAKE EXPLORATION, L.L.C.	7/21/2011	NW 34-10N-4W SE 3-11N-5W	ARCHER	HARRISON	OH	193	854	
12308 00HR	D.M.H.M., AN OHIO PARTNERSHIP	CHESAPEAKE EXPLORATION, L.L.C.	9/7/2011	NE 15-11N-5W	ARCHER	HARRISON	OH	198	1184	
1-301948-001	SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN LLC	5/18/2010	NE4, 28 9N 4W NE4, 34 9N 4W NW4, 28 9N 4W SE4, 29 9N 4W SE4, 33 9N 4W SW4, 29 9N 4W	CADIZ	HARRISON	OH	193	1784	201000000927
1-301946-000	SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN LLC	5/18/2010	SE4, 17 11N 5W SW4, 17 11N 5W	ARCHER	HARRISON	OH	193	1767	201000000929
1-301948-000	ALAN M. THOMPSON AND SANDRA L. THOMPSON, HUSBAND AND WIFE AND CHARLES M. THOMPSON AND BARBARA A. THOMPSON, HUSBAND AND WIFE	DALE PROPERTY SERVICES PENN LLC	5/27/2010	SW4, 11 11N 5W	ARCHER	HARRISON	OH	193	1751	201000000926
1-301949-000	ALAN M THOMPSON AND SANDRA L THOMPSON, HUSBAND AND WIFE AND CHARLES M THOMPSON AND BARBARA A THOMPSON, HUSBAND AND WIFE	DALE PROPERTY SERVICES PENN LP	5/27/2010	NW4, 5 11N 5W SE4, 11 11N 5W SW4, 5 11N 5W	ARCHER	HARRISON	OH	193	2039	201000000975
1-301951-000	ALAN M. THOMPSON AND SANDRA L. THOMPSON, HUSBAND AND WIFE AND CHARLES M. THOMPSON AND BARBARA A. THOMPSON, HUSBAND AND WIFE	DALE PROPERTY SERVICES PENN LLC	5/27/2010	NE4, 34 10N 4W NE4, 35 10N 4W NW4, 26 10N 4W NW4, 25 10N 4W	ARCHER	HARRISON	OH	193	2035	201000000975

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IT IS THE INTENTION OF THE ASSIGNOR TO CONVEY THE LEASES INSOFAR AND ONLY INSOFAR AS THE LEASE IS LOCATED WITHIN THE DESCRIBED TOWNSHIP.

UNIFORM DORMANT MINERAL INTERESTS ACT*

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL TE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-FIFTH YEAR
IN BOSTON, MASSACHUSETTS

August 1-8, 1986

WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
New Orleans, Louisiana, February 16, 1987

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* The Conference changed the designation of the Dormant Mineral Interests Act from Uniform to Model as approved by the Executive Committee on January 17, 1999.

UNIFORM DORMANT MINERAL INTERESTS ACT

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Final, approved copies of this Act are available on 8-inch IBM Displaywriter diskettes, and copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

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UNIFORM DORMANT MINERAL INTERESTS ACT

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UNIFORM DORMANT MINERAL INTERESTS ACT

Prefatory Note

Nature of Mineral Interests

Transactions involving mineral interests may take several different forms. A *lease* permits the lessee to enter the land and remove minerals for a specified period of time; whether a lease creates a separate title to the real estate varies from state to state. A *profit* is an interest in land that permits the owner of the profit to remove minerals; however, the profit does not entitle its owner to possession of the land. A fee title or other interests in minerals may be created by *severance*.

A severance of mineral interests occurs where all or a portion of mineral interests are owned apart from the ownership of the surface. A severance may occur in one of two ways. First, a surface owner who also owns a mineral interest may *reserve* all or a portion of the mineral interest upon transfer of the surface. In the deed conveying the surface of the land to the buyer, the seller reserves a mineral interest in some or all of the minerals beneath the surface. Certain types of sellers, such as railroad companies, often include a reservation of mineral interests as a matter of course in all deeds.

Second, a person who owns both the surface of the land and a mineral interest may *convey* all or a portion of the mineral interest to another person. This practice is common in areas where minerals have been recently discovered, because many landowners wish to capitalize immediately on the speculative value of the subsurface rights.

Severed mineral interests may be owned in the same manner as the surface of the land, that is, in fee simple. In some jurisdictions, however, an oil and gas right (as opposed to an interest in nonfugacious minerals) is a nonpossessory interest (an incorporeal hereditament).

Potential Problems Relating to Dormant Mineral Interests

Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown. Under the common law, a fee simple interest in land cannot be extinguished or abandoned by nonuse, and it is not necessary to rerecord or to maintain current property records in order to preserve an ownership interest in minerals. Thus, it is possible that the only document appearing in the public record may be the document initially creating the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned about an apparently valueless mineral interest and may not even be aware of it; hence their interests may not appear of record.

If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of

reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.

On the other hand, the owner of a dormant mineral interest is not motivated to develop the minerals since undeveloped rights may not be taxed and may not be subject to loss through adverse possession by surface occupancy. The greatest value of a dormant mineral interest to the mineral owner may be its effectual impairment of the surface estate, which may have hold-up value when a person seeks to assemble an unencumbered fee. Even if one owner of a dormant mineral interest is willing to relinquish the interest for a reasonable price, the surface owner may find it impossible to trace the ownership of other fractional shares in the old interest.

An extensive body of legal literature demonstrates the need for an effective means of clearing land titles of dormant mineral interests. Public policy favors subjecting dormant mineral interests to termination, and legislative intervention in the continuing conflict between mineral and surface interests may be necessary in some jurisdictions. More than one-fourth of the states have now enacted special statutes to enable termination of dormant mineral interests, and some of the nearly two dozen states that now have marketable title acts apply the acts to mineral interests.

Approaches to the Dormant Mineral Problem

The jurisdictions that have attempted to deal with dormant mineral interests have adopted a wide variety of solutions, with mixed success. The basic schemes described below constitute some of the main approaches that have been used, although many states have adopted variants or have combined features of these schemes.

Abandonment. The common law concept of abandonment of mineral interests provides useful relief in some situations. As a general rule, severed mineral interests that are regarded as separate possessory estates are not subject to abandonment. But less than fee interests in the nature of a lease or profit may be subject to abandonment. In some jurisdictions the scope of the abandonment remedy has been broadened to extend to oil and gas rights on the basis that these minerals, being fugacious, are owned in the form of an incorporeal hereditament, and hence are subject to abandonment.

The abandonment remedy is limited both in scope and by practical proof problems. Abandonment requires a difficult showing of *intent* to abandon; nonuse of the mineral interest alone is not sufficient evidence of intent to abandon. However, the remedy is useful in some situations and should be retained along with enactment of dormant mineral legislation.

Nonuse. A number of statutes have made *nonuse* of a mineral interest for a term of years, e.g., 20 years, the basis for termination of the mineral interest. Such a statute in effect makes nonuse for the prescribed period conclusive evidence of intent to abandon.

The nonuse scheme has advantages and disadvantages. Its major attraction is that it enables extinguishment of dormant interests solely on the basis of nonuse; proof of intent to abandon is unnecessary. Its major drawbacks are that it requires resort to facts outside the record

and it requires a judicial proceeding to determine the fact of nonuse. It also precludes long-term holding of mineral rights for such purposes as future development, future price increases that will make development feasible, or assurance by a conservation organization or subdivider that the mineral rights will not be exploited.

The nonuse concept should be incorporated in any dormant mineral statute. Even a statute based exclusively on recording, such as the Uniform Simplification of Land Transfers Act (USLTA) discussed below, does not terminate the right of a person who has an active legitimate mineral interest but who through inadvertence fails to record.

Recording. Another approach found in several jurisdictions, as well as in USLTA, is based on passage of time without recording. Under this approach a mineral interest is extinguished a certain period of time after it is recorded, for example 30 years, unless during that period a notice of intent to preserve the interest is recorded. The virtues of this model are that it enables clearing of title on the basis of facts in the record and without resort to judicial action, and it keeps the record mineral ownership current. Its major disadvantages are that it permits an inactive owner to preserve the mineral rights on a purely speculative basis and to hold out for nuisance money indefinitely, and it creates the possibility that actively producing mineral rights will be lost through inadvertent failure to record a notice of intent to preserve the mineral rights. The recording concept is useful, however, and should be a key element in any dormant mineral legislation.

Trust for unknown mineral owners. A quite different approach to protecting the rights of mineral owners is found in a number of jurisdictions, based on the concept of a trust fund created for unknown mineral owners. The basic purpose of such statutes is to permit development of the minerals even though not all mineral owners can be located, paying into a trust the share of the proceeds allocable to the absent owners. The usefulness of this scheme is limited in one of the main situations we are concerned with, which is to enable surface development where there is no substantial mineral value. The committee has concluded that this concept is beyond the scope of the dormant mineral statute, although it could be the subject of a subsequent act.

Escheat. A few states have treated dormant minerals as abandoned property subject to escheat. This concept is similar to the treatment given personal property in the Uniform Unclaimed Property Act. This approach has the same shortcomings as the trust for unknown mineral owners.

Constitutionality. Constitutional issues have been raised concerning retroactive application of a dormant mineral statute to existing mineral interests. The leading case, *Texaco v. Short*, 454 U.S. 516 (1982), held the Indiana dormant mineral statute constitutional by a narrow 5-4 margin. The Indiana statute provides that a mineral right lapses if it is not used for a period of 20 years and no reservation of rights is recorded during that time. No prior notice to the mineral owner is required. The statute includes a two-year grace period after enactment during which notices of preservation of the mineral interest may be recorded.

A combination nonuse/recording scheme thus satisfies federal due process requirements. Whether such a scheme would satisfy the due process requirements of the various states is not

clear. Comparable dormant mineral legislation has been voided by several state courts for failure to satisfy state due process requirements. Uniform legislation, if it is to succeed in all states where it is enacted, will need to be clearly constitutional under various state standards. This means that some sort of prior notice to the mineral owner is most likely necessary.

Draft Statute

A combination of approaches appears to be best for uniform legislation. The politics of this area of the law are quite intense in the mineral producing states, and the positions and interests of the various pressure groups differ from state to state. It should be remembered that the dormant mineral portion of USLTA was felt to be the most controversial aspect of that act.

A statute that combines a number of different protections for the mineral owner, but that still enables termination of dormant mineral rights, is likely to be the most successful. Such a combination may also help ensure the constitutionality of the act from state to state. For these reasons, the draft statute developed by the committee consists of a workable combination of the most widely accepted approaches found in jurisdictions with existing dormant mineral legislation, together with prior notice protection for the mineral owner.

Under the draft statute, the surface owner may bring an action to terminate a mineral interest that has been dormant for 20 years, provided the record also evidences no activity involving the mineral interest during that period, the owner of the mineral interest fails to record a notice of intent to preserve the mineral interest within that period, and no taxes are paid on the mineral interest within that period. To protect the rights of a dormant mineral owner who through inadvertence fails to record, the statute enables late recording upon payment of the litigation expenses incurred by the surface owner; this remedy is not available to the mineral owner, however, if the mineral interest has been dormant for more than 40 years (i.e., there has been no use, taxation, or recording of any kind affecting the minerals for that period). The statute provides a two-year grace period for owners of mineral interests to record a notice of intent to preserve interests that would be immediately or within a short period affected by enactment of the statute.

This procedure will assure that active or valuable mineral interests are protected, but will not place an undue burden on marketability. The combination of protections will help ensure the fairness, as well as the constitutionality, of the statute.

The committee believes that clearing title to real property should not be an end in itself and should not be achieved at the expense of a mineral owner who wishes to retain the mineral interest. In many cases the interest was negotiated and bargained for and represents a substantial investment. The objective is to clear title of worthless mineral interests and mineral interests about which no one cares. The draft statute embodies this philosophy.

UNIFORM DORMANT MINERAL INTERESTS ACT

SECTION 1. STATEMENT OF POLICY.

(a) The public policy of this State is to enable and encourage marketability of real property and to mitigate the adverse effect of dormant mineral interests on the full use and development of both surface estate and mineral interests in real property.

(b) This [Act] shall be construed to effectuate its purpose to provide a means for termination of dormant mineral interests that impair marketability of real property.

Comment

This section is a legislative finding and declaration of the substantial interest of the state in dormant mineral legislation.

SECTION 2. DEFINITIONS.

As used in this [Act]:

(1) "Mineral interest" means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, leasehold, or lien, in minerals, regardless of character.

(2) "Minerals" includes gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable, and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, and any other substance defined as a mineral by the law of this State.

Comment

The definitions in this section are broadly drafted to include all the various forms of minerals and mineral interests. This includes both fugacious and nonfugacious, as well as organic and inorganic, minerals. The Act does not distinguish among minerals based on their character, but treats all minerals the same.

The reference to liens in paragraph (1) includes both contractual and noncontractual, voluntary and involuntary, liens on minerals and mineral interests. It should be noted that the duration of a lien may be subject to general laws governing liens. For example, a lien that by state law has a duration of 10 years may not be given a life of 20 years simply by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice), just as a mineral lease which by its own terms has a duration of five years is not extended by recordation of a notice of intent to preserve the lease. Likewise, if state law requires specific filings, recordings, or other acts for enforceability of a lien, those acts must be complied with even though the lien is not dormant within the meaning of this Act. Conversely, an instrument that creates a security interest which, by its terms, endures more than 20 years, cannot avoid the effect of the 20-year statute. See Section 4(c) (termination of dormant mineral interest).

The definition of "minerals" in paragraph (2) is inclusive and not exclusive. "Coal" and other solid hydrocarbons within the meaning of paragraph (2) includes lignite, leonhardite, and other grades of coal. This Act is not intended to affect water law but is intended to affect minerals dissolved or suspended in water. See Section 3 (exclusions).

While Section 2 defines the term "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

SECTION 3. EXCLUSIONS.

(a) This [Act] does not apply to:

(1) a mineral interest of the United States or an Indian tribe, except to the extent permitted by federal law; or

(2) a mineral interest of this State or an agency or political subdivision of this State, except to the extent permitted by state law other than this [Act].

(b) This [Act] does not affect water rights.

Comment

Public entities are excepted by this section because they have perpetual existence and can be located if it becomes necessary to terminate by negotiation a mineral interest held by the public entity. A jurisdiction enacting this statute should also exclude from its operation interests protected by statute, such as environmental or natural resource conservation or preservation statutes.

This Act does not affect mineral interests of Indian tribes, groups, or individuals (including corporations formed under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1600 et seq.) to the extent that the interests are protected against divestiture by superseding federal treaties or statutes.

Although this Act affects minerals dissolved or suspended in water, it is not intended to affect water law. See Comment to Section 2 (definitions).

While Section 2 (definitions) defines the terms "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

SECTION 4. TERMINATION OF DORMANT MINERAL INTEREST.

(a) The surface owner of real property subject to a mineral interest may maintain an action to terminate a dormant mineral interest. A mineral interest is dormant for the purpose of this [Act] if the interest is unused within the meaning of subsection (b) for a period of 20 or more years next preceding commencement of the action and has not been preserved pursuant to Section 5. The action must be in the nature of and requires the same notice as is required in an action to quiet title. The action may be maintained whether or not the owner of the mineral interest or the owner's whereabouts is known or unknown. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the 20-year period.

(b) For the purpose of this section, any of the following actions taken by or under authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the entire mineral interest:

(1) Active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development, but not including injection of substances for purposes of disposal or storage. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations.

(2) Payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest.

(3) Recordation of an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, leases, or divides the interest. Recordation of an instrument constitutes use of (i) any recorded interest owned by any person in any mineral that is the subject of the instrument, and (ii) any recorded mineral interest in the property owned by any party to the instrument.

(4) Recordation of a judgment or decree that makes specific reference to the mineral interest.

(c) This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to or the continued existence of the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

Comment

This section defines dormancy for the purpose of termination of a mineral interest pursuant to this Act. The dormancy period selected is 20 years -- a not uncommon period among the various jurisdictions.

Subsection (a) provides for a court proceeding in the nature of a quiet title action to

terminate a dormant mineral interest. The device of a court proceeding ensures notice to the mineral owner personally or by publication as may be appropriate to the circumstances and a reliable determination of dormancy.

Subsection (b) ties the determination of dormancy to nonuse. Each paragraph of subsection (b) describes an activity that constitutes use of a mineral interest for purposes of the dormancy determination. In addition, a mineral interest is not dormant if a notice of intent to preserve the interest is recorded pursuant to Section 5 (preservation of mineral interest).

Paragraph (b)(1) provides for preservation of a mineral interest by active mineral operations. Repressuring may be considered an active mineral operation if made for the purpose of secondary recovery operations. A shut-in well is not an active mineral operation and therefore would not suffice to save the mineral interest from dormancy.

Paragraph (b)(1) is intended to preserve in its entirety a mineral interest where there are active operations directed toward any mineral that is included within the interest. Thus, if there are fractional owners of a mineral interest, activity by one owner is considered activity by all owners. Other interests owned by other persons in the minerals that are the object of the operations are also preserved by the operations. For example, oil and gas operations by a fractional oil, gas, and coal owner would save not only the interests of other fractional oil and gas owners but also the interests of oil and gas lessees and royalty owners holding under either the oil and gas owner or any fractional owner, as well as the interests of holders of any other mineral interest in the oil and gas that is the object of the operations. The oil and gas operations suffice to save the coal interest of the oil, gas, and coal owner, as well as other minerals included in any of the affected mineral interests, not just the interest in oil and gas that is the subject of the particular operations. This is the case regardless whether the mineral interest was acquired in one instrument or by several instruments. However, oil and gas operations by a fractional oil, gas, and coal owner would not save the mineral interest of a fractional coal owner if the interest does not include oil and gas.

Under paragraph (b)(2), taxes must be actually paid within the preceding 20 years to suffice as a qualifying use of the mineral interest.

Paragraph (b)(3) is intended to cover any recorded instrument evidencing an intention to own or affect an interest in the minerals, including a recorded oil, gas, or mineral lease, regardless whether such a lease is recognized as an interest in land in the particular jurisdiction.

Under paragraph (b)(3), recordation has the effect of preserving not only the interests of the parties to the instrument in the minerals that are the subject of the instrument, but also the recorded interests of nonparties in the subject minerals, as well as other recorded interests of the parties in other minerals in the same property. Thus, recordation of an oil and gas lease between a fractional owner and lessee preserves the interest in oil and gas not only of the fractional owner but also of the co-owners; moreover, the recordation preserves the interest of the fractional owner in other minerals that are not the subject of the lease, whether the other minerals were acquired by the same instrument by which the oil and gas interest was acquired or by a separate instrument.

Recordation of a judgment or decree under paragraph (b)(4) includes entry or recordation in a judgment book in a jurisdiction where such an entry or recordation becomes part of the property records. The judgment or decree must make specific reference to the mineral interest in order to preserve it. Thus, a general judgment lien or other recordation of civil process such as an attachment or sheriff's deed of a nonspecific nature would not constitute use of the mineral interest within the meaning of paragraph (b)(4).

Subsection (c) is intended to preclude a mineral owner from evading the purpose of this Act by contracting for a very long or indefinite duration of the mineral interest. A lien on minerals having a 30-year duration, for example, would be subject to termination after 20 years under this Act if there were no further activities involving the minerals or mineral interest. A person seeking to keep the lien for its full 30-year duration could do so by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice). It should be noted that recordation of a notice of intent to preserve the lien would not extend the lien beyond the date upon which it terminates by its own terms.

SECTION 5. PRESERVATION OF MINERAL INTEREST BY NOTICE.

(a) An owner of a mineral interest may record at any time a notice of intent to preserve the mineral interest or a part thereof. The mineral interest is preserved in each county in which the notice is recorded. A mineral interest is not dormant if the notice is recorded within 20 years next preceding commencement of the action to terminate the mineral interest or pursuant to Section 6 after commencement of the action.

(b) The notice may be executed by an owner of the mineral interest or by another person acting on behalf of the owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf or whose identity cannot be established or is uncertain at the time of execution of the notice. The notice may be executed by or on behalf of a co-owner for the benefit of any or all co-owners or by or on behalf of an owner for the benefit of any or all persons claiming under the owner or persons under whom the owner claims.

(c) The notice must contain the name of the owner of the mineral interest or the co-owners or other persons for whom the mineral interest is to be preserved or, if the identity of the owner cannot be established or is uncertain, the name of the class of which the owner is a

member, and must identify the mineral interest or part thereof to be preserved by one of the following means:

(1) A reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the interest or of the judgment or decree that confirms the interest.

(2) A legal description of the mineral interest. [If the owner of a mineral interest claims the mineral interest under an instrument that is not of record or claims under a recorded instrument that does not specifically identify that owner, a legal description is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims. In such a case, the record of the notice of intent to preserve the mineral interest must be indexed under the name of the record owner as well as under the name of the owner of the mineral interest.]

(3) A reference generally and without specificity to any or all mineral interests of the owner in any real property situated in the county. The reference is not effective to preserve a particular mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the interest, (i) a previously recorded instrument that creates, reserves, or otherwise evidences that interest or (ii) a judgment or decree that confirms that interest.

Comment

This section is broadly drawn to permit a mineral owner to preserve not only his or her own interest but also any or all related interests. For example, the mineral owner may share ownership with one or more other persons. This section permits but does not require the mineral owner to preserve the interests of any or all of the co-owners by specifying the interests to be preserved. Likewise, the mineral interest being preserved may be subject to an overriding royalty or sublease or executive interest. In this situation, the mineral owner may elect also to preserve any or all of the interests subject to it, by specifying the interests in the notice of intent

to preserve. The mineral owner may also elect to preserve the interest as to some or all of the minerals included in the interest.

Where the mineral interest being preserved is of limited duration, recordation of a notice under this section does not extend the interest beyond the time the interest expires by its own terms. Where the mineral interest being preserved is a lien, recordation of the notice does not excuse compliance with any other applicable conditions or requirements for preservation of the lien.

The bracketed language in paragraph (c)(2) is for use in a jurisdiction that does not have a tract index system. It is intended to assist in indexing a notice of intent to preserve an interest despite a gap in the recorded mineral chain of title.

Paragraph (c)(3) permits a blanket recording as to all interests in the county, provided that there is a prior recorded instrument, or a judgment whether or not recorded, that establishes the name of the mineral owner in the county records. The blanket recording provision is a practical necessity for large mineral owners. Where a county does not have a general index of grantors and grantees, it will be necessary to establish a separate index of notices of intent to preserve mineral interests for purposes of the blanket recording.

SECTION 6. LATE RECORDING BY MINERAL OWNER.

(a) In this section, "litigation expenses" means costs and expenses that the court determines are reasonably and necessarily incurred in preparing for and prosecuting an action, including reasonable attorney's fees.

(b) In an action to terminate a mineral interest pursuant to this [Act], the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest as a condition of dismissal of the action, upon payment into court for the benefit of the surface owner of the real property the litigation expenses attributable to the mineral interest or portion thereof as to which the notice is recorded.

(c) This section does not apply in an action in which a mineral interest has been unused within the meaning of Section 4(b) for a period of 40 or more years next preceding commencement of the action.

Comment

This section applies only where the mineral owner seeks to make a late recording in order to obtain dismissal of the action. The section is not intended to require payment of litigation expenses as a condition of dismissal where the mineral owner secures dismissal upon proof that the mineral interest is not dormant by virtue of recordation or use of the property within the previous 20 years, as prescribed in Section 4 (termination of dormant mineral interest). Moreover, the remedy provided by this section is available only if there has been some recordation or use of the property within the previous 40 years.

SECTION 7. EFFECT OF TERMINATION.

A court order terminating a mineral interest [, when recorded,] merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments.

Comment

In some states it is standard practice for judgments such as this to be recorded. In other states entry of judgment alone may suffice to make the judgment part of the land records.

Merger of a terminated mineral interest with the surface is subject not only to existing tax liens and assessments, but also to other outstanding liens on the mineral interest. However, an outstanding lien on a mineral interest is itself a mineral interest that may be subject to termination under this Act. It should be noted that termination of a mineral interest under this Act that has been tax-deeded to the state or other public entity is subject to compliance with relevant requirements for release of tax-deeded property.

The appurtenant surface rights and obligations referred to in Section 7 include the right of entry on the surface and the obligation of support of the surface. However, termination of the support obligation of the surface under this Act does not terminate any support obligations owed to adjacent surface owners.

It is possible under this section for a surface owner to acquire greater mineral interests than the surface owner started with. Assume, for example, there are equal co-owners of the surface, one of whom conveys his or her undivided 50% share of minerals. Upon termination of the conveyed mineral interest under this Act, the interest would merge with the surface estate in proportion to the ownership of the surface estate, so that each owner would acquire one-half of the mineral interest. The end result is that the conveying surface owner would hold an undivided one-fourth of the minerals and the nonconveying surface owner surface owner would hold an

undivided three-fourths of the minerals. This result is proper since the reversion represents a windfall to the surface estate in general and to the conveying owner in particular, who has previously received the value of the mineral interest.

In the example above, assume that the conveyed mineral interest is not terminated, but instead the owner of the mineral interest executes a 30-year mineral lease. If the lease is terminated under this Act after 20 years have run, the interest in the remaining 10 years of the lease would merge with the surface estate in proportionate shares, at the end of which time it would expire, leaving the interest of the mineral owner unencumbered.

SECTION 8. SAVINGS AND TRANSITIONAL PROVISIONS.

(a) Except as otherwise provided in this section, this [Act] applies to all mineral interests, whether created before, on, or after its effective date.

(b) An action may not be maintained to terminate a mineral interest pursuant to this [Act] until [two] years after the effective date of the [Act].

(c) This [Act] does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

(d) This [Act] does not affect the validity of the termination of any mineral interest made pursuant to any predecessor statute on dormant mineral interests. The repeal by this [Act] of any statute on dormant mineral interests takes effect [two] years after the effective date of this [Act].

Comment

The [two]-year grace period provided by this section is to enable a mineral owner to take steps to record a notice of intent to preserve an interest that would otherwise be subject to termination immediately upon the effective date because of the application of the Act to existing mineral interests. Thus, a mineral owner may record a notice of intent to preserve an interest during the [two]-year period even though no action may be brought during the [two]-year period. Subsection (d) is intended for those states that repeal an existing dormant mineral statute upon enactment of this Act.

SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

SECTION 10. SHORT TITLE.

This [Act] may be cited as the Uniform Dormant Mineral Interests Act.

SECTION 11. SEVERABILITY CLAUSE.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 12. EFFECTIVE DATE.

This [Act] takes effect _____.

SECTION 13. REPEALS.

The following acts and parts of acts are repealed:

(1) _____.

(2) _____.

(3) _____.

PROPONENT TESTIMONY ON BEHALF OF SENATE BILL 223 AND HOUSE BILL 521, AN OHIO DORMANT MINERAL ACT

Ohio presently has a Marketable Title Act, R.C. §5301.47 et seq., which became effective September 29, 1961. It was amended September 30, 1974 to exclude any right, title, estate or interest in coal and coal mining rights from operation of the Act. Section 5301.48 of the Act states that a person has a marketable title to an interest in land if he has an unbroken chain of record title for a period of not less than 40 years. Chain of title is then defined by two clauses, the first of which states the case where the chain of title consists of only a single instrument or transaction and the second where it consists of two or more instruments or transactions. The Act provides that the requisite chain of title is only effective if nothing appears of record purporting to divest the claimant of the marketable title.

The obvious purpose of the Marketable Title Act is to simplify land title transactions by making it possible to determine marketability through limited title searches over some reasonable period thus avoiding the necessity of examining the record back to the patent for each new transaction. This is obviously a legitimate and desirable objective but in the absence of specific statutory authority, interests created and interests appearing in titles prior to that period would not necessarily be eliminated and would continue to be an impediment to marketability. Marketable Title Acts do not cure and validate errors or irregularities in conveyancing instruments but bar or extinguish interests which have been created by or result from irregularities in instruments recorded prior to the period prescribed by the statute and thereby free present titles from the effect of those instruments. In this very general sense, the Marketable Title Act is curative in character.

The Ohio Marketable Title Act was based on the model Marketable Title Act which was drafted by Professor Lewis M. Simes and Clarence B. Taylor as part of the Michigan research project, a comprehensive study undertaken to set up standard statutory language to provide for the simplification of real estate conveyances. At the time of that study in 1959, there were ten Marketable Title Acts in effect, including Michigan's. The Michigan Act, which had been in effect for 15 years and subjected to considerable testing and experience, appeared to be the best piece of draftsmanship and embodied the most practical approach for attaining the desired objective. The Michigan Act served as the basis for drafting the model Act. The Ohio Marketable Title Act was the tenth Marketable Title Act enacted after the Michigan study and was patterned directly from the model Act.

It is apparent from the legislative history of the Ohio Marketable title Act and subsequent interpretation by courts and

practitioners since its enactment that it was the general intent of the act to apply to mineral interests except coal. Simes and Taylor, in their Model Act, pointed out that the single principal provision in the Marketable Title Act which makes it ineffective to bar dormant mineral interests is the provision that the record title is subject to such interest and defects as are inherent in the muniments of which the chain of record title is formed. This provision is included in the Model Act, as well as the Michigan and Ohio Acts. From a practical standpoint, any reference in the recorded chain of title to previously-created mineral interests may serve to keep those interests alive. This issue was the subject of Heifner v. Bradford, 4 O.S. 3d 49 (1983). In that case, the trial court upheld the validity of a severed mineral interest which was based upon transactions in a chain of title separate from the title claimed by the possessor of the surface interest. The severed mineral chain, however, contained transactions recorded during the 40-year period prescribed by the Act and the court held that transactions inherent in muniments of title during the period constituted a separate recognizable chain of title entitled to protection under the Act. The Appellate Court reversed in a decision acknowledging the fact that a precise reading of the statute upheld the trial court's decision but relied on legislative history to the effect that it was the intent of the drafters to extinguish severed mineral interests.

The Ohio Supreme Court overruled the Court of Appeals based upon a strict reading of the statute. Due to this obvious limitation in the Act, recognized by Simes and Taylor and highlighted by Heifner, it would appear that the Ohio Marketable Title Act is not generally effective as a means of eliminating severed mineral interests.

As a general principle, minerals are not deemed to be capable of being abandoned by a non-user unless they are actually possessed. Ohio is in the majority of jurisdictions which hold that a severed interest in undeveloped minerals does not constitute possession. Michigan's legislators recognized the importance of including minerals in those defects and errors which should be eliminated by operation of time and non-use. The Michigan Act and the Model Act provide an additional mechanism for the elimination of dormant mineral interests which, when used in conjunction with the Marketable Title Act, is effective in accomplishing this goal. Under the Michigan Act, owners of severed mineral interests are required to file notice of their claims of interest within 20 years after the last use of the interest. A three-year grace period was provided for initial filing under the Michigan Act. Any severed mineral interest deemed abandoned or extinguished as a result of the application of the Michigan Act vests in the owner of the surface.

The major distinction between the proposed bill for consideration by the Ohio legislature and the Michigan Act is that the Michigan Act applies only to interests in oil and gas. It is apparent from the 1974 amendment of the Ohio Marketable Title Act

that the Ohio Legislature has deemed it advisable for the Marketable Title Act to apply to all mineral interests except coal. The proposed Ohio Dormant Mineral Act has been drafted to conform to the Ohio Marketable Title Act and apply to any mineral interest except an interest in coal as defined by §5301.53(E) of the Marketable Title Act. The proposed Bill, if passed, would have lead to the desired result as stated by the Appellate Court in Heifner of terminating unused mineral interests not preserved by operations, transfers or a filing of notice of an intent to preserve interest.

The proposed bill also contains the essential elements recommended by the National Conference of Commissioners on Uniform State Laws at its annual conference in Boston in August, 1986. I have enclosed a copy of the Uniform Dormant Mineral Interests Act with prefatory notes and comments for your review.

California, Illinois, Indiana, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington and Wisconsin all have adopted Dormant Mineral Acts. All but Pennsylvania, Virginia and Tennessee have companion Marketable Title Acts.

I believe that enactment of the Dormant Mineral Act will encourage the development of minerals in Ohio which have been previously ignored due to defects in title. The development of minerals would lead to severance tax revenues and enhance the economy of areas of the state which may have no other source of revenue production.

I feel that companies engaged in the development of minerals as well as owners of property subject to title defects not cured by the Marketable Title Act would benefit from the enactment of the proposed dormant minerals statute.

This testimony was prepared and presented by William J. Taylor, attorney and partner in Kincaid, Cultice & Geyer, 50 North Fourth Street, Zanesville, Ohio 43701, (614) 454-2591. Mr. Taylor's practice involves extensive mineral title work and his firm represented the prevailing party in Heifner v. Bradford, the leading Ohio Supreme Court case dealing with the Ohio Marketable Title Act. He frequently lectures and writes articles involving mineral title topics, including "Practical Mineral Title Opinions" and "The Effects of Foreclosing on Oil and Gas Leases" published by the Eastern Mineral Law Foundation. He is a member of the Ohio State Bar Association Natural Resources Committee, the Federal Bar Association Committee on Natural Resources, and the Legal Committee of the Ohio Oil and Gas Association.

UNIFORM DORMANT MINERAL INTERESTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

Approved and Recommended for Enactment
in All the States

At its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-FIFTH YEAR
IN BOSTON, MASSACHUSETTS
AUGUST 1-8, 1986

With Prefatory Note and Comments

UNIFORM DORMANT MINERAL INTERESTS ACT

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Final, approved copies of this Act are available on 8-inch IBM Displaywriter diskettes, and copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

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UNIFORM DORMANT MINERAL INTERESTS ACT

PREFATORY NOTE

Nature of Mineral Interests

Transactions involving mineral interests may take several different forms. A lease permits the lessee to enter the land and remove minerals for a specified period of time; whether a lease creates a separate title to the real estate varies from state to state. A profit is an interest in land that permits the owner of the profit to remove minerals; however, the profit does not entitle its owner to possession of the land. A fee title or other interests in minerals may be created by severance.

A severance of mineral interests occurs where all or a portion of mineral interests are owned apart from the ownership of the surface. A severance may occur in one of two ways. First, a surface owner who also owns a mineral interest may reserve all or a portion of the mineral interest upon transfer of the surface. In the deed conveying the surface of the land to the buyer, the seller reserves a mineral interest in some or all of the minerals beneath the surface. Certain types of sellers, such as railroad companies, often include a reservation of mineral interests as a matter of course in all deeds.

Second, a person who owns both the surface of the land and a mineral interest may convey all or a portion of the mineral interest to another person. This practice is common in areas where minerals have been recently discovered, because many landowners wish to capitalize immediately on the speculative value of the subsurface rights.

Severed mineral interests may be owned in the same manner as the surface of the land, that is, in fee simple. In some jurisdictions, however, an oil and gas right (as opposed to an interest in nonfugacious minerals) is a nonpossessory interest (an incorporeal hereditament).

Potential Problems Relating to Dormant Mineral Interests

Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown. Under the common law, a fee simple interest in land cannot be extinguished or abandoned by nonuse, and it is not necessary to rerecord or to maintain current property records in order to preserve an ownership interest in minerals. Thus, it is possible that the only document appearing in the public record may be the document initially creating the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned

about an apparently valueless mineral interest and may not even be aware of it; hence their interests may not appear of record.

If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.

On the other hand, the owner of a dormant mineral interest is not motivated to develop the minerals since undeveloped rights may not be taxed and may not be subject to loss through adverse possession by surface occupancy. The greatest value of a dormant mineral interest to the mineral owner may be its effectual impairment of the surface estate, which may have hold-up value when a person seeks to assemble an unencumbered fee. Even if one owner of a dormant mineral interest is willing to relinquish the interest for a reasonable price, the surface owner may find it impossible to trace the ownership of other fractional shares in the old interest.

An extensive body of legal literature demonstrates the need for an effective means of clearing land titles of dormant mineral interests. Public policy favors subjecting dormant mineral interests to termination, and legislative intervention in the continuing conflict between mineral and surface interests may be necessary in some jurisdictions. More than one-fourth of the states have now enacted special statutes to enable termination of dormant mineral interests, and some of the nearly two dozen states that now have marketable title acts apply the acts to mineral interests.

Approaches to the Dormant Mineral Problem

The jurisdictions that have attempted to deal with dormant mineral interests have adopted a wide variety of solutions, with mixed success. The basic schemes described below constitute some of the main approaches that have been used, although many states have adopted variants or have combined features of these schemes.

Abandonment. The common law concept of abandonment of mineral interests provides useful relief in some situations. As a general rule, severed mineral interests that are regarded as separate possessory estates are not subject to abandonment. But less than fee interests in the nature of a lease or profit may be subject to abandonment. In some jurisdictions the scope of

the abandonment remedy has been broadened to extend to oil and gas rights on the basis that these minerals, being fugacious, are owned in the form of an incorporeal hereditament, and hence are subject to abandonment.

The abandonment remedy is limited both in scope and by practical proof problems. Abandonment requires a difficult showing of intent to abandon; nonuse of the mineral interest alone is not sufficient evidence of intent to abandon. However, the remedy is useful in some situations and should be retained along with enactment of dormant mineral legislation.

Nonuse. A number of statutes have made nonuse of a mineral interest for a term of years, e.g., 20 years, the basis for termination of the mineral interest. Such a statute in effect makes nonuse for the prescribed period conclusive evidence of intent to abandon.

The nonuse scheme has advantages and disadvantages. Its major attraction is that it enables extinguishment of dormant interests solely on the basis of nonuse; proof of intent to abandon is unnecessary. Its major drawbacks are that it requires resort to facts outside the record and it requires a judicial proceeding to determine the fact of nonuse. It also precludes long-term holding of mineral rights for such purposes as future development, future price increases that will make development feasible, or assurance by a conservation organization or subdivider that the mineral rights will not be exploited.

The nonuse concept should be incorporated in any dormant mineral statute. Even a statute based exclusively on recording, such as the Uniform Simplification of Land Transfers Act (USLTA) discussed below, does not terminate the right of a person who has an active legitimate mineral interest but who through inadvertence fails to record.

Recording. Another approach found in several jurisdictions, as well as in USLTA, is based on passage of time without recording. Under this approach a mineral interest is extinguished a certain period of time after it is recorded, for example 30 years, unless during that period a notice of intent to preserve the interest is recorded. The virtues of this model are that it enables clearing of title on the basis of facts in the record and without resort to judicial action, and it keeps the record mineral ownership current. Its major disadvantages are that it permits an inactive owner to preserve the mineral rights on a purely speculative basis and to hold out for nuisance money indefinitely, and it creates the possibility that actively producing mineral rights will be lost through inadvertent failure to record a notice of intent to preserve the mineral rights. The recording concept is useful, however, and should be a key element in any dormant mineral legislation.

Trust for unknown mineral owners. A quite different approach to protecting the rights of mineral owners is found in a number of jurisdictions, based on the concept of a trust fund created for unknown mineral owners. The basic purpose of such statutes is to permit development of the minerals even though not all mineral owners can be located, paying into a trust the share of the proceeds allocable to the absent owners. The usefulness of this scheme is limited in one of the main situations we are concerned with, which is to enable surface development where there is no substantial mineral value. The committee has concluded that this concept is beyond the scope of the dormant mineral statute, although it could be the subject of a subsequent act.

Escheat. A few states have treated dormant minerals as abandoned property subject to escheat. This concept is similar to the treatment given personal property in the Uniform Unclaimed Property Act. This approach has the same shortcomings as the trust for unknown mineral owners.

Constitutionality. Constitutional issues have been raised concerning retroactive application of a dormant mineral statute to existing mineral interests. The leading case, Texaco v. Short, 454 U.S. 516 (1982), held the Indiana dormant mineral statute constitutional by a narrow 5-4 margin. The Indiana statute provides that a mineral right lapses if it is not used for a period of 20 years and no reservation of rights is recorded during that time. No prior notice to the mineral owner is required. The statute includes a two-year grace period after enactment during which notices of preservation of the mineral interest may be recorded.

A combination nonuse/recording scheme thus satisfies federal due process requirements. Whether such a scheme would satisfy the due process requirements of the various states is not clear. Comparable dormant mineral legislation has been voided by several state courts for failure to satisfy state due process requirements. Uniform legislation, if it is to succeed in all states where it is enacted, will need to be clearly constitutional under various state standards. This means that some sort of prior notice to the mineral owner is most likely necessary.

Draft Statute

A combination of approaches appears to be best for uniform legislation. The politics of this area of the law are quite intense in the mineral producing states, and the positions and interests of the various pressure groups differ from state to state. It should be remembered that the dormant mineral portion of USLTA was felt to be the most controversial aspect of that act.

A statute that combines a number of different protections for the mineral owner, but that still enables termination of dormant mineral rights, is likely to be the most successful. Such a combination may also help ensure the constitutionality of the act from state to state. For these reasons, the draft statute developed by the committee consists of a workable combination of the most widely accepted approaches found in jurisdictions with existing dormant mineral legislation, together with prior notice protection for the mineral owner.

Under the draft statute, the surface owner may bring an action to terminate a mineral interest that has been dormant for 20 years, provided the record also evidences no activity involving the mineral interest during that period, the owner of the mineral interest fails to record a notice of intent to preserve the mineral interest within that period, and no taxes are paid on the mineral interest within that period. To protect the rights of a dormant mineral owner who through inadvertence fails to record, the statute enables late recording upon payment of the litigation expenses incurred by the surface owner; this remedy is not available to the mineral owner, however, if the mineral interest has been dormant for more than 40 years (i.e., there has been no use, taxation, or recording of any kind affecting the minerals for that period). The statute provides a two-year grace period for owners of mineral interests to record a notice of intent to preserve interests that would be immediately or within a short period affected by enactment of the statute.

This procedure will assure that active or valuable mineral interests are protected, but will not place an undue burden on marketability. The combination of protections will help ensure the fairness, as well as the constitutionality, of the statute.

The committee believes that clearing title to real property should not be an end in itself and should not be achieved at the expense of a mineral owner who wishes to retain the mineral interest. In many cases the interest was negotiated and bargained for and represents a substantial investment. The objective is to clear title of worthless mineral interests and mineral interests about which no one cares. The draft statute embodies this philosophy.

UNIFORM DORMANT MINERAL INTERESTS ACT

SECTION 1. STATEMENT OF POLICY.

(a) The public policy of this State is to enable and encourage marketability of real property and to mitigate the adverse effect of dormant mineral interests on the full use and development of both surface estate and mineral interests in real property.

(b) This [Act] shall be construed to effectuate its purpose to provide a means for termination of dormant mineral interests that impair marketability of real property.

COMMENT

This section is a legislative finding and declaration of the substantial interest of the state in dormant mineral legislation.

SECTION 2. DEFINITIONS.

As used in this [Act]:

(1) "Mineral interest" means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, leasehold, or lien, in minerals, regardless of character.

(2) "Minerals" includes gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable, and nonfissionable ores, colloidal

and other clay, steam and other geothermal resource, and any other substance defined as a mineral by the law of this State.

COMMENT

The definitions in this section are broadly drafted to include all the various forms of minerals and mineral interests. This includes both fugacious and nonfugacious, as well as organic and inorganic, minerals. The Act does not distinguish among minerals based on their character, but treats all minerals the same.

The reference to liens in paragraph (1) includes both contractual and noncontractual, voluntary and involuntary, liens on minerals and mineral interests. It should be noted that the duration of a lien may be subject to general laws governing liens. For example, a lien that by state law has a duration of 10 years may not be given a life of 20 years simply by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice), just as a mineral lease which by its own terms has a duration of five years is not extended by recordation of a notice of intent to preserve the lease. Likewise, if state law requires specific filings, recordings, or other acts for enforceability of a lien, those acts must be complied with even though the lien is not dormant within the meaning of this Act. Conversely, an instrument that creates a security interest which, by its terms, endures more than 20 years, cannot avoid the effect of the 20-year statute. See Section 4(c) (termination of dormant mineral interest).

The definition of "minerals" in paragraph (2) is inclusive and not exclusive. "Coal" and other solid hydrocarbons within the meaning of paragraph (2) includes lignite, leonardite, and other grades of coal. This Act is not intended to affect water law but is intended to affect minerals dissolved or suspended in water. See Section 3 (exclusions).

While Section 2 defines the term "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

SECTION 3. EXCLUSIONS.

(a) This [Act] does not apply to:

(1) a mineral interest of the United States or an Indian tribe, except to the extent permitted by federal law; or

(2) a mineral interest of this State or an agency or political subdivision of this State, except to the extent permitted by state law other than this [Act].

(b) This [Act] does not affect water rights.

COMMENT

Public entities are excepted by this section because they have perpetual existence and can be located if it becomes necessary to terminate by negotiation a mineral interest held by the public entity. A jurisdiction enacting this statute should also exclude from its operation interests protected by statute, such as environmental or natural resource conservation or preservation statutes.

This Act does not affect mineral interests of Indian tribes, groups, or individuals (including corporations formed under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1600 et seq.) to the extent that the interests are protected against divestiture by superseding federal treaties or statutes.

Although this Act affects minerals dissolved or suspended in water, it is not intended to affect water law. See Comment to Section 2 (definitions).

While Section 2 (definitions) defines the terms "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

SECTION 4. TERMINATION OF DORMANT MINERAL INTEREST.

(a) The surface owner of real property subject to a mineral interest may maintain an action to terminate a dormant mineral interest. A mineral interest is dormant for the purpose of this [Act] if the interest is unused within the meaning of subsection (b) for a period of 20 or more years next preceding commencement of the action and has not been preserved pursuant to Section 5. The action must be in the nature of and requires

the same notice as is required in an action to quiet title. The action may be maintained whether or not the owner of the mineral interest or the owner's whereabouts is known or unknown. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the 20-year period.

(b) For the purpose of this section, any of the following actions taken by or under authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the entire mineral interest:

(1) Active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development, but not including injection of substances for purposes of disposal or storage. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations.

(2) Payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest.

(3) Recordation of an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, leases, or divides the interest. Recordation of an instrument constitutes use of (i) any recorded interest owned by any person in any mineral that is the subject of the instrument,

and (ii) any recorded mineral interest in the property owned by any party to the instrument.

(4) Recordation of a judgment or decree that makes specific reference to the mineral interest.

(c) This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to or the continued existence of the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

COMMENT

This section defines dormancy for the purpose of termination of a mineral interest pursuant to this Act. The dormancy period selected is 20 years -- a not uncommon period among the various jurisdictions.

Subsection (a) provides for a court proceeding in the nature of a quiet title action to terminate a dormant mineral interest. The device of a court proceeding ensures notice to the mineral owner personally or by publication as may be appropriate to the circumstances and a reliable determination of dormancy.

Subsection (b) ties the determination of dormancy to nonuse. Each paragraph of subsection (b) describes an activity that constitutes use of a mineral interest for purposes of the dormancy determination. In addition, a mineral interest is not dormant if a notice of intent to preserve the interest is recorded pursuant to Section 5 (preservation of mineral interest).

Paragraph (b)(1) provides for preservation of a mineral interest by active mineral operations. Repressuring may be considered an active mineral operation if made for the purpose of secondary recovery operations. A shut-in well is not an active mineral operation and therefore would not suffice to save the mineral interest from dormancy.

Paragraph (b)(1) is intended to preserve in its entirety a mineral interest where there are active operations directed toward any mineral that is included within the interest. Thus, if there are fractional owners of a mineral interest, activity by one owner is considered activity by all owners. Other interests owned by other persons in the minerals that are the object of

the operations are also preserved by the operations. For example, oil and gas operations by a fractional oil, gas, and coal owner would save not only the interests of other fractional oil and gas owners but also the interests of oil and gas lessees and royalty owners holding under either the oil and gas owner or any fractional owner, as well as the interests of holders of any other mineral interest in the oil and gas that is the object of the operations. The oil and gas operations suffice to save the coal interest of the oil, gas, and coal owner, as well as other minerals included in any of the affected mineral interests, not just the interest in oil and gas that is the subject of the particular operations. This is the case regardless whether the mineral interest was acquired in one instrument or by several instruments. However, oil and gas operations by a fractional oil, gas, and coal owner would not save the mineral interest of a fractional coal owner if the interest does not include oil and gas.

Under paragraph (b)(2), taxes must be actually paid within the preceding 20 years to suffice as a qualifying use of the mineral interest.

Paragraph (b)(3) is intended to cover any recorded instrument evidencing an intention to own or affect an interest in the minerals, including a recorded oil, gas, or mineral lease, regardless whether such a lease is recognized as an interest in land in the particular jurisdiction.

Under paragraph (b)(3), recordation has the effect of preserving not only the interests of the parties to the instrument in the minerals that are the subject of the instrument, but also the recorded interests of nonparties in the subject minerals, as well as other recorded interests of the parties in other minerals in the same property. Thus, recordation of an oil and gas lease between a fractional owner and lessee preserves the interest in oil and gas not only of the fractional owner but also of the co-owners; moreover, the recordation preserves the interest of the fractional owner in other minerals that are not the subject of the lease, whether the other minerals were acquired by the same instrument by which the oil and gas interest was acquired or by a separate instrument.

Recordation of a judgment or decree under paragraph (b)(4) includes entry or recordation in a judgment book in a jurisdiction where such an entry or recordation becomes part of the property records. The judgment or decree must make specific reference to the mineral interest in order to preserve it. Thus, a general judgment lien or other recordation of civil process such as an attachment or sheriff's deed of a nonspecific nature would not constitute use of the mineral interest within the meaning of paragraph (b)(4).

Subsection (c) is intended to preclude a mineral owner from evading the purpose of this Act by contracting for a very long or indefinite duration of the mineral interest. A lien on minerals having a 30-year duration, for example, would be subject to termination after 20 years under this Act if there were no further activities involving the minerals or mineral interest. A person seeking to keep the lien for its full 30-year duration could do so by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice). It should be noted that recordation of a notice of intent to preserve the lien would not extend the lien beyond the date upon which it terminates by its own terms.

SECTION 5. PRESERVATION OF MINERAL INTEREST BY NOTICE.

(a) An owner of a mineral interest may record at any time a notice of intent to preserve the mineral interest or a part thereof. The mineral interest is preserved in each county in which the notice is recorded. A mineral interest is not dormant if the notice is recorded within 20 years next preceding commencement of the action to terminate the mineral interest or pursuant to Section 6 after commencement of the action.

(b) The notice may be executed by an owner of the mineral interest or by another person acting on behalf of the owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf or whose identity cannot be established or is uncertain at the time of execution of the notice. The notice may be executed by or on behalf of a co-owner for the benefit of any or all co-owners or by or on behalf of an owner for the benefit of any or all persons claiming under the owner or persons under whom the owner claims.

(c) The notice must contain the name of the owner of the mineral interest or the co-owners or other persons for whom the

mineral interest is to be preserved or, if the identity of the owner cannot be established or is uncertain, the name of the class of which the owner is a member, and must identify the mineral interest or part thereof to be preserved by one of the following means:

(1) A reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the interest or of the judgment or decree that confirms the interest.

(2) A legal description of the mineral interest. [If the owner of a mineral interest claims the mineral interest under an instrument that is not of record or claims under a recorded instrument that does not specifically identify that owner, a legal description is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims. In such a case, the record of the notice of intent to preserve the mineral interest must be indexed under the name of the record owner as well as under the name of the owner of the mineral interest.]

(3) A reference generally and without specificity to any or all mineral interests of the owner in any real property situated in the county. The reference is not effective to preserve a particular mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the interest, (i) a previously recorded instrument that creates, reserves, or otherwise evidences that interest or (ii) a judgment or decree that confirms that interest.

COMMENT

[illegible]tion is broadly drawn to permit a mineral owner to [illegible]ly his or her own interest but also any or all [illegible]. For example, the mineral owner may share [illegible] or more other persons. This section permits [illegible]ire the mineral owner to preserve the interests [illegible] the co-owners by specifying the interests to be [illegible], the mineral interest being preserved may [illegible] overriding royalty or sublease or executive [illegible] situation, the mineral owner may elect also to [illegible] or all of the interests subject to it, by specifying [illegible] in the notice of intent to preserve. The mineral [illegible] may also elect to preserve the interest as to some or all of the minerals included in the interest.

Where the mineral interest being preserved is of limited duration, recordation of a notice under this section does not extend the interest beyond the time the interest expires by its own terms. Where the mineral interest being preserved is a lien, recordation of the notice does not excuse compliance with any other applicable conditions or requirements for preservation of the lien.

The bracketed language in paragraph (c)(2) is for use in a jurisdiction that does not have a tract index system. It is intended to assist in indexing a notice of intent to preserve an interest despite a gap in the recorded mineral chain of title.

Paragraph (c)(3) permits a blanket recording as to all interests in the county, provided that there is a prior recorded instrument, or a judgment whether or not recorded, that establishes the name of the mineral owner in the county records. The blanket recording provision is a practical necessity for large mineral owners. Where a county does not have a general index of grantors and grantees, it will be necessary to establish a separate index of notices of intent to preserve mineral interests for purposes of the blanket recording.

SECTION 6. LATE RECORDING BY MINERAL OWNER.

(a) In this section, "litigation expenses" means costs and expenses that the court determines are reasonably and necessarily incurred in preparing for and prosecuting an action, including reasonable attorney's fees.

(b) In an action to terminate a mineral interest pursuant to this [Act], the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest as a condition of dismissal of the action, upon payment into court for the benefit of the surface owner of the real property the litigation expenses attributable to the mineral interest or portion thereof as to which the notice is recorded.

(c) This section does not apply in an action in which a mineral interest has been unused within the meaning of Section 4(b) for a period of 40 or more years next preceding commencement of the action.

COMMENT

This section applies only where the mineral owner seeks to make a late recording in order to obtain dismissal of the action. The section is not intended to require payment of litigation expenses as a condition of dismissal where the mineral owner secures dismissal upon proof that the mineral interest is not dormant by virtue of recordation or use of the property within the previous 20 years, as prescribed in Section 4 (termination of dormant mineral interest). Moreover, the remedy provided by this section is available only if there has been some recordation or use of the property within the previous 40 years.

SECTION 7. EFFECT OF TERMINATION.

A court order terminating a mineral interest [, when recorded,] merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments.

COMMENT

In some states it is standard practice for judgments such as this to be recorded. In other states entry of judgment alone may suffice to make the judgment part of the land records.

Merger of a terminated mineral interest with the surface is subject not only to existing tax liens and assessments, but also to other outstanding liens on the mineral interest. However, an outstanding lien on a mineral interest is itself a mineral interest that may be subject to termination under this Act. It should be noted that termination of a mineral interest under this Act that has been tax-deeded to the state or other public entity is subject to compliance with relevant requirements for release of tax-deeded property.

The appurtenant surface rights and obligations referred to in Section 7 include the right of entry on the surface and the obligation of support of the surface. However, termination of the support obligation of the surface under this Act does not terminate any support obligations owed to adjacent surface owners.

It is possible under this section for a surface owner to acquire greater mineral interests than the surface owner started with. Assume, for example, there are equal co-owners of the surface, one of whom conveys his or her undivided 50% share of minerals. Upon termination of the conveyed mineral interest under this Act, the interest would merge with the surface estate in proportion to the ownership of the surface estate, so that each owner would acquire one-half of the mineral interest. The end result is that the conveying surface owner would hold an undivided one-fourth of the minerals and the nonconveying surface owner surface owner would hold an undivided three-fourths of the minerals. This result is proper since the reversion represents a windfall to the surface estate in general and to the conveying owner in particular, who has previously received the value of the mineral interest.

In the example above, assume that the conveyed mineral interest is not terminated, but instead the owner of the mineral interest executes a 30-year mineral lease. If the lease is terminated under this Act after 20 years have run, the interest in the remaining 10 years of the lease would merge with the surface estate in proportionate shares, at the end of which time it would expire, leaving the interest of the mineral owner unencumbered.

SECTION 8. SAVINGS AND TRANSITIONAL PROVISIONS.

(a) Except as otherwise provided in this section, this [Act] applies to all mineral interests, whether created before, on, or after its effective date.

(b) An action may not be maintained to terminate a mineral interest pursuant to this [Act] until [two] years after the effective date of the [Act].

(c) This [Act] does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

(d) This [Act] does not affect the validity of the termination of any mineral interest made pursuant to any predecessor statute on dormant mineral interests. The repeal by this [Act] of any statute on dormant mineral interests takes effect [two] years after the effective date of this [Act].

COMMENT

The [two]-year grace period provided by this section is to enable a mineral owner to take steps to record a notice of intent to preserve an interest that would otherwise be subject to termination immediately upon the effective date because of the application of the Act to existing mineral interests. Thus, a mineral owner may record a notice of intent to preserve an interest during the [two]-year period even though no action may be brought during the [two]-year period. Subsection (d) is intended for those states that repeal an existing dormant mineral statute upon enactment of this Act.

SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

SECTION 10. SHORT TITLE.

This [Act] may be cited as the Uniform Dormant Mineral Interests Act.

SECTION 11. SEVERABILITY CLAUSE.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 12. EFFECTIVE DATE.

This [Act] takes effect _____.

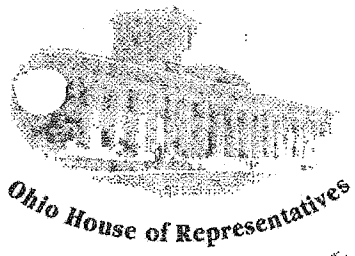
SECTION 13. REPEALS.

The following acts and parts of acts are repealed:

(1) _____.

(2) _____.

(3) _____.



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Committees
Public Utilities and Energy, *Chair*

Ways and Means

Financial Institutions, Real Estate & Securities

Economic Development and Environment

Appointments
Power Siting Board

Transportation Improvement District Board of Trustees of Stark County

Ohio Steel Industry Advisory Council

COMMITTEE NOTICE
HOUSE PUBLIC UTILITIES AND ENERGY COMMITTEE
REP. JOHN P. HAGAN – CHAIRMAN

Date: Wednesday, June 15th, 2005
Time: 9:30 am
Room: Statehouse Room 017

REVISION

BILLS SCHEDULED TO BE HEARD

Bill	Sponsor	Title	Status
HB 288	Wagoner	Abandoned Mineral Rights/ Oil and Gas Comm.	1st Hearing Sponsor
HB 251	Uecker	State Facilities-Efficient Energy Use	2nd Hearing Prop/Opp/IP
HB 85	Blessing	Do Not Aggregate	2nd Hearing Prop/Opp/IP

**** All witnesses please provide the committee with 30 copies of written testimony 24 hours prior to the committee hearing.**

CC:
Committee Members
Speaker's Office
Nate Filler – Speaker's Office
Jodi AllAlen – Clerk's Office
Sonja Herd – Clerk's Office
Laura Clemens – Clerk's Office
All Interested Parties

Legislative Information Office
Statehouse Press Room
Mary Connor - LSC
Monica Piper – LSC
Ruhaiza Ridzwan - LSC Fiscal
Ellen Aiello - Minority Caucus
Michael Culp - Minority Chief of Staff

MINUTES OF THE MEETING OF THE PUBLIC UTILITIES & ENERGY COMMITTEE
June 15, 2005

The meeting of the House Public Utilities and Energy Committee convened at 09:36 a.m. in room 017

With a quorum present, Chairman Hagan moved to dispense with the reading of the minutes of June 1, 2005. With no objection, the minutes were accepted.

The Chairman called up House Bill 288 for the first hearing and Sponsor Testimony.

Representative Wagoner gave sponsor testimony for House Bill 288 and questions were asked by Representatives Garrison and Buehrer.

The Chairman called up House Bill 251 for the second hearing and proponent and opponent testimony.

Janine Migden Ostrander testified on behalf of the Ohio Consumers Council as a proponent of HB 251 and questions were asked by Representative Buehrer.

Kevin Schmidt testified on behalf of Public Policy Sources as a proponent of HB 251 and questions were asked by Representative Buehrer.

James Nargang testified on behalf of the Board of Reagents as an interested party of HB 251 and questions were asked by Representatives Daniels, Blessing and Stewart.

The Chairman called up House Bill 85 for the second hearing and proponent and opponent testimony.

Tom Froehle testified on behalf of Industrial Energy Users Ohio as a proponent of HB 85 and questions were asked by Representative Carmichael.

With no further business this concluded the meeting of the Public Utilities and Energy Committee. Chairman Hagan adjourned the meeting at 10:26.

John P. Hagan, Chairman

Steve Driehaus, Secretary

Mark D. Wagoner, Jr.
State Representative, 46th House District

HOUSE BILL 288
REPRESENTATIVE MARK WAGONER
SPONSOR TESTIMONY
BEFORE THE OHIO HOUSE PUBLIC UTILITIES COMMITTEE

Chairman Hagan and members of the House Public Utilities Committee, I thank you for the opportunity to present sponsor testimony on House Bill 288.

House Bill 288 seeks to update Ohio's mineral rights law. House Bill 288 contains two proposed amendments to Ohio's existing statutory scheme affecting energy production. The bill is designed, first, to address technical problems with Ohio's current Dormant Mineral Statute and, second, to resolve procedural problems with The Ohio Oil and Gas Commission. The General Assembly can take these two steps to help increase the availability of domestic energy supplies without adversely affecting the environment or state tax collections.

Turning first to the Dormant Mineral Statute, Ohio has had an active energy production industry since the mid 1800's. During this period, landowners in mineral producing areas have frequently severed the mineral rights in their land from the surface rights. Through the decades, ownership of the severed minerals has been transferred and factionalized through estates and business transfers. Today, those old severed mineral rights may be the key to new production sites, as advances in current technology and the high cost of energy make reworking old oil and gas fields possible.

The problem is that it may be difficult - if not impossible - to find the owners or in some cases the multiple partial interest owners of such old severed mineral rights. Twenty years ago, Ohio joined the majority of oil and gas producing states by passing a Dormant Mineral Statute that permitted the surface owner to reunite severed mineral rights with the surface estate if the mineral rights had been abandoned. Unfortunately, Ohio's Dormant Mineral Statute has seldom been used, in large measure because the statute did not clearly define when a mineral interest became abandoned and exactly how the process to reunite the mineral ownership with the surface ownership was to be accomplished.

House Bill 288 removes the ambiguity of the existing statute with a clear definition of when a mineral right is deemed abandoned. The mineral right will be deemed abandoned if there

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is both (1) no active use of the mineral rights and (2) a failure by the mineral right owner to file to preserve the inactive mineral right for future use for at least 20 years from the time a surface owner petitions to reunite the surface with the inactive mineral interest.

The first part of House Bill 288 is designed to fix perceived problems with the existing statutory provisions. The Bill will neither alter the balance between surface owner and mineral right owners, nor will the Bill change the environmental or conservation requirements to drill or produce in Ohio. Finally, the bill will not adversely affect tax revenues. In fact, if the bill has its intended results of bringing back old or marginal oil and gas fields to production, the bill should increase Ohio's collection of severance and ad valorem tax.

The second issue addressed in House Bill 288 deals with the administrative practices involved with the permitting and regulation of oil and gas wells in Ohio. Currently, an administrative appeal from a decision by the Chief of the Division of Mineral Resources Management in the Department of Natural Resources is to a body called the Ohio Oil and Gas Commission. The Commission has five (5) members and the current statute provides that no decision may be made without the concurrence of three members. The problem is that, in practice, it may be impossible to get three of the five Commissioners to even hear, much less decide, an appeal. Lack of a quorum can occur because of vacancies on the Commission, illness of a Commissioner or because a Commissioner has to recuse him or herself due to a conflict of interest. If a quorum of Commissioners cannot be assembled, or three votes secured, the appeal is stalled indefinitely.

A similar problem exists within our Courts and is addressed by appointing visiting judges. H.B. 288 applies the same technique by permitting the Chair of the Oil and Gas Commission to appoint visiting Commissioners from the pool of members who make up the oil and gas Technical Advisory Council. The Technical Advisory Council member go through the same screening and appointment process as the Oil and Gas Commissioners and have oil and gas experience and technical skills. Thus, drawing temporary members for the Oil and Gas Commission from the Technical Advisory Council will vest the Commission with the same skill set as the Commission's regular members and will allow the Commission to proceed to decide appeals which are now stalled.

In closing, I hear concerns about the availability and cost price of energy. Given the Ohio's national preeminence in manufacturing and its four month heating season, it is not surprising that Ohio ranks within the top ten states for energy consumption. What is less well

known is that Ohio is also among the top ten states for natural gas and oil production. In fact, almost 15% of the natural gas burned in Ohio's homes and factories is produced locally. House Bill 288 is a small step towards improving local production by streamline existing program and regulations to make them more efficient. It is step worth taking.

The Ohio State Bar Association has played an integral role in drafting and reviewing this legislation and supports it. I ask for your support to pass this bill too. Chairman Hagan and members of the committee, I thank you for your time and I would be happy to answer your questions at this time.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Chesapeake Exploration, L.L.C., *et al.*,

Plaintiffs,

v. **Case No. 2:12–cv–916**

Kenneth Buell, *et al.*, **Judge Michael H. Watson**

Defendants.

OPINION AND ORDER

This diversity action requires the court to determine which parties are entitled to the mineral rights that lie below 90.2063 acres of property located in Harrison County, Ohio. The parties have filed cross-motions for summary judgment. ECF Nos. 38, 39. In addition, Plaintiffs filed a Motion for Leave to File a Surreply in Opposition to Defendants' Motion for Summary Judgment, ECF No. 50, which Defendants oppose, ECF No. 51. For the following reasons, the Court defers ruling on the summary judgment motions, **CERTIFIES** two questions of Ohio law to the Supreme Court of Ohio, and **STAYS** the proceedings pending the outcome of certification.

I. PROCEDURAL HISTORY

On October 4, 2012, Plaintiffs Chesapeake Exploration, L.L.C. ("Chesapeake"), CHK Utica, L.L.C. ("CHK Utica"), Larchmont Resources, L.L.C. ("Larchmont"), and Dale Pennsylvania Royalty, L.P. ("Dale"), filed a complaint

against Defendants Kenneth Buell, Arieh Ordronneau, Sunni Ordronneau, Jeffrey Elias, Janice Elias, Dennis Elias, and Margaret Elias (collectively "Defendants") as well as North American Coal Royalty Company ("North American") and Total E&P USA, Inc. ("Total E&P"), seeking to quiet title to the oil and gas rights under Defendants' surface estates. Plaintiffs included North American and Total E&P as defendants due to their interests in the oil and gas rights. Compl., ECF No. 1. Defendants answered with a third party complaint against Dale Property Services and counterclaims and cross claims against North American and Total E&P to quiet title. Countercl., ECF No. 12. Defendants also allege slander of title and unjust enrichment and seek declaratory and injunctive relief. *Id.*

Chesapeake, CHK Utica, Larchmont, and Dale voluntarily dismissed Kenneth Buell on November 14, 2012. ECF No. 11. North American and Total E&P were realigned as Plaintiffs on January 7, 2013, and February 22, 2013, respectively. ECF Nos. 17, 30. Chesapeake, CHK, Larchmont, Dale, Total E&P, and North American will be collectively referred to as "Plaintiffs."

II. FACTS

Both Plaintiffs and Defendants set forth the undisputed facts in their respective summary judgment motions. Given the facts, however, the parties dispute who is the legal owner of the mineral rights beneath 90.2063 acres of land ("the "Property") located in Harrison County, Ohio. The Property has been frequently transferred since 1958.

In October of 1958, Powhatan Mining Company ("Powhatan") transferred the surface rights of the Property to Clarence and Anna Bell Sedoris, excepting all oil, gas, coal, or other mineral rights (the "Mineral Rights") to itself and its successors. Powhatan transferred the Mineral Rights to the North American Coal Company ("NA Coal") (a separate entity from Plaintiff North American) when the two companies merged in 1959.

A. The Surface Rights

In 1968, Clarence and Anna Bell Sedoris transferred the Property to Jerry and Janice Torok. The Toroks transferred the Property to Levi and Naomi Miller in 1983. The Millers conveyed the Property in September of 1984 to Dennis and Linda Elias. That deed contained a clause (the "Reservation Clause") excepting and reserving the Mineral Rights originally reserved in the Powhatan to Sedoris deed. Linda Elias conveyed her portion of the Property to Dennis Elias ("Dennis") on December 4, 1989 via a quitclaim deed which included the Reservation Clause.

Dennis then began to break up the property. Dennis transferred 10.37 acres of the Property to Jeffrey Elias and Janice Elias in April of 1995. That deed did not contain the Reservation Clause. Dennis next transferred 20.17 acres of the Property to John and Marilyn Jackson on October 21, 1996. That deed also did not contain the Reservation Clause. After the above conveyances, Dennis retained approximately 59.66 acres of the Property.

The Jacksons then transferred their claim in the Property to Benjamin Wiker who transferred the same to the Ordronneaus on July 27, 2011. The Jackson to Wiker deed was given subject to "all restrictions and reservations of record," and the Wiker to Ordronneau deed contained the Reservation Clause.

B. The Mineral Rights

In 1973, NA Coal leased the Mineral Rights to National Petroleum Corporation for a term of ten years, recorded in Harrison County on February 6, 1974. National Petroleum Corporation assigned its interest to American Exploration Company by a recorded assignment on May 12, 1975. At the expiration of the lease term, the Mineral Rights reverted back to NA Coal.

NA Coal next leased the Mineral rights to C.E. Beck, recorded on February 6, 1984 ("1984 Lease"). C.E. Beck assigned its interest to Carless Resources on May 30, 1985, and Carless recorded the assignment the same day. In January of 1989, the lease expired, and the rights reverted to NA Coal by the terms of the 1984 Lease. NA Coal changed its name to Bellaire on July 7, 1992, and later transferred the Mineral Rights to North American via quitclaim deed, recorded in Harrison County on December 16, 2008.

On January 28, 2009, North American leased the Mineral Rights ("2009 Lease") to Mountaineer, who assigned its interest to Dale Property on May 6, 2010. Dale Property assigned its interest under the 2009 Lease to Ohio Buckeye Energy, L.L.C., reserving a 1.25% royalty interest. Dale Property assigned its royalty interest to Plaintiff Dale Pennsylvania on June 28, 2012.

On October 5, 2011, Ohio Buckeye Energy assigned a portion of its interest to Larchmont, which interest was recorded. On November 1, 2011, another portion of Ohio Buckeye Energy's interest was assigned to CHK Utica. Ohio Buckeye Energy merged with Chesapeake on December 22, 2011, merging the remainder of Ohio Buckeye's interest in the 2009 Lease into Chesapeake. Chesapeake transferred a portion of its interest in the 2009 Lease to Total E&P on December 30, 2011.

Currently, North American is the record owner of the Mineral Rights. Larchmont and CHK Utica are leasing a portion of the Mineral Rights from North American by assignment. Chesapeake is the lessee of the remainder of the lease interest, although Dale Pennsylvania has a 1.25% royalty interest in the lease. Dennis Elias owns 59.66 acres of the Property. Jeffrey and Janice Elias own 10.37 acres of the Property, and the Ordronneaus own 20.17 acres of the Property.

III. STANDARD OF REVIEW

The standard governing summary judgment is set forth in Federal Rule of Civil Procedure 56(a), which provides: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

The Court must grant summary judgment if the opposing party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); *see also Van Gorder v. Grand Trunk Western R.R., Inc.*, 509 F.3d 265, 268 (6th Cir. 2007).

When reviewing a summary judgment motion, the Court must draw all reasonable inferences in favor of the nonmoving party, who must set forth specific facts showing there is a genuine issue of material fact for trial, and the Court must refrain from making credibility determinations or weighing the evidence. *Matsushita Elec. Indus. Co.*, 475 U.S. 574, 587 (1986); *Pittman v. Cuyahoga Cnty. Dept. of Children and Family Servs.*, 640 F.3d 716, 723 (6th Cir. 2011). The Court disregards all evidence favorable to the moving party that the jury would not be required to believe. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000). Summary judgment will not lie if the dispute about a material fact is genuine, "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Barrett v. Whirlpool Corp.*, 556 F.3d 502, 511 (6th Cir. 2009).

IV. ANALYSIS

The parties agree that this case directly concerns the Ohio Dormant Mineral Act ("ODMA"). Ohio Revised Code § 5301.56, *et seq.* The ODMA, enacted in 1989, operates to return dormant, severed mineral rights to the surface land holder by placing a twenty-year limit on dormant mineral rights. In other words, when someone other than the surface land holder ("land holder") obtains the sub-surface mineral rights, that mineral rights holder ("mineral rights

holder") is deemed to have abandoned the mineral rights if those rights lay dormant for twenty years, at which time they revert back to the land holder. The manner in which the mineral rights return to the land owner changed between the 1989 version of the statute and the 2006 version due to an amendment in the statute.

Under either version of the ODMA, a twenty-year clock begins to run the moment that the mineral rights are acquired by someone other than the land holder. If twenty years run in which the rights are dormant and there is no "savings event" under § 5301.56(B), the mineral rights vest in the manner prescribed by the statute. A § 5301.56(B) savings event restarts the twenty-year clock from the date of the event.

The 1989 ODMA does not specify any method for vesting of the mineral rights in the land owner, and thus, if no savings event occurs, the interest in the mineral rights held is deemed abandoned and vests automatically in the land owner upon the twentieth year. That statute requires no further action by the land owner, but it did provide a three year grace period under which a mineral rights holder could maintain his interest. The three year grace period expired on March 23, 1992.

The 2006 ODMA requires that notice be given by the land holder to the mineral rights holder of record before the mineral rights can vest in the land

holder. Ohio Rev. Code § 5301.56(B) (2006).[1] Once notice is given, the mineral rights holder has sixty days to either file a claim to preserve the interest under § 5301.56(B)(3)(e) or file an affidavit identifying a savings event under § 5301.56(B)(3). If the mineral rights holder fails to file a claim to preserve the mineral rights or identify a savings event within sixty days, the mineral rights vest upon memorialization of the abandonment in the county record. Ohio Rev. Code § 5301.56(H)(2).

The parties agree that the only possible savings event that has occurred in this case arises under § 5301.56(B)(3)(a), which requires that "the mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located" within the preceding twenty years.[2] For example, if the mineral rights were the subject of a title transaction in 1984, then the twenty-year clock restarts in 1984, and the mineral rights could not vest in the land holder until 2004. However, the parties dispute both whether the 1989 or 2006 version of the ODMA governs this dispute and whether a savings event has occurred at all. Plaintiffs argue the 2006 version of the ODMA applies because the expiration of a lease is a savings event and therefore the twenty year clock began in 1989, at the expiration of the

[1] Defendants make no argument that they gave notice to Plaintiffs or any party.
[2] The 2006 ODMA notes that it is the preceding twenty years from the date the land holder gives notice to the mineral rights holder. The 1989 ODMA is silent as to when the preceding twenty-year period begins.

1984 Lease. Defendants argue that the 1989 version applies and the twenty year clock began in 1959, when Powhatan merged with NA Coal.

Plaintiffs contend that any savings event occurring after 1986 restarted the twenty-year clock, meaning the twenty-year period would not fully run until after the 2006 amendments. As the 2006 version would be applicable upon expiration of twenty years, Plaintiffs contend that Defendants had to give notice before the Mineral Rights could vest.

Plaintiffs allege that at least three distinct types of title transactions took place that amount to savings events. First, Plaintiffs posit any conveyance evidenced by a deed that included the Reservation Clause is a title transaction. Such a deed was conveyed in 1984, 1989, and 2011. Second, Plaintiffs argue that an executed and recorded oil and gas lease is a title transaction. Third, Plaintiffs argue a title transaction occurs when a lease expires and the oil and gas interest reverts to the lessor. Plaintiffs conclude that because multiple title transactions took place after 1986, notice was required but not given, and thus, the Mineral Rights have not been abandoned.

Defendants argue that the last savings event occurred when Powhatan merged with NA Coal in 1959, and when the grace period expired in 1992, no title transaction had taken place in the last twenty years. Thus, they conclude the Mineral Rights automatically vested to Dennis Elias in 1992. Defendants contend that none of the title transactions alleged by Plaintiffs constitutes a recorded title transaction under either version of the ODMA. Alternatively,

Defendants argue that even if the 1984 Lease is a title transaction, the date of the recording in 1984, not the expiration, is the start of the twenty-year clock, which automatically fully vested the Mineral Rights to the Defendants in 2004, before the 2006 amendments.

In this diversity case, the Court must apply the substantive law of the forum state. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). In doing so, this Court is bound by the decisions of the state's highest court. *Pennington v. State Farm Mut. Auto Ins. Co.*, 553 F.3d 447, 450 (6th Cir. 2009). If the state's highest court has not directly addressed the issue, however, this Court must predict how the state's highest court would resolve the matter. *Andrews v. Columbia Gas Transmission Corp.*, 544 F.3d 618, 624 (6th Cir. 2008). In that case, the decisions of the state's intermediate appellate courts are deemed authoritative, unless there is a strong showing that the state's highest court would reach a different result. *Id.*

The ODMA does not define the term "title transaction." Nonetheless, the Ohio Marketable Title Act ("OMTA") defines the term "title transaction" as "any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage." Ohio Rev. Code § 5301.47(F). Although the OMTA definition of a title transaction is broad, for our purposes it is limited by the language of the ODMA, which requires that the mineral interest be the

subject of the title transaction in order for the title transaction to qualify as a savings event. Ohio Rev. Code § 5301.56(B)(3)(a). Neither version of the ODMA specifically states whether any title transaction alleged by Plaintiffs qualifies as a savings event. The Court addresses each in turn.

A. A Reservation Clause in a Surface Land Deed is not a Title Transaction Because the Mineral Interest is not the Subject of the Title Transaction.

Plaintiffs rely heavily on a Harrison County Common Pleas Court's decision for the proposition that a reservation clause in a deed to a surface estate is a title transaction under the ODMA. *Dodd v. Croskey*, No. CVH–2011–0019, (Harrison C.P. Oct. 29, 2012) (unreported, cited by Plaintiffs at ECF No. 39-5). However, since the parties have briefed the issue, the Seventh District Court of Appeals has overruled the *Dodd* decision. *Dodd v. Croskey*, 2013–Ohio–4257, 2013 WL 5437365, at *9 (Ohio Ct. App. 7th Dist. Sept. 23, 2013).[3] In discussing what constitutes the "subject of a title transaction," the Seventh District found that there is no statutory definition of what the legislature meant by "subject of" and thus afforded the words their ordinary meaning. *Id.*

> "The common definition of the word "subject" is[:] topic of interest, primary theme or basis for action. Webster's II New Riverside University Dictionary 1153 (1984). Under this definition the mineral interests are not the "subject of" the title transaction. Here, the primary purpose of the title transaction is the sale of surface rights. While the deed does mention the oil and gas reservations, the deed does not transfer those rights. In order for the mineral interest to be the "subject of" the title transaction the grantor must be conveying that interest or retaining that interest. Here, the mineral interest was not being

[3] Both Plaintiffs and Defendants have notified the Court of the 7th District's decision in a notice of supplemental authority.

> conveyed or retained by . . . the party that sold the property to appellants.
>
> Therefore, we disagree with the trial court's conclusion that oil and gas interests were the "subject of" the 2009 title transaction. Instead we specifically find that they were not the "subject of" the 2009 title transaction."

Id.

Although the Court is only bound by decisions of the Ohio Supreme Court, *Dodd* is nearly identical to the dispute *sub judice* and is the only statement from any Ohio appeals court on this specific issue. Moreover, its reasoning is sound. Thus, this decision, from the same county as the present dispute, is highly persuasive, and it warrants the same result in this case.

The subject of the deeds which contained the Reservation Clause was the surface land, not the mineral rights. In those deeds, the Reservation Clause operated to limit the portions of the property that could be expected to be included in the transfer. When read in this manner, it is clear that the Reservation Clause sought to exclude the Mineral Rights from being a subject of the deed transaction.

Accordingly, the conveyances of deeds including the Reservation Clause were not title transactions that restarted the twenty-year clock under either the 1989 ODMA or the 2006 ODMA.

B. Whether an Oil and Gas Lease is a Title Transaction is a Question for the Supreme Court of Ohio.

Plaintiffs contend that the 1984 Lease was a title transaction that was properly recorded. Plaintiffs further contend that the *expiration* of the 1984 Lease in 1989 also operated as a title transaction, making the "date of record of the title transaction" 1989. If the expiration of the 1984 Lease in 1989 was a title transaction, then the clock restarted in 1989, and Defendants' interest in the mineral rights could not have vested until 2009, after the 2006 ODMA took effect. Plaintiffs therefore argue that at the earliest, the twenty-year clock would run in 2009, and because Defendants did not give notice, as required by the 2006 ODMA, the Mineral Rights could not have vested in Defendants.

Defendants contend that a lease is not a title transaction because it is omitted from the OMTA's list of enumerated title transactions and because it would cause redundancies in the ODMA. Defendants also argue that even if the expiration of a lease is a title transaction, the expiration is not a sufficient title transaction under the ODMA to constitute a savings event because the expiration was not recorded.

Both Plaintiffs and Defendants argue that Supreme Court of Ohio decisions support their position.

1. Statutory Interpretation Does Not Resolve the Question

Defendants argue that the language of the OMTA indicates that a lease is not a title transaction because it is not included in the list of what the statute defines as a title transaction.

Plaintiffs retort that the language of the OMTA "does not purport to give a complete or exclusive list of every possible type of title transaction." P. Resp. 7, ECF No. 46. The Court agrees.

Defendants argue that "had the Ohio Legislature intended for an oil and gas lease to qualify as a 'title transaction' for purposes of the 1989 Act, it knew how to do so—by incorporating such language into the statute." D. Reply 11, ECF No. 48. While this may be true, the legislature also knew how to explicitly exclude all other transactions from the definition and chose not to do so. The definition of a title transaction in § 5301.47(F) provides a non-exhaustive list of what is considered a title transaction. The word "including" means it is not exclusive, and other unlisted transactions may qualify as title transactions. This definition is also broad, involving "*any* transaction affecting title to *any* interest in land." Ohio Rev. Code § 5301.47(F) (emphasis added). Defendants' argument would require the Court to render the word "including" superfluous in the OMTA.[4] The list in the OMTA is non-exhaustive. Thus, failure to include an oil and gas

[4] "Courts may not delete words used or insert words not used," when interpreting a statute. *Cline v. Ohio Bureau Motor Vehicles*, 573 N.E.2d 77, 80 (Ohio 1991).

lease in the list does not mean an oil and gas lease is not a title transaction under the OMTA.

Defendants next argue that the language of the ODMA requires a finding that an oil and gas lease is not a title transaction under the ODMA. Defendants rely on § 5301.56(B)(3)(b), which states that a mineral interest fails to vest to the surface owner if, within the last twenty years, one or more of the following has occurred: "there has been actual production or withdrawal of minerals by the holder from the lands, *from lands covered by a lease to which the mineral interest is subject*, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations . . . ." Ohio Rev. Code § 5301.56(B)(3)(b) (emphasis added). Defendants contend that if an oil and gas lease is itself a title transaction, the twenty-year clock would already be stayed without actual production under the lease. In other words, the clause "from lands covered by a lease to which the mineral interest is subject" would be rendered superfluous because whether there is production under the lease or not, the twenty-year clock would already be reset merely by executing the oil and gas lease.

Plaintiffs argue that both production under a lease and the recordation of the lease as a title transaction can separately, and at different times, operate to restart the twenty-year clock. For example, recording a lease in 1985 would start the twenty-year clock in 1985, but production under that lease in 1989 would restart the twenty-year clock in 1989. Therefore, Plaintiffs contend, no part of the

statute is superfluous if a lease is a title transaction. Plaintiffs further posit that under Defendants' reading, a drilling permit would not be a savings event because it would make actual production under the permit irrelevant. But receiving a drilling permit is a savings event under § 5301.56(B)(3)(d), therefore Defendants' argument is flawed. Plaintiffs argue the same reasoning also applies to conveyances, if a conveyance of the minerals is a title transaction which prevents vesting in the surface owner, then actual production by the mineral holder would be "irrelevant," so the conveyance must not be a savings event. P. Opp. 9, ECF No. 46. A conveyance is a title transaction under § 5301.56(B)(3)(a).

No part of the statute would be rendered superfluous by finding that an oil and gas lease is a title transaction. The ODMA states that "one *or more* of the following," savings events restarts the twenty-year clock. Ohio Rev. Code § 5301.56(B)(3) (emphasis added). This necessarily means that the Ohio Legislature contemplated that those events could happen simultaneously or in succession and made clear that the combination of, or occurrence of individual events would each reset the twenty-year clock. For example, a 25 year oil and gas lease could be recorded in 1985. That could start the clock if plaintiffs are right, and it would run in 2005. If there is production in 1995, the twenty-year clock would restart and run in 2015.

Further, although an application for a drilling permit is a savings event under § 5301.56(B)(3)(d), that does not render the "actual production" clause in

§ 5301.56(B)(3)(b) superfluous even though a permit is required before actual production may take place under Ohio Revised Code § 1509.05. Because the clause in Ohio Revised Code § 5301.56(B)(3) would not be made superfluous, Defendants' statutory construction argument fails.

2. Supreme Court of Ohio Case Law Focuses on the Nature of the Statute and the Lessee's Interest in Determining the Character of the Oil and Gas agreement.

As noted above, the definition in the OMTA for a title transaction is broad and includes "*any* transaction affecting title to *any* interest in land." Ohio Rev. Code § 5301.47(F) (emphasis added). Both Plaintiffs and Defendants cite to Supreme Court of Ohio decisions to support whether the execution or expiration of an oil and gas lease constitute a title transaction. Plaintiffs argue that an oil and gas lease creates a fee simple determinable and gives the lessee ownership of the oil and gas estate. Defendants argue that an oil and gas lease is merely a license and not a fee simple conveyance, and therefore is not a title transaction because it does not convey title.

The nature of an oil and gas agreement in Ohio is unsettled. "[O]il and gas agreements have been characterized as leases, licenses, corporeal hereditaments, rights, easements, and/or interests in real estate." *Rayl v. E. Ohio Gas Co.*, 348 N.E.2d 385, 389 (Ohio Ct. App. 9th Dist. 1973) (overruled on other grounds). "Cases which discuss the character of the lessee's interest often do so in the context of determining the impact of a statute upon the oil and gas

lease." *In re Frederick Petroleum Corp.*, 98 B.R. 762, 763 (S.D. Ohio 1989).[5] Two Supreme Court of Ohio cases take divergent views of the nature of oil and gas leases but neither concerns whether a lease of severed subsurface mineral rights is a title transaction under the ODMA.

In *Harris v. Ohio Oil Co.*, 48 N.E. 502, 506 (Ohio 1897), the court noted in dicta that an oil and gas lease conveyed a fee estate. A landowner leased the oil and gas rights to Harris who assigned his interest to the Ohio Oil Company. Harris then purchased the lands from the original landowner and thus became the lessor. The Supreme Court of Ohio noted in dicta that an oil and gas lease conveys more than a mere license because it is the land that is granted, demised, and let and that the lessee has a limited, vested estate in the lands for the purposes named in the lease. *Id.* The ultimate issue in *Harris* was whether there was an implied covenant to reasonably develop and protect oil and gas lines. The conclusion that a lease equated to a fee estate meant that such an implied covenant did exist, but a breach of said covenant did not forfeit the lease.

Plaintiffs rely on the Ninth District's reading of *Harris* in *Kramer v. PAC Drilling Oil and Gas, L.L.C.*, for the proposition that an oil and gas lease conveys ownership of the oil and gas estate. 968 N.E.2d 64, 67 (Ohio Ct. App. 9th Dist. App. 2011). Thus, Plaintiffs posit that a recorded conveyance of a fee estate, i.e.

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[5] The court in *Frederick* found that for the purpose of determining whether an oil and gas lease was a lease of real property under 11 U.S.C. § 365(d)(4), Ohio would rule similarly to Oklahoma courts and find that oil and gas leases are licenses. 98 B.R. at 766.

the oil and gas estate, is necessarily a "transaction affecting title to any interest in land." Ohio Rev. Code § 5301.47(F). Because the minerals rights are the subject to such a transaction, Plaintiffs argue that the lease is necessarily a savings event.

Conversely, in *Back v. Ohio Fuel Gas Co.*, 113 N.E.2d 865 (Ohio 1953), the court found that an oil and gas lease was a license. *Back* involved an instrument conveying oil and gas rights in the form of a deed recorded in the lease records. The holder of the rights admitted the deed was not a lease because it granted rights in perpetuity. *Id.* at 867. The Court held that the deed was a license in practice, although not in form, because "[p]ossession of oil and gas, having as they do a migratory character, can be acquired only by severing them from the land under which they lie, and in effect the instrument of conveyance in the instant case is no more than a license to effect such a severance." *Id.*[6]

Neither of these cases addresses the nature of the transaction at issue in this case. In the instant case, unlike either Ohio Supreme Court case, the mineral rights have already been severed from the land holder and are being leased to a third party.[7] Further, as the court in *Frederick* noted, the context of the statute has always been a key factor in how to consider the nature of the

[6] At least one court of appeals concluded that the finding of the oil and gas lease as a license was not binding because it was not in the syllabus. *Bath Twp. v. Raymond C. Firestone, Co.*, 747 N.E.2d 262, 266 (Ohio Ct. App. 9th Dist. 2000).
[7] For a further discussion of the Ohio case law on this subject, *see Frederick*, 98 B.R. at 763–66.

lease. The ODMA was not enacted at the time either *Harris* or *Back* were decided. Because the context of the statute is extremely important, and no Ohio court has considered the nature of an oil and gas lease under the ODMA, the Court declines to answer the question of whether the execution of a lease of severed subsurface mineral rights constitutes a title transaction under the ODMA.

C. Whether a Lease Expiration is a Recorded Title Transaction is also a Question for the Supreme Court of Ohio.

Even if this Court were able to determine how the Supreme Court of Ohio would rule concerning whether the execution of oil and gas lease is a title transaction under the ODMA, the parties dispute whether the proper date from which the twenty-year clock begins is the date the lease was recorded or the date the lease expired. Plaintiffs posit that it would be nonsensical for an abandonment clock to begin while a mineral rights holder is actively renting and collecting rental payments under a lease, and therefore the expiration of the lease restarts the clock. P.'s Opp. 11, ECF 46.

Defendants argue that a lease expiration is not a title transaction, and also that even if it is, the expiration is not recorded and thus does not comport with the requirements of § 5301.56(B)(3)(a) to qualify as a savings event.

The Supreme Court of Ohio has not considered this issue, but in *Energetics, Ltd. v. Whitmill*, 442 Mich. 38 (1993), the Michigan Supreme Court decided that under the Michigan Dormant Minerals Act ("MDMA"), the reversion of rights under a recorded lease is a savings event that restarts the twenty-year

clock at the time of the reversion. The MDMA prevents vesting when the mineral interest has been "sold, leased, mortgaged, or transferred by instrument recorded," in the last twenty years. Mich. Comp. Laws § 554.291 (2006). Although the MDMA expressly considers the execution of a lease a savings event, the Michigan Supreme Court found that the lease in that case was a recorded instrument transfer and thus the twenty-year clock restarted from the day the rights under the lease reverted to the lessor (the expiration of the lease). *Energetics*, 442 Mich. at 47. This is because that day, the rights transferred from the lessee to the lessor "by instrument recorded," i.e. the lease. *Id.* Although the Michigan Supreme Court's analysis is instructive, it is by no means binding as the ODMA and the MDMA differ in their definition of a savings event.

Given the dearth of Ohio authority, the best course of action is to certify these important questions of Ohio law to the Supreme Court of Ohio. Rule 9.01(A) of the Practice Rules of the Supreme Court of Ohio allows a federal court to certify questions of Ohio Law to the Supreme Court if the analysis may be determinative of the proceeding and there is no controlling precedent. Certification helps to conserve resources, avoid "friction generating error," and acknowledge the state court's status as the final arbiter on state law matters when a federal court is construing a state statute in the absence of controlling state law. *Planned Parenthood of Cincinnati Region v. Strickland*, 531 F.3d 406, 410 (6th Cir. 2008) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 79 (1997)). Because federal courts act as outsiders, there is a "responsibility

to make sure that questions of state law are 'settled right,' not that they are just 'settled.'" *Rutherford v. Columbia Gas*, 575 F.3d 616, 627 (6th Cir. 2009) (Clay, J., concurring). "This rationale is all the more compelling where, as here, the state's highest court has yet to address an issue directly and thus the federal courts are called upon to 'predict' what that court would do." *Id.* The Court may *sua sponte* certify a question to the Supreme Court of Ohio. *Planned Parenthood*, 531 F.3d at 408 (citing *Elkins v. Moreno*, 435 U.S. 647, 662 (1978)).

V. CERTIFICATION REQUIREMENTS

A. The Certified Questions

For the reasons set forth above, the undersigned certifies the following questions of state law to the Supreme Court of Ohio pursuant to Rule 9.01 of the Rules of Practice of the Supreme Court of Ohio:

1) Is the recorded lease of a severed subsurface mineral estate a title transaction under the ODMA, Ohio Revised Code § 5301.56(B)(3)(a)?

AND

2) Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the ODMA at the time of the reversion?

B. The Information Required by Ohio State Supreme Court Rule § 9.02(A)

Because the Court is certifying two questions to the Supreme Court of Ohio, the Court provides the following information in accordance with Ohio State Supreme Court Rule § 9.02(A)–(E).

1. **Name of the case:** Please refer to the caption on page 1 of this order.

2. **Statement of facts:** Please refer to § II of this order for a full recitation of the pertinent facts.

3. **Name of each of the parties:**

   a. Plaintiffs: Chesapeake Exploration, L.L.C.; CHK Utica, L.L.C.; Larchmont Resources, L.L.C.; Dale Pennsylvania Royalty, L.P.; North American Coal Royalty Company; and Total E&P USA, Inc.

   b. Defendants: Arieh Ordronneau, Sunni Ordronneau; Jeffrey Elias; Janice Elias; Dennis Elias; and Margaret Elias.

4. **Names, Addresses, Telephone Numbers, and Attorney Registration Numbers of Counsel for Each Party:**

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5. **Designation of Moving Party:** Because neither side has sought certification, the Undersigned designates Plaintiffs as the moving parties.

C. Instructions to the Clerk

In accordance with Rule 9.03(A) of the Rules of Practice of the Supreme Court of Ohio, the Clerk of the United States District Court for the Southern District of Ohio is hereby instructed to serve copies of this certification order upon counsel for the parties and to file this certification order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.

VI. CONCLUSION

For the foregoing reasons, the Court **CERTIFIES** two questions of Ohio law to the Supreme Court of Ohio in accordance with Ohio State Supreme Court

Rule § 9.01. Further, this case will be **STAYED** pending the outcome of the proceedings in the Supreme Court of Ohio.

IT IS SO ORDERED.

MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
2013 JUN -6 PM 1:47
BETH ANN ROSE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, OHIO

LELAND EISENBARTH, et al.,

Plaintiffs

v.

Case No. 2012-292

DEAN F. REUSSER, et al.,

Defendants.

JUDGMENT ENTRY
(Incorporating Findings of Fact and Conclusions of Law)

This matter is before the Court for non-oral hearing on the following:

(1). Stipulation of the Parties;

(2). Plaintiffs' Motion for Summary Judgment;

(3). Defendants' Response to Plaintiffs' Motion for Summary Judgment;

(4). Plaintiffs' Reply to Defendants' Response to Plaintiffs' Motion for Summary Judgment;

(5). Defendants' Motion for Summary Judgment;

(6). Plaintiffs' Memorandum Contra to Defendants' Motion for Summary Judgment;

(7). Defendants' Reply in Support of Defendants' Motion for Summary Judgment; *and*

(8). Defendants' Motion to Strike.

Based on the applicable law and the filings of the parties, the Court hereby makes the following findings and orders.

Monroe County
Common Pleas
Court
- - -
Julie R. Selmon
Judge

FINAL APPEALABLE
ORDER

COPY

The facts of the within case are undisputed and are set forth below.

In 1954, William H. Eisenbarth owned two tracts of land in Monroe County, Ohio, one totaling approximately 126.4530 acres (hereinafter "Tract I") and the other approximately 26.797 acres (hereinafter "Tract II"). At that time, William Eisenbarth had two children, Paul Eisenbarth and Mildred Reusser. In early 1954, William Eisenbarth executed a warranty deed which transferred the surface rights to Tracts I and II to Paul and Ida Eisenbarth, his son and daugbter-in-law. As to the oil and gas and other mineral rights, the deed included the following provision:

> There is reserved however by the Grantor William H. Eisenbarth one half of all Oil and Gas and all other minerals underlying said lands together with all rights to develope [sic] any or all of said the one half of Oil, Gas and other Mineral and to remove the same from the premises.
>
> The right to lease however is given to Paul Eisenbarth and Ida Eisenbarth the grantees in this deed.

Several months later, William H. Eisenbarth transferred all of his right, title and interest to the severed mineral interest to his daughter Mildred Reusser, via a Royalty Deed dated April 2, 1954.

Within months of receiving the surface rights, one half the oil and gas rights, and the executive right to sign oil and gas leases, Paul and Ida Eisenbarth signed an oil and gas lease with C.H. McCammon on March 19, 1954.

They subsequently signed an oil and gas lease with J. F. Hall on August 30, 1957. They also signed an oil and gas lease with E & W Oil Company on June 29, 1967. Finally, they signed an oil and gas lease with Stocker & Sitler Oil Company on

August 2, 1973.

Paul and Ida Eisenbarth continued to own both tracts of land transferred to them by William Eisenbarth until September 28, 1989, when they transferred Tract II to their son Keith Eisenbarth via a warranty deed. This transfer was made subject to all reservations of record which would include the recorded reservation of one-half the oil and gas underlying the property by William H. Eisenbarth. Paul and Ida Eisenbarth continued to own Tract I until Paul died on December 4, 1989. A Certificate of Transfer filed on February 21, 1990 noted the transfer of Paul's interest in Tract I to his wife Ida. The legal description of Tract I attached to the Certificate of Transfer included the reservation language from the 1954 deed. Ida Eisenbarth continued to own Tract I until her death on January 24,1998. A Certificate of Transfer filed September 9,1998 noted the transfer of Ida's interest in Tract I to the Plaintiffs, her sons. Again, the legal description of Tract I attached to the Certificate of Transfer included the reservation language from the 1954 deed to Paul and Ida Eisenbarth.

On October 27, 1998, Plaintiffs transferred Tract I to themselves via a joint and survivorship deed. The exception of one half the oil and gas underlying the tract reserved by their grandfather William H. Eisenbarth is repeated in this deed, including the volume and page number where the 1954 deed was recorded. Plaintiffs then signed an oil and gas lease with Viking International Resources Co., Inc. on January 22, 2008.

On January 1, 2009, Plaintiffs caused a Notice of Abandonment directed to William Eisenbarth, Mildred Reusser, Martha Rose Maag and their unknown heirs, devisees, executors, administrators, relicts, next of kin and assign to be published in the

Monroe County Beacon. Plaintiffs filed an Affidavit of Abandonment on February 16, 2009 with the Monroe County Recorder claiming that the oil and gas interest had not been the subject of title transactions filed or recorded in the Monroe County Recorder's Office within the last twenty years.

However, on February 19, 2009, Defendants filed an Affidavit of Claim to Preserve Mineral Interest pursuant to Ohio Revised Code § 5301.56(C) with the Monroe County Recorder, claiming to be the holders of the Severed Mineral Interest. On that same date, Defendants also recorded a Royalty Deed dated April 2, 1954, transferring all of William E. Eisenbarth's right, title and interest in and to the Severed Mineral Interest to his daughter, Mildred Reusser.

Mildred Reusser died testate on October 2, 2002, leaving the residuary of her estate to the Defendants. Defendants in this case are the heirs of Mildred Reusser and are claiming title to the Severed Mineral Interest as reserved in the Reservation Deed.

Plaintiffs claim that they were unaware of the above-mentioned Claim to Preserve and as a result, on March 6, 2009, Plaintiffs sent notice to the Monroe County Recorder instructing her to note that the Severed Mineral Interest was abandoned.

Thereafter, Plaintiffs signed an oil and gas lease with Northwood Energy Corporation on March 15, 2012. This lawsuit followed, having been filed on September 13, 2012 where Plaintiffs seek a declaration that Defendants' rights to the oil and gas underlying Tracts I and II are abandoned pursuant to both the former and current version of the Dormant Minerals Act. Defendants then filed a Counterclaim seeking a declaratory judgment that Plaintiffs could not rely upon the prior version of the Dormant Minerals Act,

that the Severed Mineral Interest had been the subject of a title transaction in the twenty (20) years prior to Plaintiffs' filing their Notice of Abandonment and other relief. Also at issue is the signing bonus Plaintiffs received from their most recently-executed oil and gas lease whereby Plaintiffs received $766,250.00.

Civil Rule 56 governs Summary Judgment motions. Civil Rule 56(C) provides that Summary Judgment shall be granted once it is determined that: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the non-moving party, that conclusion is adverse to the party against whom the motion for Summary Judgment is made. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St. 3d 447, 448 (1996); *Harless v. Willis Day Warehousing Co.*, 54 Ohio St. 2d 64 (1978). If the moving party makes such a showing, the non-moving party then must produce evidence on any issue for which the party bears the burden of production at trial. *Wing v. Anchor Media, Ltd. of Texas*, 59 Ohio St. 3d 108, Syllabus ¶3 (1991); *(Celotex Corp. v. Catrett*, 477 U.S. 317 [1986] approved and followed).

In this case, the oil and gas reservation contained in the Reservation Deed states that "the right to lease . . . is given to Paul and Ida Eisenbarth . . ." (The parents of the Plaintiffs). Plaintiffs thus claim that Plaintiffs are solely entitled to one hundred percent (100%) of the incidents of ownership of those leasing rights, including any signing bonus. Yet, Defendants claim they are entitled to half the proceeds of any bonus payment.

In seeking a declaration that Defendants' one-half interest in all the oil and gas and

all other minerals including Tracts I and II has been abandoned, Plaintiffs rely on both the previous and current version of the Dormant Minerals Act. In doing so, Plaintiffs claim that (over certain twenty year periods), the Defendants' mineral interest has not been the subject of any title transactions.

The Dormant Minerals Act of 1989 sets forth six savings events which, if they occurred in preceding twenty years, would prevent a deemed abandonment of the reserved minerals. R. C. § 5301.56(B)(1)(c). The first of these savings events looks to whether "[t]he mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the County Recorder of the County in which the lands are located." R. C. § 5301.56(B)(1)(c)(i) .

Thus, in determining whether the Defendants' mineral interest can be deemed abandoned under the Dormant Minerals Act, the Court must consider the title transactions which occurred during this period and whether those transactions affected the mineral rights to the property.

A "title transaction", as defined by ORC § 5301.47(F) means "any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's or sheriff's deed, or decree of any Court, as well as warranty deed, quit claim deed or mortgage."

Defendants' claim both that: (1) an oil and gas lease is a title transaction; and (2) deeds transferring the surface of the property that recited the oil and gas reservation contained in the Reservation Deed constitutes a title transaction.

In *Dodd v. Croskey*, Case No. CVH-2011-0019 (Harrison County Common Pleas

Court, October 29, 2012), the Court was presented with facts similar to the within facts of the case currently before this Court. In 1947, the landowners conveyed the surface rights while excepting and reserving all oil and gas to themselves. The deed under which the surface owners claimed title described the premises conveyed and specifically noted the reservation of oil and gas rights in 1947. The Plaintiffs argued that the inclusion of the exception and reservation language in the deed did not qualify as a "title transaction" under the Dormant Minerals Act. The Court rejected that contention and held, as a matter of law, that the mineral interest is the subject of a title transaction where the deed in question conveys the surface rights while excepting oil and gas rights which were previously reserved.

However, the recent decision of *Walker v. Noon*, Noble County Common Pleas Court CVH 212-0098 found otherwise. In *Walker*, the facts were also nearly identical to the facts in the within case. In that case, two (2) conveyances after the Reservation Deed (in 1970 and 1977) "specifically not[ed] that the oil and gas had previously been reserved." The Court in *Walker* held:

> "The question becomes, do the surface transfers in 1970 and 1977 count as 'title transactions'? The Court believes the answer to be no. They would be within the twenty year period prior to March 22, 1989. However, to be 'title transactions', they would need to affect an interest in the land (§ 5301.47[F]), and for purposes of this case that interest is the mineral interest. [§ 5301.56(B)(1)(c)(i)]. While the surface transfers reference the mineral reservation, those transfers do not affect the mineral interest."

In *Walker*, the Court also recognized that a title transaction must affect the mineral interest to qualify as a savings condition. The Severed Mineral Interest must be the subject

of that title transaction according to ORC § 5301.56(B)(1)(c)(i) and not just a repetition of a prior oil and gas reservation.

Additionally, in *Wendt v. Dickerson*, Case No. 2012 CV 02 0133 (Tuscarawas County Common Pleas Court, February 21, 2013), the transfer to the Plaintiffs contained the following oil and gas reservation:

> "Reservation by John R. Dickerson and Marjorie I. Dickerson, their heirs and assigns for all of the oil and gas with the right to drill for in Warranty Deed for record December 17, 1952, in Volume 133, Page 69."

The Court found that, regardless of the repetition of that reservation in the Plaintiff's deed, "no deed executed before or after 3/22/1992 transferred the property at issue 'subject to' the Defendant's mineral interest nor did they operate to create or perserve the interest of the Defendants in that case." *Wendt* at 18.

Similarly, in *William Wiseman, et al. v. Arthur Potts, et al.* , Morgan C.P. 08CV0145 (2008), the Morgan County Common Pleas Court found that a severed oil and gas interest was deemed abandoned based upon the prior version of the Ohio Dormant Minerals Act. In *Wiseman*, the Defendants argued that subsequent deeds that repeated the oil and gas reservation were "title transactions" that operated as savings conditions under the previous version of ORC § 5301.56. However, the Court in *Wiseman* found that "there is no genuine issue as to material fact and that the Motion of the Plaintiffs [landowners] for Summary Judgment quieting title to the oil and gas rights that are the subject of the Complaint should be and hereby is granted." *Wiseman v. Potts*, Morgan C.P. 08CV0145 (2008).

This Court finds that a recitation of the original oil and gas reservation in subsequent

transfers of the surface do not affect the Severed Mineral Interest and therefore do not constitute "title transactions" under ORC § 5301.56(B)(1)(c)(i) . The Court finds that the Severed Mineral Interest was not deeded, transferred or otherwise conveyed in any of the following title transactions and as a result, title thereto was not affected. These transactions include:

Tract I

- Reservation Deed (1954)

- Certificate of Transfer from Paul E. Eisenbarth (date of death 12/4/89) to Ida Eisenbarth dated February 16, 1990 and recorded in Volume 200, Page 522 of the Deed Records of Monroe County, Ohio.

- Certificate of Transfer from Ida M. Eisenbarth (date of death 1/24/1998) to Plaintiffs dated August 28, 1998, filed September 9, 1998 and recorded in Volume 45, Page 473 of the Official Records of Monroe County, Ohio.

- Survivorship Deed from Plaintiffs to Plaintiffs in joint survivorship dated October 27, 1998, filed October 30, 1998 and recorded in Volume 46, Page 979 of the Official Records of Monroe County, Ohio.

Tract II

- Reservation Deed (1954)

- Warranty Deed from Paul and Ida Eisenbarth to Plaintiff Keith Eisenbarth dated September 28, 1989, filed October 2, 1989 and recorded in Volume 199, Page 547 of the Deed Records of Monroe County, Ohio.

Again, none of these transactions affected title to the property at issue in this case, more specifically the Severed Mineral Interest. Instead, these transactions only affect title to the surface of the property. Accordingly, they do not constitute a savings condition

under ORC § 5301.56.

Next, this Court must determine whether an oil and gas lease constitutes a "title transaction." ORC § 5301.47(F) specifically provides that: "Title Transaction" means "any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's or sheriff's deed, or decree of any Court, as well as warranty deed, quit claim deed, or mortgage." The fact that the words "lease" or "oil and gas lease" do not appear in the non-exhaustive list in the above-cited statute does not end this Court's inquiry. Rather, the Court must decide if an oil and gas lease is a "transaction affecting title to any interest in land." This issue was most recently addressed by the Columbiana County Court of Common Pleas in *Bender v. Morgan*, Case No. 2012-CV-378 (Columbiana County, March 20, 2013). In *Bender*, the Court found that "an oil and gas lease is clearly a 'title transaction' as contemplated under R.C. § 5301.47(F)." See *Id.* at 5.

More specifically, the Court found:

> Moreover, an oil and gas lease does more than merely permit use of minerals for development. Rather, an oil and gas lease does actually convey (a determinable fee interest) in the oil and gas (severed mineral interests in this case) in place, for production. That conveyance is subject to reverter in the event there is no production and the lease otherwise expires by its own terms. "Oil and gas in place are the same as any part of the realty, and capable of separate reservation or conveyance," citing *Pure Oil Co. v Kindall* (1927), 116 Ohio St. 188, 201. A lessee to an oil and gas lease acquires a "vested, though limited, estate in the lands for the purposes named in the lease . . .", citing *Harris v. Ohio Oil Co.* (1897), 57 Ohio St. 118, 130-31. Under the typical language of a habendum clause found in an oil and gas lease, such generally creates a determinable fee interest, subject to reverter to the lessor if

> conditions are not satisfied. E.g., *Tisdale v. Walla* (December 23, 1994), Ashtabula App. No. 94-A-0008; *Kramer v. PAC Drilling Oil & Gas* (December 29, 2011), 2011-Ohio-6750, ¶11. As stated in *Kramer*, an oil and gas lease "convey[s] ownership of the oil and gas estates" to the lessee; again, subject to reverter. *Id.* Because of the possibility of reverter, the oil and gas lease conveys a fee simple determinable rather than a fee simple absolute. *Id.* In any event, an oil and gas lease is clearly a "title transaction" as contemplated under R. C. § 5301.47(F).
>
> It is inescapable that an instrument which conveys a fee simple determinable in oil and gas minerals (in place) is a "title transaction" as contemplated by the broad definition found in the Marketable Title Act.

In this case, Paul and Ida Eisenbarth signed an oil and gas lease on August 2, 1973, which was recorded on January 23, 1974. As a matter of simple math, this occurred within the twenty (20) years preceding both the date the Dormant Minerals Act was passed in 1989 and the date it became effective in 1992. Plaintiffs contend, however, that the "severed" mineral interest was not the subject of such a lease because their parents (and predecessors in interest) signed this lease only in regard to the undivided one-half of the oil and gas rights which had been conveyed with the surface rights. This argument is inconsistent with both the facts of this case and the law.

Plaintiffs contend that the leases their parents signed (including those in 1954, 1957 and 1967) could not have affected the undivided one-half of the oil and gas rights retained by William Eisenbarth (and later conveyed to Mildred Reusser and then Defendants) because a lease must be signed by the grantor. Elsewhere, however, Plaintiffs emphasize that the 1954 deed conveying the surface rights and one-half the mineral interest to their parents also conveyed the executive right (the right to sign leases). As Plaintiffs have

acknowledged, this means that the owners of the Severed Mineral Interest could not have signed an oil and gas lease because that right belonged to Paul and Ida Eisenbarth and their successors in interest. Their argument that the oil and gas leases signed by Plaintiffs and their parents could not have affected Defendants' interest "without the Defendants' signature [sic]" directly contradicts their argument that "Defendants have no right or ability to execute an oil and gas lease on the Property."

This Court finds that when Paul and Ida Eisenbarth signed the lease in 1973, they were exercising the executive right conveyed to them in 1954. The Court finds that the oil and gas lease in question covered all of the oil and gas underlying the property, not just the one-half belonging to Paul and Ida Eisenbarth.

Thus, this Court finds that the mineral interest in this case was clearly the subject of a title transaction when Paul and Ida signed a lease conveying rights to the oil and gas to a third party. Based on the foregoing, the Court finds in Defendants' favor that their oil and gas interest has not been abandoned under the Ohio Dormant Minerals Act since one of the savings provisions under Ohio Revised Code § 5301.56(B)(1)(c) has been satisfied.

Next, since this Court found that the mineral interest has not been abandoned, this Court must now decide the issue of who is rightfully entitled to any bonus money received by Plaintiffs. Plaintiffs seek a declaration from this Court that possessing the executive right (the right to lease) carries with it an entitlement to all bonus money received. Thus Plaintiffs contend that the only interest Defendants can claim is an interest in the royalty or subsequent delay rental payments. Defendants claim otherwise. Defendants contend that the executive right (the right to lease) and the right to bonus money are two (2)

separate rights and since William Eisenbarth did not convey the right to receive the bonus money related to the one-half mineral interest he retained, such a declaration would be inappropriate. Defendants contend they are entitled to one-half of the bonus money, or $383,125.00.

In the within case, the oil and gas reservation contained in the Reservation Deed read that William Eisenbarth reserved "one-half of all oil and gas and all other minerals underlying said lands together with all rights to develop any or all of said one-half of oil, gas and other minerals and to remove the same from the premises." Meanwhile, "the right to lease . . . was given to Paul Eisenbarth and Ida Eisenbarth . . .".

In support of their position, Plaintiffs rely on *Buegel v. Amos*, Case No. 577, 1984 WL 7725 (7th Dist. June 5, 1984). The *Buegel* case dealt with a non-participating royalty interest. In the within case, the Court finds that the language of reservation created a mineral fee interest in the Grantor, William Eisenbarth, not a royalty interest. See *Lighthouse v. Clinefelter*, 36 Ohio App. 3d 204, 206 (9th Dist. 1987) (retaining ownership in one-half of the minerals beneath the surface retains a fee simple estate in those minerals); 2 Williams & Meyers, Oil and Gas Law, § 338 at 198.

Moreover, the *Buegel* Court held: "The distinguishing characteristics of a 'non-participating royalty interest' are: (1) such share of production is not chargeable with any of the costs of discovery and production; (2) the owner has no right to do any act or thing to discover and produce the oil and gas; (3) the owner has no right to grant leases; and (4) the owner has no right to receive bonuses or delay rentals." *Buegel*, 1984 WL 7725 at 2.

The *Buegel* Court relied exclusively upon *Mounger v. Pittman*, 108 So.2d 565 (Miss. 1959) in determining what the characteristics of a non-participating royalty are. The *Mounger* Court expressly held that the right to receive a bonus is a distinct right retained by the grantor unless specifically conveyed to the grantee.

Thus, this Court finds consistent with the 7th District's ruling in *Buegel* that William Eisenbarth retained the right to receive the bonus money associated with his one-half interest in the oil and gas in place, which right was eventually conveyed to the Defendants.

Based on all of the foregoing, the Court finds there are no genuine issues of material fact that remain to be litigated from Plaintiffs' Complaint or Defendants' Counterclaim. Consistent with the findings herein, Defendants are entitled to judgment as a matter of law. Defendants are hereby ordered title to one-half of the oil, gas and other minerals underlying Tracts I and II quieted in themselves. The Court further orders Plaintiffs to pay one-half of any bonus money received to Defendants.

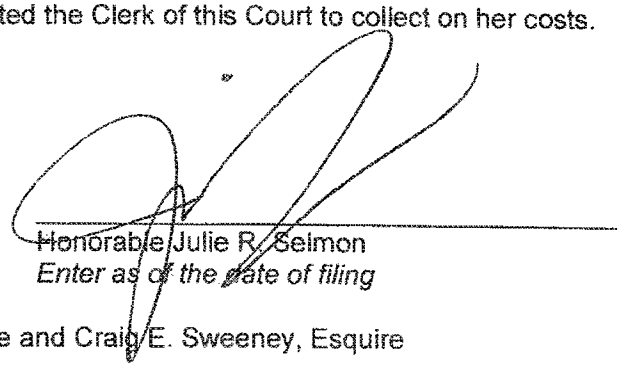
The Clerk is hereby ordered to forward a certified copy of this order to the Monroe County Recorder, to add a marginal notation on the deed recorded at Volume 129, Page 503 stating that the Severed Mineral Interest was not abandoned pursuant to the Affidavit of Abandonment recorded in Volume 178, page 681.

The Court further finds that there is no just reason for delay, and that this "Judgment Entry Incorporating Findings of Fact and Conclusions of Law" is a final appealable order, as defined under Civil Rule 54.

The costs of this proceeding shall first be taken from the deposits previously filed by both Plaintiffs and Defendants. Any remaining balance shall be divided equally between

the parties. Judgment is hereby granted the Clerk of this Court to collect on her costs.

IT IS SO ORDERED.



Honorable Julie R. Selmon
Enter as of the date of filing

Copies to: Richard A. Yoss, Esquire and Craig E. Sweeney, Esquire
YOSS LAW OFFICES

Andrew P. Lycans, Esquire and Patrick E. Noser, Esquire
CRITCHFIELD, CRITCHFIELD & JOHNSTON, LTD.

c: \ oil&gas decisions \
eisenbarth-reusseropinionanddecision
June 4, 2013 (2:10PM)Jay

Monroe County
Common Pleas
Court
- - -
Julie R. Selmon
Judge

As Introduced

117th General Assembly

Regular Session

1987-1988

S. B. No. 223

MESSRS. CUPP-SCHAFRATH-NETTLE

A B I L L

To amend sections 317.18, 317.20, 317.201, and 5301.53, to enact new section 5301.56, and to repeal section 5301.56 of the Revised Code to provide a method for the termination of dormant mineral estates and the vesting of their title in the surface owners, in the absence of certain occurrences within the preceding 20 years, including the filing by the holder of the mineral interest of a notice of claim.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 317.18, 317.20, 317.201, and 5301.53 be amended and new section 5301.56 of the Revised Code be enacted to read as follows:

Sec. 317.18. At the beginning of each day's business the county recorder shall make and keep up general alphabetical indexes, direct and reverse, of all the names of both parties to all instruments theretofore received for record by him. The volume and page where such instrument is recorded may be omitted until it is actually recorded if the file number is entered in place of the volume or page~~, but such file number may be omitted from any index volume in use on April 21, 1896, if the form of the index volume is not adapted to entering the file number~~. The indexes shall show the kind of instrument, the range, township, and section or the survey number and number of acres, or the permanent parcel number provided for under section 319.28 of the Revised Code, or the lot and sublot number and the part thereof, all as the case requires, of each tract, parcel, or lot of land described in any such instrument of writing. The name of each

grantor shall be entered in the direct index under the appropriate letter, followed on the same line by the name of the grantee, or, if there is more than one grantee, by the name of the first grantee followed by "and others" or their equivalent. The name of each grantee shall be entered in the reverse index under the appropriate letter, followed on the same line by the name of the grantor, or, if there is more than one grantor, by the name of the first grantor followed by "and others" or their equivalent.

As to notices of claims filed in accordance with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code there shall be entered in the reverse index under the appropriate letter the name of each claimant, followed on the same line by the name of the present owner of title against whom the claim is asserted, if the notice contains the name of the present owner; or, if the notice contains the names of more than one such owner, there shall be entered the name of the first owner followed by "and others" or their equivalent.

In all cases of deeds, mortgages, or other instruments of writing made by any sheriff, master commissioner, marshal, auditor, executor, administrator, trustee, or other officer, for the sale, conveyance, or encumbrance of any lands, tenements, or hereditaments, and recorded in the recorder's office, the recorder shall index the parties to such instrument under their appropriate letters, respectively, as follows:

(A) The names of the persons represented by such officer as owners of the lands, tenements, or hereditaments described in any such instruments;

(B) The official designation of the officer by whom such instrument of writing was made;

(C) The individual names of the officers by whom such instrument of writing was made.

In all cases of instruments filed in accordance with sections 5311.01 to 5311.22 of the Revised Code, the name of each owner shall be entered in the direct index, under the appropriate

letter, followed on the same line by the name of the condominium 3.16
property, and the name of the condominium property shall be 3.17
entered in the reverse index under the appropriate letter
followed on the same line by the name of the owner of the 3.18
property, or, if the instrument contains the names of more than 3.19
one owner there shall be entered the name of the first owner 3.20
followed by "and others" or its equivalent. 3.21

Any general alphabetical index ~~commenced--after-June-7,~~ 3.22
~~1911,~~ shall be COMMENCED in conformity to this section, and 3.23
whenever, in the opinion of the board of county commissioners, it 3.25
becomes necessary to transcribe, on account of its worn out or 3.26
incomplete condition, any volume of ~~such~~ AN index now in use, 3.29
such volume shall be revised and transcribed to conform with this 3.30
section; except that in counties having a sectional index in 3.31
conformity with section 317.20 of the Revised Code, such 3.33
transcript shall be only a copy of the original. 3.34

Sec. 317.20. When, in the opinion of the board of county 3.36
commissioners sectional indexes are needed, and it so directs, in 4.1
addition to the alphabetical indexes provided for in section 4.2
317.18 of the Revised Code, the board may provide for making, in 4.3
books prepared for that purpose, sectional indexes to the records 4.4
of all real estate in the county, beginning with some designated 4.5
year and continuing through such period of years as it specified, 4.6
by placing under the heads of the original surveyed sections or 4.7
surveys, or parts of a section or survey, squares, subdivisions, 4.8
or the permanent parcel numbers provided for under section 319.28 4.10
of the Revised Code, or lots, on the left-hand page, or on the 4.12
upper portion of such page of the index book, the following: 4.13

(A) The name of the grantor; 4.14

(B) Next to the right, the name of the grantee; 4.16

(C) The number and page of the record where the instrument 4.18
is found recorded; 4.19

(D) The character of the instrument, to be followed by a 4.21
pertinent description of the property conveyed by the deed, 4.22
lease, or assignment of lease;

(E) On the opposite page, or on the lower portion of the 4.23
same page, beginning at the bottom, in like manner, all the 4.24
mortgages, liens, notices as provided for in sections 5301.51 4.25
and, 5301.52, AND 5301.56 of the Revised Code, or other 4.27
encumbrances affecting such real estate. 4.29

The compensation for the services rendered under this 4.30
section shall be paid from the general revenue fund of the 4.31
county, and no additional levy shall be made in consequence of 4.32
such services. In the event that the board decides to have such 4.33
sectional index made it shall advertise for three consecutive 4.34
weeks in one newspaper of general circulation in the county for 4.35
sealed proposals to do such work as provided in this section, and 4.36
shall let the work to the lowest and best bidder, and shall 5.1
require him to give bond for the faithful performance of the 5.2
contract, in such sum as the board fixes, and such work shall be 5.3
done to the acceptance of the bureau of supervision and 5.4
inspection of public offices upon allowance by such board. The 5.5
board may reject any and all bids for the work, provided that no 5.6
more than five cents shall be paid for each entry of each tract 5.7
or lot of land. 5.8

When brought up and completed, the county recorder shall 5.9
keep up the indexes described in this section. 5.10

Sec. 317.201. The county recorder shall maintain a book to 5.11
be known as the "Notice Index." Separate pages of the book shall 5.12
be headed by the original survey sections or surveys, or parts of 5.14
a section or survey, squares, subdivisions, or the permanent 5.15
parcel numbers provided for under section 319.28 of the Revised 5.16
Code, or lots. In this book there shall be entered the notices 5.17
for preservation of claims presented for recording in conformity 5.18
with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised 5.20
Code. In designated columns there shall be entered on the left- 5.21
hand page:

(A) The name of each claimant; 5.23

(B) Next to the right, the name of each owner of title; 5.25

(C) The deed book number and page where the instrument 5.27
containing the claim has been recorded; 5.28

(D) The type of claim asserted; and on the opposite page 5.30
on the corresponding line a pertinent description of the property 5.31
affected as appears in such notice. 5.32

Sec. 5301.53. The provisions of sections 5301.47 to 5.35
5301.56 of the Revised Code~~,~~ shall not be applied TO BAR OR 6.1
EXTINGUISH ANY OF THE FOLLOWING: 6.2

(A) ~~To bar any~~ ANY lessor or his successor as reversioner 6.4
of his right to possession on the expiration of any lease or any 6.5
lessee or his successor of his rights in and to any lease, EXCEPT 6.7
AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE; 6.8

(B) ~~To bar or extinguish any~~ ANY easement or interest in 6.10
the nature of an easement created or held for any railroad or 6.11
public utility purpose; 6.12

(C) ~~To bar or extinguish any~~ ANY easement or interest in 6.14
the nature of an easement, the existence of which is clearly 6.15
observable by physical evidence of its use; 6.17

(D) ~~To bar or extinguish any~~ ANY easement or interest in 6.19
the nature of an easement, or any rights granted, excepted, or 6.20
reserved by the instrument creating such easement or interest, 6.21
including any rights for future use, if the existence of such 6.22
easement or interest is evidenced by the location beneath, upon, 6.23
or above any part of the land described in such instrument of any 6.26
pipe, valve, road, wire, cable, conduit, duct, sewer, track,
pole, tower, or other physical facility and whether or not the 6.27
existence of such facility is observable; 6.28

(E) ~~To bar or extinguish any~~ ANY right, title, estate, or 6.30
interest in coal, and any mining or other rights pertinent 6.31
thereto or exercisable in connection therewith; 6.32

(F) ~~To bar or extinguish any~~ ANY mortgage recorded in 6.33
conformity with section 1701.66 of the Revised Code; 6.34

(G) ~~To bar or extinguish any~~ ANY right, title, or interest 6.36
of the United States, or of ~~the state of Ohio~~ THIS STATE, or any 7.2
political subdivision, body politic, or agency thereof. 7.3

Sec. 5301.56. (A) AS USED IN THIS SECTION: 7.5

(1) "HOLDER" INCLUDES NOT ONLY THE RECORD HOLDER OF A 7.7
MINERAL INTEREST, BUT ALSO ANY PERSON WHO DERIVES HIS RIGHTS 7.8
FROM, OR A COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM 7.10
DOES NOT INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS 7.11
ADVERSE TO THE INTEREST OF THE RECORD HOLDER.

(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED 7.13
UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE 7.15
HOLDER TO DRILL AN OIL OR GAS WELL OR MINE OTHER MINERALS. 7.16

(B) ANY MINERAL INTEREST HELD BY ANY PERSON OTHER THAN THE 7.19
OWNER OF THE SURFACE OF THE LANDS SHALL BE DEEMED ABANDONED AND 7.20
VESTED IN THE OWNER OF THE SURFACE, IF NEITHER OF THE FOLLOWING 7.21
IS TRUE:

(1) THE MINERAL INTEREST IS ONE IN COAL, OR MINING OR 7.23
OTHER RIGHTS PERTINENT THERETO, AS DESCRIBED IN DIVISION (E) OF 7.24
SECTION 5301.53 OF THE REVISED CODE; 7.25

(2) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE 7.27
FOLLOWING HAS OCCURRED: 7.28

(a) THE INTEREST HAS BEEN CONVEYED, LEASED, TRANSFERRED, 7.30
OR MORTAGED BY AN INSTRUMENT FILED OR RECORDED IN THE RECORDER'S 7.31
OFFICE OF THE COUNTY IN WHICH THE LANDS ARE LOCATED; 7.32

(b) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF 7.34
MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A 7.35
LEASE TO WHICH SUCH INTEREST IS SUBJECT, OR, IN THE CASE OF OIL 7.36
OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT 8.1
OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED 8.2
CODE, IN WHICH THE INTEREST IS PARTICIPATING; 8.3

(c) THE INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE 8.6
OPERATIONS BY THE HOLDER;

(d) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE 8.8
HOLDER; 8.9

(e) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED UNDER 8.12
DIVISION (C) OF THIS SECTION.

NO MINERAL INTEREST SHALL BE DEEMED ABANDONED UPON THE 8.14
BASIS OF FAILURE OF COMPLIANCE WITH DIVISION (B) OF THIS SECTION 8.16
PRIOR TO THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION. 8.17

(C) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 8.19
DEEMED ABANDONED UNDER DIVISION (B) OF THIS SECTION MAY BE FILED 8.21
FOR RECORD BY THE HOLDER WITH THE COUNTY RECORDER OF THE COUNTY 8.22
IN WHICH THE LAND IS LOCATED. THE CLAIM SHALL CONSIST OF A 8.23
NOTICE, VERIFIED UNDER OATH, OF THE NATURE OF THE INTEREST
CLAIMED, A DESCRIPTION OF THE LAND, THE VOLUME AND PAGE OF ANY 8.24
RECORDED INSTRUMENT ON WHICH IT IS BASED, THE NAME AND ADDRESS OF 8.26
THE HOLDER, AND THAT HE DOES NOT INTEND TO ABANDON BUT TO
PRESERVE HIS RIGHTS. SUCH CLAIM PRESERVES THE RIGHTS OF ALL 8.27
HOLDERS OF A MINERAL INTEREST IN THE SAME LAND. ANY HOLDER OF AN 8.29
INTEREST FOR USE IN UNDERGROUND GAS STORAGE OPERATIONS MAY
PRESERVE HIS INTEREST, AND THOSE OF ANY LESSOR THEREOF, BY A 8.30
SINGLE CLAIM, DEFINING THE BOUNDARIES OF THE STORAGE FIELD OR 8.31
POOL AND ITS FORMATIONS, WITHOUT DESCRIBING EACH SEPARATE 8.32
INTEREST CLAIMED. SUCH A CLAIM ALSO ESTABLISHES PRIMA-FACIE 8.33
EVIDENCE OF THE USE OF SUCH INTEREST IN UNDERGROUND GAS STORAGE 8.34
8.35
OPERATIONS.

(D) A CLAIM FILED UNDER DIVISION (C) OF THIS SECTION SHALL 9.2
BE RECORDED AS PROVIDED IN SECTIONS 317.18 TO 317.201 AND 5301.52 9.3
OF THE REVISED CODE.

(E) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY FROM 9.6
THE PRESUMPTION OF ABANDONMENT UNDER THIS SECTION BY OCCURRENCE 9.7
OF ANY OF THE EVENTS DESCRIBED IN DIVISION (B)(2) OF THIS 9.8
SECTION, INCLUDING SUCCESSIVE FILINGS OF CLAIMS UNDER DIVISION 9.9
(C) OF THIS SECTION. THE FILING OF A CLAIM UNDER DIVISION (C) OF 9.10
THIS SECTION DOES NOT AFFECT THE RIGHT OF A LESSOR OF AN OIL OR 9.11
GAS LEASE TO OBTAIN ITS FORFEITURE UNDER SECTION 5301.332 OF THE 9.12
REVISED CODE.

(F) THIS SECTION DOES NOT APPLY TO ANY MINERAL INTEREST 9.14
9.15
HELD BY ANY GOVERNMENTAL ENTITY.

Section 2. That existing sections 317.18, 317.20, 317.201, 9.17
and 5301.53 and section 5301.56 of the Revised Code are hereby 9.18
repealed. 9.19

S.B. 223
(As Introduced)

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Sens. Cupp, Schafrath, Nettle

Provides that, in the absence of certain specified occurrences within the preceding 20-year period, including failure to file a written notice of claim in subsurface minerals, a mineral estate (other than in coal) is considered abandoned and the title vests in the surface owner.

Background

When a person buys an interest in land, the Marketable Title Act (sections 5301.47 to 5301.56 of the Revised Code) makes it unnecessary for the most part to do a title search back further than the date that is known as the effective date of the root of title. This is so because the Act generally cuts off interests existing prior to the effective date of the root of title, unless those interests have been preserved by the recording of a preserving notice as provided in the Act.

The "root of title" is the conveyance, in the seller's chain of title, that was most recently recorded as of the date 40 years before the date on which marketability is determined. The "effective date of the root of title" is the date on which was recorded the conveyance that is the root of title.

Current section 5301.56 provides that regardless of when the Marketable Title Act's 40-year period expires, for the purpose of recording a preserving notice of a claim in the right, title, estate or interest in and to subsurface minerals, with the exception of coal, such period shall not be considered to expire until after December 31, 1976. The bill would repeal this section because it no longer applies to conveyances of interests in minerals and would replace it with guidelines for determining when an interest in a mineral estate (other than coal) has become dormant and the interest would vest in the owner of the surface land.

CONTENT AND OPERATION

The bill would not change existing law concerning marketable title to or the filing of preserving notices for an interest in surface land. Under the bill, any mineral interest held (see COMMENT 1) by any person

other than the owner of the surface land, would be deemed abandoned and would vest in the owner of the surface land if neither of the following applies (sec. 5301.56(B)):

(1) The mineral interest is one in coal, or mining or other rights pertinent to or exercisable in connection with the mining;

(2) Within the preceding 20 years, one or more of the following has occurred:

(a) The interest has been conveyed, leased, transferred, or mortgaged by an instrument filed or recorded in the recorder's office of the county in which the lands are located;

(b) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which such interest is subject, or, in the case of oil or gas, from lands pooled, utilized, or included in unit operations in which the interest is participating;

(c) The interest has been used in underground gas storage operations by the holder;

(d) A drilling or mining permit has been issued to the holder (see COMMENT 2);

(e) A claim to preserve the interest has been filed in compliance with the provisions of the bill.

No mineral interest would be considered abandoned based on failure to comply with this provision prior to three years from the effective date of this section (sec. 5301.56(B)).

A claim to preserve a mineral interest from being deemed abandoned could be filed for record with the county recorder of the county in which the land is located. It would consist of a notice, verified under oath, of the nature of the interest claimed, a description of the land, the volume and page of any recorded instrument on which it is based, the name and address of the holder, and a statement that the holder does not intend to abandon but to preserve his rights. The claim would preserve the rights of all holders of a mineral interest in the same land. Any holder of an interest for use in underground gas storage operations could preserve his interest, and those of any lessor, by a single claim, defining the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. This claim also would establish prima-facie evidence of the use of such interest in underground gas storage operations. (Sec. 5301.56(C).)

A claim filed pursuant to the procedure described above also would have to be recorded as provided in sections 317.18 to 317.201 (governing indexes maintained by a county recorder) (see COMMENT 3) and 5301.52 (contents of notice claiming to preserve an interest in land) of the Revised Code (sec. 5301.56(D)). A mineral interest could be preserved indefinitely from the bill's presumption of abandonment by the continuing occurrence of any of the items listed in the bill (the mineral is coal or the events listed occurred within the preceding 20 years). Indefinite preservation also could be accomplished by successive filings of claims to preserve a mineral interest by the method provided by the bill. (Sec. 5301.56(C).)

The filing of a claim to preserve a mineral interest from being deemed abandoned as provided by the bill would not affect the right of a lessor of an oil or gas lease to obtain a forfeiture pursuant to section 5301.332 (provides basis and procedure for forfeiture and cancellation of natural gas and oil land leases) (sec. 5301.56(E)). The bill specifies that its provisions would not apply to any mineral interest held by a governmental entity (sec. 5301.56(F)).

COMMENT

(1) Section 5301.56(A)(1) defines a holder as including not only the record holder of a mineral interest, but also any person who derives his rights from, or a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) A drilling or mining permit is a permit issued under Chapter 1509., 1513., or 1514. (Oil and Gas, Coal Surface Mining, and Other Surface Mining, respectively) of the Revised Code to the holder to drill an oil or gas well or mine other minerals (sec. 5301.56(A)(2)).

(3) Sections 317.18 to 317.201 of the Revised Code set forth guidelines to be followed by a county recorder in maintaining the records of all real estate located in the county. For example, section 317.19 requires that a daily register of deeds and a daily register of mortgages be kept. The county recorder also is responsible for maintaining an alphabetical index, both direct and reverse, of the names of both parties to all instruments affecting county real estate (sec. 317.18). In addition, section 317.201 provides that every notice of preservation of claims filed in the recorder's office be logged in a record book called a "Notice Index."

ACTION	DATE	JOURNAL ENTRY
Introduced	05-28-87	p. 404

ASB0223-I/tjc/nsg

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Nancy M. McLaughlin,	)	CASE NO. 5:13CV1502
Plaintiff,	)	JUDGE JOHN R. ADAMS
vs.	)	
CNX Gas Company,	)	**MEMORANDUM OF OPINION AND ORDER**
Defendant.	)	(Resolves Docs. 8, 9, 11, 15, 17)

This matter comes before the Court on a motion for judgment on the pleadings filed by Defendant CNX Gas Company (Doc. 8). Initially, the Court GRANTS Defendant's motion to supplement its motion for judgment on the pleadings (Doc. 9) as well as Plaintiff's motion to supplement her opposition (Doc. 15). Moreover, the Court GRANTS Defendant's motion to amend its affirmative defenses and dismiss their counterclaim (Doc. 17). Accordingly, the motion to intervene (Doc. 11) is DENIED AS MOOT. The Court has been advised, having considered the complaint, pleadings, and applicable law. The motion for judgment on the pleadings (Doc. 8) is GRANTED.

I. LEGAL STANDARD

Fed.R. Civ.P. 12(c) provides that "[a]fter the pleadings are closed -- but early enough not to delay trial -- a party may move for judgment on the pleadings." The standard for evaluating a motion for judgment on the pleadings is the same as that applicable to a motion to dismiss under Rule 12(b)(6) for failure to state a claim. *Ziegler v. IBP Hog Market, Inc.*, 249 F.3d 509, 511-12 (6th Cir. 2001). The Sixth Circuit stated the standard for reviewing such a motion to dismiss in *Assn. of Cleveland Fire Fighters v. Cleveland*, 502 F.3d 545 (6th Cir. 2007) as follows:

> The Supreme Court has recently clarified the law with respect to what a plaintiff must plead in order to survive a Rule 12(b)(6) motion. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The Court stated that "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 1964-65 (citations and quotation marks omitted). Additionally, the Court emphasized that even though a complaint need not contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Id.* (internal citation and quotation marks omitted). In so holding, the Court disavowed the oft-quoted Rule 12(b)(6) standard of *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (recognizing "the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief"), characterizing that rule as one "best forgotten as an incomplete, negative gloss on an accepted pleading standard." *Twombly*, 550 U.S. at 563.

Id. at 548.

If an allegation is capable of more than one inference, this Court must construe it in the plaintiff's favor. *Columbia Natural Res., Inc. v. Tatum*, 58 F.3d 1101, 1109 (6th Cir. 1995) (citing *Allard v. Weitzman*, 991 F.2d 1236, 1240 (6th Cir. 1993)). This Court may not grant a Rule 12(b)(6) motion merely because it may not believe the plaintiff's factual allegations. *Id.* Although this is a liberal standard of review, the plaintiff still must do more than merely assert bare legal conclusions. *Id.* Specifically, the complaint must contain "either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988) (quotations and emphasis omitted).

II. FACTS

The issue squarely before this Court is a rather narrow one. Plaintiff Nancy McLaughlin seeks a declaration that certain mineral rights were abandoned under Ohio's Dormant Mineral Act (the "ODMA") and therefore merged with her surface rights. In contrast, Defendant asserts

that certain events took place that prevent application of the ODMA. Plaintiff does not dispute that these events took place, but rather she claims that they do nothing to alter her conclusion that the mineral rights were abandoned. As such, the Court is presented with a pure issue of law to resolve this matter.

As general background, in 1957, Consolidation Coal Company acquired 143 acres of land in Carroll County, Ohio inclusive of mineral rights to the property. In 1977, Consolidation entered into an Option to Lease with Republic Steel Corporation related to oil and gas rights on the lands acquired in 1957. In 1979, Republic exercised its option and leased the oil and gas rights to this land. In 1985, Consolidation conveyed the land to Conoco, reserving its oil and gas rights. In 1988, Conoco conveyed its rights to DuPont Energy Coal Holdings. On December 12, 1988, DuPont conveyed its interests to International Environmental Services, again noting the reservation of oil and gas rights. On July 6, 1992, Kelt Resources, Inc. executed a Partial Release of Oil and Gas Lease. In that document, Kelt released its rights to a portion of the oil and gas lease entered into by Consolidation and Republic.

On May 25, 1994, Plaintiff and her late husband acquired the surface rights to the 143-acre tract through a sheriff sale that was conducted based on the delinquent tax status of International Environmental Services. On September 29, 2011, Consolidation conveyed the oil and gas rights to Defendant CNX. On June 13, 2013, Plaintiff filed this action to quiet title, alleging that the mineral rights merged with the surface rights no later than January 3, 2005 because following the 1985 severance, twenty years passed without a title transaction. With that background in mind, the Court reviews the parties' arguments.

III. ANALYSIS

The Ohio Dormant Mineral Act ("ODMA"), as codified in Ohio Revised Code ("O.R.C.") § 5301.56, establishes a process by which mineral interests may be deemed abandoned and to have vested to the owner of the surface rights. Specifically, O.R.C. § 5301.56(B) provides in pertinent part as follows:

> (B) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface of the lands subject to the interest if the requirements established in division (E) of this section are satisfied and none of the following applies:
>
> ...
>
> (3) Within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section, one or more of the following has occurred:
>
> (a) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.

While the parties agreed on the underlying facts, they sharply dispute the application of the above provisions of the ODMA.

Plaintiff argues that the memorandum of lease relied upon by Defendant is nothing more than a license and therefore cannot act in any manner to preserve rights under the ODMA. In support, Plaintiff relies heavily on *Back v. The Ohio Fuel Gas Co.*, 160 Ohio St. 81 (1953). Plaintiff contends that *Back* makes clear that the lease at issue is nothing more than a license. Plaintiff then asserts that because a license does not formally pass property, it cannot be found to be a title transaction. The Court finds no merit in this assertion.

O.R.C. § 5301.47(F) provides:

> (F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's,

> guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

As the above definition makes clear, title transaction means *any transaction* affecting title to *any interest* in land. It is difficult for the Court to conceive of a broader definition than the one chosen by Ohio law. By its plain language, the statute does not require a conveyance or transfer of real property in order to constitute a title transaction. Rather, the statute simply requires a transaction that affects title to any interest in the land.

Moreover, Plaintiff's reliance on *Wellington Resource Group LLC v. Beck Energy Corp.*, 2013 WL 5311412 (S.D.Ohio Sept. 20, 2013) also does little to assist Plaintiff's arguments. In *Wellington*, the district court concluded: "In essence, this Court reaffirms its prior conclusion in *Frederick*, where it stated that 'Ohio courts, if given the opportunity to do so, would characterize the property interests involved [here] as being like or similar to the interest recognized under Oklahoma law,' and common to many oil-producing states, and hold that oil and gas leases are not a grant of real property." *Id.* at *7. Plaintiff again incorrectly assumes that an actual transfer of real property is required under the ODMA when the plain language of the statute requires far less.

Even if this Court were to agree with the analysis in *Wellington* and ignore the contrary conclusion reached by a member of this District in *Binder v. Trinity OG Land Development and Exploration*, 2012 WL 1970239, at *3 (N.D. Ohio May 31, 2012), it would not aid Plaintiff's claim. Even if Defendant's property interests through the lease are something less than a grant of real property, those interests quite clearly still **affect** title to the mineral rights in the property. As the lease itself was a title transaction, there can be no dispute that the release of rights under that lease qualifies as a title transaction as well. Accordingly, Plaintiff's claims must fail as a matter of law.

In reaching this conclusion, the Court is mindful of Plaintiff's argument that Ohio's statute includes numerous specific items that qualify as title transactions and that oil and gas leases are not among those listed transactions. However, the list is certainly not an exclusive list and an oil and gas lease falls within the same category of documents listed within the statute. Moreover, contrary to Plaintiff's argument, including the oil and gas lease as a title transaction would not render any portion of the ODMA superfluous. One savings event that includes "actual production or withdrawal of minerals" is not made superfluous by the Court's conclusion. Herein, the original lease appears to have a term of fifty years. Thus, there are factual scenarios that would allow the lease itself to operate as a savings event for twenty years, but thereafter only actual production or a new title transaction would operate as a savings event. Accordingly, the Court's construction does not render any portion of the ODMA meaningless.

Finally, the Court rejects Plaintiff's assertion that she acquired the mineral rights through the sheriff sale of the surface rights. The Court agrees with Defendant – the sale could not have included the mineral interests as they were not owned by the party delinquent in its taxes – International Environmental Services. As the mineral interests were not owned by IES, they could not have been subject to any tax lien or any sheriff sale. Accordingly, Plaintiff could not have acquired them through such a transaction.

IV. CONCLUSION

Defendant's motion for judgment on the pleadings is GRANTED. Defendant shall file a notice within seven days of this order stating whether it intends to pursue the remaining counterclaims in this matter.

IT IS SO ORDERED.

Date: December 13, 2013

/s/ John R. Adams
Judge John R. Adams
UNITED STATES DISTRICT COURT

IN THE COURT OF COMMON PLEAS
HARRISON COUNTY, OHIO
GENERAL DIVISION

FILED MAR 21 2015

CHARLES J. SCHUCHT, et al.

Plaintiffs

CASE NO. CVH 2012-0010

v.

ENTRY

BEDWAY LAND AND MINERALS COMPANY, et al.

Defendants

This matter having come on before this Court upon Defendant Bedway Land and Minerals Company's Motion For Summary Judgment filed January 2, 2014, Defendant Eric Petroleum Corporation's Motion For Summary Judgment filed January 3, 2014, Defendant Chesapeake Exploration, L.L.C.'s Motion For Partial Summary Judgment filed January 3, 2014 and Plaintiff Charles J. Schucht, et al's Motion For Summary Judgment filed March 12, 2014. Responses and Replies were thereafter filed by all parties.

STATEMENT OF FACTS

The Plaintiffs herein acquired title to the surface rights in the parcels in question on April 2, 2013 by way of a deed to Charles J. Schucht and Wilma L. Schucht, Trustees of the Schucht Family Trust U/A. Said deed was recorded at Volume 207, Page 1138 of the Harrison County Records. This deed was comprised of two separate parcels at issue herein being 260.2665 acres previously transferred at Volume 10, Page 504 and 266.522 acres previously transferred at Volume 21, Page 451. The total acreage owned by the

Plaintiffs is approximately 526.7885 in Shortcreek Township, Harrison County, Ohio.

The Defendant Bedway Land and Minerals Company (Bedway) received a 7/8 interest in the mineral rights herein, including coal, oil and gas by way of a Quitclaim Deed. The deed regarding the parcel in question was filed December 18, 1984 with William W. Wehr and Mary Ann Wehr as the grantors. Prior to the 1984 Quitclaim Deed, while Willaim W. Wehr and Mary Ann Wehr owned the minerals, a memorandum of lease with a three year primary term was filed by K.S.T. Oil & Gas Co. Inc. The same being filed on May 25, 1983 and recorded at Lease Book 179, Page 359. Said memorandum leased approximately 1383.953 acres (including the Mineral Estate herein).

On December 28, 1989 K.S.T. filed a Release of its interest in the Oil and Gas Lease with said Release recorded at Lease Book 75, Page 152. On June 16, 2005 at Official Record 160, Page 2912, Defendant Bedway filed an oil and gas lease with Mason Dixon Energy, Inc. which covered the Mineral Estate herein. Thereafter, Mason Dixon Energy, LLC, successor in interest to the Lessee Mason Dixon Energy, Inc., assigned its interest in the lease to Burlington Resources Oil & Gas Company L P.(Burlington Resources) at Official Record Book 21, Page 451. Burlington Resources assigned their interest to Defendant Eric Petroleum on October 1, 2007 who then signed a partial assignment to Ohio Buckeye Energy L.L.C. on July 15, 2010 at Official Record Book 183, Page 2737. On December 22, 2011 Defendant Chesapeake obtained Ohio Buckeye's interest by way of a merger.

Consequently, Plaintiffs own the surface herein and claim the severed minerals pursuant to the 1989 version of the Ohio Dormant Mineral Act. The Defendant Bedway

claims a 7/8 interest in the minerals and Defendants Eric Petroleum and Chesapeake Exploration claim interests by way of an oil and gas lease and subsequent assignments.

SUMMARY JUDGMENT STANDARD

Ohio Rule of Civil Procedure Rule 56 provides that summary judgment is warranted when "it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." Ohio Rule of Civil Procedure 56 (c).

Pursuant to Temple v. Wean United, Inc., 50 Ohio St. 2d 317, 327, 364 N.E. 2d 267, 274 (1977) summary judgment is appropriate when the moving party demonstrates that (1) no genuine issues of material fact remain to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion that is adverse to the party against whom the motion is made.

THE CONSTITUTIONALITY OF THE 1989 OHIO DORMANT MINERAL ACT

The Ohio Dormant Mineral Act was enacted in its original form on March 22, 1989. The act has been characterized as a "use it or lose it" statute. The Ohio Legislature attempted to balance the interests of property owners and the compelling public interest in drilling, producing and marketing the mineral interests of this state. Dormant and

abandoned mineral interests were viewed as of no benefit to the state, while making use of the state's mineral resources was for the public good.

In order to negate the retroactive effect of the Act, the following language was inserted at 5301.56(B)(2).

(2) A mineral interest shall not be abandoned under division (B)(1) of this section..... until three years from the effective date of this section.

The oil and gas owners thereby were given 3 years to meet one of the "Savings Events" provisions. A similar statute was enacted in Indiana and provided for a two year grace period. This act was upheld by the United States Supreme Court in Texaco Inc. v. Short, 454 US 516 (1982). In Texaco, it was held that, "There was no constitutional right for a mineral interest owner to receive individual notice that his rights will expire."

Based upon Texaco, this Court finds the 1989 Ohio Dormant Mineral Act to be constitutional.

1989 OHIO DORMANT MINERAL ACT V. 2006 OHIO DORMANT MINERAL ACT

The Defendants argue that the 2006 version of the Ohio Dormant Mineral Act supersedes the 1989 version, and in effect eliminates the need to analyze the facts herein in relation to the earlier version. The 1989 version states that unless one of the Savings Events have been met within the 20 year look back period, the oil and gas shall be deemed abandoned and vested in the owner of the surface. Revised Code 1.58 (A)(1) and (2) provide that "[t]he reenactment, amendment, or repeal of a statute does not, except as

provided in division (B) of this section: (1) Affect the prior operation of the statute for any prior action taken thereunder, or (2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder..." A change in the law that deals with substantive rights does not affect such rights even though no action or proceeding has been commenced, unless the amending or repealing act expressly provides that the rights are affected. O'Mara v. Alberto-Culver Co., 6 Ohio Misc. 132, 133, 215 N.E. 2d 735 (Ohio Com. Pl. 1966). "A vested right can be created by common law or statute and is generally understood to be the power to lawfully do certain actions or possess certain things: in essence, it is a property right." State ex rel. Jordan v. Indus. Comm. 120 Ohio St. 3d 412, 413, 900 N.E. 2d 150 (2008) quoting Washington Cty. Taxpayers Assn. v. Peppel, 78 Ohio App. 3d 146, 155, 604 N.E. 2d 181 (1992). Wendt v. Dickerson 2012 CV 020135 Tuscarawas County Common Pleas Court, decided February 21, 2013.

If no Savings Event has occurred, pursuant to law, the abandonment and vesting have already taken place in the case at bar. This Court finds that the 1989 and the 2006 versions of the Ohio Dormant Mineral Act are both applicable to the case at bar, however; should the mineral interest vest herein pursuant to the 1989 Act, any review under the 2006 version of the Act would become moot. See Walker v. Noon, 2014-Ohio-1499, 7th Dist. Court of Appeals, April 3, 2014.

THE 1989 VERSION OF THE OHIO DORMANT MINERAL ACT

The Ohio Dormant Mineral Act has been characterized as a "use it or lose it" statute. In order to preserve one's interest in a severed mineral right one must meet the requirements of ORC 5301.56. In accordance with (B)(1) the mineral interest held by any person, other than the owner of the surface, shall be deemed abandoned and vested in the owner of the surface unless: the interest is in coal or the interest is held by the government. ORC 5301.56 also provides protection if within the preceding 20 years the mineral interest has been the subject of a title transaction, there has been actual production or withdrawal of the minerals , underground gas storage has taken place, a drilling or mining permit has been issued, a claim to preserve the interest has been filed or a separately listed tax parcel has been created for the mineral interest.

In the case at bar the only portions of ORC 5301.56 that are applicable herein deal with whether there was a separately listed tax parcel issued and whether the property in question has been the subject of a title transaction. Applying the requirements of the 1989 Ohio Dormant Mineral Act, we must first look to the years 1992 back to 1969. The act provides for a 20 year look back period from March 22, 1989, but also allows for a three year grace period to March 22, 1992.

The Defendants argue that the 1989 Act is a static 20 years plus the grace period. The Plaintiffs take the position that the look back period is a rolling 20 years. The Defendants rely on Riddell v. Layman. 94 CA 114, 5th District, Licking County (1995). Riddell was presented with the question of whether a 1965 deed recorded in 1973 qualified as a title transaction. A "rolling look back period" was not an issue.

ORC 5301.56 (D)(1) provides:

> A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any of the circumstances described in division (B)(1)(C) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

A static 20 year look back period would have no need for a provision providing for indefinite preservation of mineral interests through successive filings of preservation claims. Based upon the same, this Court finds the 1989 Ohio Dormant Mineral Act to provide for a "rolling look back period." Also see Shannon v. Householder 12 CV 226 Jefferson County Common Pleas, July 17, 2013.

This Court finds this determination to be consistent with the comments set forth in the Ohio Legislative Service Commission Report relating to the 1989 enactment of R.C. 5301.56. The Commission therein stated:

> Under the act, an interest could be preserved indefinitely from deemed abandonment by the occurrence of any of the four listed categories of exceptional circumstances **within each preceding 20 year period**. (Emphasis added).

Ohio Legislative Service Commission, December, 1988, p. 38.

APPLICATION OF THE 1989 OHIO DORMANT MINERAL ACT

The Plaintiffs argue that even if one were to apply the 20 year "rolling" look back period, Bedway, who received the mineral interest on Dec. 18, 1984, would lose any interest on December 18, 2004. The 1984 Quitclaim Deed qualifies as a title transaction and a savings event as required by R.C. 5301.56. Defendant Bedway further argues that a

separately listed tax parcel number was issued for the minerals shortly after they received the Quitclaim Deed in 1984. There is a question as to what that Parcel No., being 26-0000590.000 actually reserves. It relates to 226.18 acres in Shortcreek Township, but there is no reference to what section or sections of the township are affected by the parcel number. Again, the two parcels herein are 260.2665 acres and 266.522 acres. There is no 226.18 acres. Without more specificity, this Court finds Parcel No. 26-0000590.000 to lack the requirements of a savings event per R.C. 5301.56. Even it were more specific it would merely act as one savings event in approximately the same year as the Quitclaim Deed and would require additional savings events within the next twenty years in order to protect Defendant Bedway's mineral interest.

This Court does not find the Parcel No. issue to be determinatively herein, but rather looks to other savings events within the twenty year "rolling" window. On May 25, 1983 Bedway's predecessor in the mineral interest William W. Wehr and Mary Ann Wehr entered into an oil and gas lease with K.S.T. Oil & Gas Co. Inc. The Memorandum of Lease provided for a three year primary term. On December 28, 1989 K.S.T. released their interest in the lease in question. Defendant Eric Petroleum's expert, Rodney C. Yoder, opined that the K.S.T. Lease "covered all of the oil and gas interests located in Shortcreek Township which were subsequently conveyed in 1984 from Wehr to Bedway Land and Minerals Company." See Yoder Supp. Affidavit at para. 18. "Given the nature of interest conveyed by an oil and gas lease, the Court finds that such represents a 'title transaction' as defined by law." Bender v. Morgan Columbiana County Court of Common Pleas Case No. 2012 CV 378 (Mar. 22, 2013). R.C. 5301.251 provides in pertinent part "in lieu of the recording of a lease, there may be recorded a memorandum

of lease." Additionally, R.C. 5301.33 in dealing with methods to cancel leases provides that, "Lease as used in this section includes a memorandum of lease provided for by section 5301.251 of the Revised Code."

The question of a lease and/or a release of an oil and gas lease being a title transaction was addressed in McLaughlin v. CNX Gas Co., N.D. Ohio No. 5:13 CV 1502, 2013 U.S. Dist. LEXIS 174698, *9 (Dec. 13, 2013). It was held that "even if Defendant's property interests through the lease are something less than a grant of real property, those interests quite clearly affect title to the mineral rights in the property. As the lease itself was a title transaction, there can be no dispute that the release of rights under that lease qualifies as a title transaction as well."

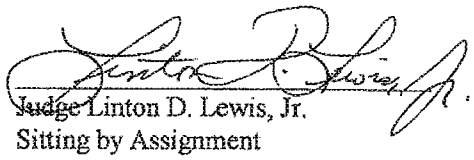
This Court finds that the K.S.T. Lease filed in 1983 and the K.S.T. Release filed in 1989 are title transactions and savings events pursuant to R.C. 5301.56. Looking forward from 1989, in order to protect their severed interest, the Defendants must exhibit another savings event within the next twenty years. On May 3, 2005 Defendant Bedway entered into a lease with Mason Dixon Energy, Inc. which was filed on June16, 2005. Said lease was subsequently assigned to Defendants Eric Petroleum Corporation and Chesapeake Exploration L.L.C. thus protecting the mineral interest herein.

The severed mineral interest owners have complied with the requirements of the 1989 Ohio Dormant Mineral Act. The surface owners have not pursued their claim by following the requirements of the 2006 Ohio Dormant Mineral Act.

CONCLUSION

This Court considered Plaintiff Charles J. Schucht et al.'s Motion For Summary Judgment, Defendant Bedway's Motion For Summary Judgment, Defendant Eric Petroleum's Motion For Summary Judgment and Chesapeake Exploration's Partial Motion For Summary Judgment. After having considered the same and construing the evidence most strongly in favor of the nonmoving party and having determined that there is no genuine issue as to any material fact and further that reasonable minds can come to but one conclusion and that there is no just reason for delay, this Court grants Defendant Bedway's Motion For Summary Judgment, grants Defendant Eric Petroleum's Motion For Summary Judgment, grants Defendant Chesapeake Exploration's Partial Motion For Summary Judgment and denies Plaintiff Charles J. Schucht et al.'s Motion For Summary Judgment. Costs herein shall be taxed to the Plaintiffs. This is a final appealable order.

IT IS SO ORDERED.



Judge Linton D. Lewis, Jr.
Sitting by Assignment

WITHIN THREE (3) DAYS OF ENTERING THIS JUDGMENT UPON THE JOURNAL, THE CLERK SHALL SERVE NOTICE OF THIS JUDGMENT AND ITS DATE OF ENTRY UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR. SERVICE SHALL BE MADE IN A MANNER PRESCRIBED IN CIVIL RULE 5 (B) AND SHALL BE NOTED IN THE APPEARANCE DOCKET. CIVIL RULE 58.

Stamped copies:

Attorney Robert J. Tscholl
Attorney James F. Mathews
Attorney Matthew L. Fornshell
Attorney Michael Shaheen
Attorney Thomas Hill
Attorney Clay K. Keller
Judge Linton D. Lewis Jr.

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HARRISON COUNTY, OHIO

IN THE COURT OF COMON PLEAS
HARRISON COUNTY, OHIO
GENERAL DIVISION

M & H PARTNERSHIP
Plaintiff

vs.

WALTER VANCE HINES, ET AL.
Defendants

Case No. CVH-2012-0059

JUDGMENT ENTRY

This matter is before the Court on Plaintiff's Motion For Summary Judgment filed on March 26, 2013 and Defendant's Motion For Summary Judgment filed March 7, 2013.

The Court has also considered the parties' replies and surreplies to said Motions including that if Defendant Chesapeake Exploration, LLC. The Court further recognizes the factual stipulations of the parties filed with the Court on March 21, 2013.

This matter is before the Court on a Complaint To Quiet Title filed by Plaintiff. Plaintiff contends that they are the surface and mineral owners of the disputed property. They claim ownership of the surface rights to the property through purchase on April 7, 2006. This ownership issue is not in dispute.

Plaintiff claims ownership of the mineral interest of the property pursuant to O.R.C. §5301.56 Ohio's Dormant Mineral Act as it was written in the 1989 version.

Defendants' Hines family do not dispute Plaintiffs surface right ownership. Defendant's Hines family do dispute Plaintiffs claim to the property's mineral rights.

Defendants' Hines family claim that Dormant Mineral Act does not apply to divest them of their mineral interest in the property because qualifying transactions have occurred in the necessary time frame.

Defendants' Hines family further argues that if no qualifying transactions are deemed to have occurred the correct version of ORC §5301.56 is the 2006 version and under said statute they properly preserved their mineral interest.

An examination of the 1989, 2006 ODMA §5301.56 is necessary as well as a review of interpreting case law in resolving the dispute.

O.R.C. §5301.56 (1989 version)

The factors to which Courts must look to decide whether a mineral interest holder had displayed sufficient activity to preserve their rights over a 20 year period or whether the mineral interest had grown stale based upon a lack of activity or interest by the mineral rights holder:

(i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located;

(ii) There has been actual production or withdrawal of minerals by the holder.

(iii) The mineral interest has been used in underground gas storage operations by the holder;

(iv) A drilling or mining permit has been issued to the holder.

(v) A claim to preserve the interest has been filed in accordance with division (c) of this section.

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

In the case at bar, items (ii), (iii), (iv), (vi) have conclusively not been completed by the mineral estate holder. Item (v) claim to preserve interest was not filed in the requisite time period.

Therefore, the item which is controlling pursuant to the 1989 act is item (i) whether the mineral interest has been subject of a title transaction that has been file or recorded in the office of the county recorder of the county in which the lands are located.

A brief discussion on transfers of interest is necessary

1. Surface Rights.

A.) The surface rights were severed from the mineral rights by deed on June 1, 1961. The surface rights passed to Selway Coal Company with Vance and Eleanor Hines reserving the oil and gas rights.

B.) Selway Coal Company passed the surface rights to Robert Fleagane on February 29, 1975.

C.) Robert Fleagane to Shell Mining Company January 1, 1989.

D.) Shell Mining to R & F Coal Company November 12, 1991.

E.) R & F Coal Company merger with Capstone Holding Company February 9, 2000.

F.) Capstone Holding Company to Emanuel J. Miller Et Al. April 20, 2001.

G.) Capstone Holding Company to William and Judith Ledger August 6, 2001.

H.) Emanuel J. Miller Et Al to M & H Partnership April 7, 2006.

Deeds A, B, C, and D contain reservation clauses for oil and gas within the deed. Transaction E, F, G, and H did not recite the reservation. Thus the last title transaction noting the reservation of oil and gas on the surface property was November 12, 1991.

2. Oil and Gas Rights.

A. The surface rights were severed from the mineral rights by deed on June 1, 1961. The surface rights passed to Consolidation Coal Company with Vance and Eleanor Hines reserving the oil and gas rights.

B. A lease of the oil and gas rights was recorded from Walter v. Hines to Harry J. Iles on July 15, 1969.

C. An oil and gas lease from Walter Vance Hines, Richard Scott Hines and David Chris Hines and Richard Scott Hines as Power of Attorney for Drue Anne Hines Danz to Chesapeake Exploration L.L.C. dated October 31, 2011 and recorded February 14, 2012.

The Seventh District Court of Appeals in Dodd v. Croskey Case No. 12 HA 6 Ohio App. 7th Dist (2013) ruled on what constitutes and whether or not a mineral interest has been the "subject of" a title transaction which has been filed or recorded in the office of the county recorder of the county in which the land are located.

The Seventh District held that "The common definition of the word "subject" is, topic of interest, primary theme or basis for action. Under this definition the mineral interests are not the subject of the title transaction.

In the case at bar, the Court finds pursuant to the Dodd decision supra, that the last title transaction that the mineral interests were subject of occurred July 15, 1969. Wherefore, under the 1989 Dormant Mineral Act the Court must decide whether the 1969 transaction was a savings event.

The effect of the 1969 transaction relies on interpretation of the statue and its 20 year look back period.

Riddell v. Layman 5th Dist. App. (1995 WL 498812) is the only appellate decision which touches upon the appropriate 20 year look back period for the 1989 Dormant Mineral Act. The Riddell Court decided that "the title transaction must have occurred within the proceeding twenty years from the enactment of the statue, which occurred on March 22, 1989. Appellee Layman recorded the deed on June 12, 1973, was within the preceding twenty years from the date the statue was enacted."

The Riddel case dealt with a 1994 complaint and a 1973 reservation. Wherefore, the Court specifically finds that a rolling 20 year period of look back is not authorized by the 1989 statute. The Court finds that the 20 year period for a look back is 20 years from enactment March 22, 1989. Wherefore, a title transaction that the mineral interest is subject of must have occurred on or after March 22, 1969 to serve as a savings event.

The Court finds that Walter Vance Hine's lease of mineral interest to Harry J. Isles on July 15, 1969 is a title transaction and that the mineral interest at issue in this matter were the subject of that title transaction. As such, the July 15, 2969 lease serves as a savings event pursuant to the 1989 dormant mineral act and the holding in Riddel Supra.

2006 Dormant Mineral Act.

In 2006, the Ohio legislature amended the dormant mineral act and provided additional due process safeguards to mineral interest holders.

The additional steps germane to this case are:

1) Recording of an affidavit of abandonment §5301.56 (E)(2).
2) Holder may file a claim to preserve mineral interests within 60 days of notice of affidavit of abandonment §5301.56 (H)(1).

In the case at bar, Defendant promptly filed their claim to preserve mineral interest within the 60 day time limit.

Plaintiff's further claim that answering Defendant's do not have standing in this matter in that they are not the successors in interest to the original holder's

of mineral interest Vance and Eleanor Hines. The Court finds that Plaintiff's argument to be without merit. The Court finds that through Ohio's Law of Succession that the mineral interest herein passed from Vance Hines and Eleanor Hines and then to their only heir their son Walter Vane Hines and then from Walter Vance Hines to his children the Defendant's herein. The Court specifically finds Defendant's to be the lineal descendants of the original holders and the successors in interest to the original holders mineral interest.

The Court finds pursuant to both the 1989 and 2006 Dormant Mineral Act the Defendants have preserved their mineral interest. Under 1989 Act, the Court finds the July 15, 1969 lease of minerals from Walter Vance Hines occurred within the statutory look back period as defined in Riddel and as such was a savings event under the statue. Under the 2006 Act, the Court finds that Defendant's properly preserved their mineral rights by filing a notice of preservation with the county recorder.

The Court finds the 2006 law is the applicable law in the case. In Dodd v. Croskey Seventh Dist App (2013) 12 HA 6 (9/12/2013) the Court applied the 2006 law in determining the parties claim. The claim involved a 1947 oil and gas reservation with no further title transactions that the mineral interest were subject.

The Court did not address its choice of the 2006 Act over the 1989 Act in Dodd. However, it is clear from their decision that the 2006 law was applied.

This Court is convinced that applying the 2006 law is the appropriate statute in this case for the following reasons.

R.C. 5301.56 is part of the Marketable Title Act. The Marketable Title Act is ORC 5301.47 – 5301.56. The act is to be read in total and not as separate independent statutes. The purpose of the act is to establish a marketable chain of title. ORC 5301.55 liberal construction "Sections 5301.47 to 5301.56 so inclusive, of the Ohio Revised Code shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transaction by allowing persons to rely on a record chain of title as described in Section 5301.48 of the Ohio Revised Code, subject only to such limitations as appear in Section 5301.49 of the Ohio Revised Code".

The application of an "automatic" vesting clause of the 1989 Dormant Mineral Act is contrary to simplifying and facilitating land title transaction by allowing persons to reply on a record chain of title.

This Court does not believe it was the legislative intent at enactment to make surface holders automatically vested in the mineral rights pursuant to the 1989 Dormant Mineral Act. The terms automatic vesting, terminated, null and void, or extinguished were not used in the statute.

Those terms null and void and extinguished are used in other parts of the marketable title act but the Dormant Mineral Act uses the term abandoned.

The Court does not believe the difference in language to be unconscious. The Court finds pursuant to the Marketable Title Act that Plaintiff at the minimum must have filed a quiet title action prior to 2006 to have the 1989 law apply. Absent such action and determination, notice of the reversion of mineral

interest would not be apparent in the record chain of title and thus violate the purpose of the Marketable Title Act.

Since in this matter no action was filed until 2012, Plaintiff must conform to the applicable law currently in place to perfect their abandonment claim. And such the 2006 Dormant Mineral Act is controlling.

The Court finds this ruling is not in conflict with Texaco v. Short 454 U.S. 516 (1982) Texaco v. Short required due process before title vested in the surface holder. In the case at bar, Defendant Hines family was not given any due process consideration prior to this suit. There is no evidence of a Quiet Title Action filed between 1989 and 2006. In order for the Plaintiff's interest to vest some court action or recording of said interest must have occurred. Plaintiff failed to assert its claim prior to 2006 as such Plaintiff interest did not vest prior to 2006 and is subject to the 2006 amended statute.

WHEREFORE, it is the ORDER of the Court that:

Plaintiff's Motion For Summary Judgment is denied.

Defendants, Hines Family, Motion For Summary Judgment is granted.

Defendants, Hines Family, is the lawful owner of the oil and gas interest at issue in this matter. Plaintiff's claim of ownership fails under the 1989 and 2006 Dormant Mineral Act. The Court holds the 2006 Dormant Mineral Act to be controlling.

SO ORDERED.

T. Shawn Hervey, Judge

NOTICE: FINAL APPEALABLE ORDER

This is a final appealable order. For each party who is not in default, serve notice to the attorney for each party and to each party who represents himself or herself by regular mail service with certificate of mailing making notation of same upon case docket.

T. Shawn Hervey, Judge

Stamped Copies:
Attorney Patrick E. Noser
Attorney T. Owen Beetham
Attorney Clay K. Kellar

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

FILED
COMM. PLEAS COURT
BELMONT CO., OHIO
2013 DEC 16 PM 1 07
CYNTHIA K. M... CLERK OF COURT

WAYNE K. LIPPERMAN, et al.	:	CASE NO. 12-CV-0085
Plaintiffs	:	JUDGMENT ENTRY
v.	:	
NILE E. BATMAN, et al.	:	
Defendants	:	

This matter having come on before this Court upon Plaintiff Wayne K. Lipperman, et al.'s Motion For Summary Judgment having been filed with this Court on October 3, 2013 and Defendants Reserve Energy Exploration Company and Equity Oil & Gas Funds, Inc's Motion For Summary Judgment filed with this Court on October 4, 2013. Thereafter, Responses and Replies were filed regarding the same. After having reviewed said filings this Court makes the following ruling.

STATEMENT OF FACTS

The Plaintiffs are the surface owners of approximately 41.23 acres in Pultney Township, Belmont County, Ohio. The Defendants Nile E. Batman and Kathryn Batman claim an interest in the mineral rights based upon a reservation of one-half (½) of all the oil and gas in a deed from a predecessor in title being John Clark, with said deed dated May 25, 1926 and recorded at Volume 602, Page 162 in the records of the Belmont

County Recorder. The Plaintiffs claim that the Defendants have abandoned their interest in the oil and gas based upon their failure to comply with the requirements of the Ohio Dormant Mineral Act. (ODMA). The Plaintiffs signed a lease with Defendant Reserve Energy on April 7, 2006. The Defendants signed a lease with Reserve Energy on November 1, 2008 for one-half (½) of the oil and gas underlying the parcel in question. The Plaintiffs have couched their argument within the 1989 version of the ODMA and have not complied with the notice requirements of the 2006 version of the Act. Therefore, this Court shall conduct its analysis of the issues herein in light of the 1989 version of the ODMA.

STANDARD OF REVIEW

Ohio Rule of Civil Procedure Rule 56 provides that summary judgment is warranted when "it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." Ohio Rule of Civil Procedure 56(c).

Pursuant to Temple v. Wean United Inc., 50 Ohio St. 2d 317, 327, 364 N.E. 2d 267, 274 (1977) summary judgment is appropriate when the moving party demonstrates that (1) no genuine issues of material fact remain to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion that is adverse to the party against whom the motion is made.

1989 OHIO DORMANT MINERAL ACT

The 1989 version of the ODMA became effective March 22, 1989. It provided for a twenty (20) year look back provision regarding abandonment of mineral interests and a three year grace period through March 22, 1992 to come into compliance with the Act.

Ohio Rev. Code Section 5301.56 (B)(1), (B)(1)(c)(i), (v) provides in pertinent part:

> (B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface if none of the following applies:
>
> > (c) Within the preceding twenty years, one or more of the following has occurred;
> > (i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located;
> > * * *
> > (v) A claim to preserve the interest has been filed in accordance with division (C) of this section [.]

There are a number of other savings events that are not relevant to our discussions in the case at bar. The Plaintiffs claim that the Defendant Batmans have abandoned their mineral interest and that there have not been savings events upon which the Batmans can rely.

THE BATMAN AFFADAVIT

In analyzing the twenty (20) year look back period from March 22, 1989, this Court must review the Batman Affidavit of Preservation recorded September 14, 1981.

The Batman Affidavit was filed within the twenty (20) year look back window of the ODMA. This Court finds that the language contained in the affidavit complies with the requirements of Ohio Rev. Code Section 5301.52. As such, it qualifies as a savings event pursuant to the 1989 ODMA. Should the 1989 ODMA relate only to the years 1969-1989 plus the three year grace period, the Batman Affidavit would be sufficient to preclude abandonment by the Defendant Batmans. Whether the 1989 ODMA is stagnant or rolling requires further analysis.

THE TWENTY YEAR WINDOW

Ohio Rev. Code Section 5301.56 (D)(1) provides:

> A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any of the circumstances described in division (B)(1)(c) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

A stagnant twenty (20) year look back period would have no need for a provision calling for indefinite preservation of mineral interest through successive filings of preservation claims. Based upon the same, this Court finds the 1989 Dormant Mineral Act to provide for a "rolling look back period." Having so found, the Batmans are required to identify an additional savings event after the recording of their Affidavit to Preserve Interest on September 14, 1981 and before September 14, 2001.

THE BATMAN WILL

Frances Batman held a one-half (½) interest in the oil and gas in the parcel in question when she died in 1981. Her will was filed for record in County Court of Dakota County, Nebraska on October 21, 1981. Subsequently her will was filed for record with the Belmont County Probate Court on May 15, 1989. A certification from the Nebraska court was appended to the Batman Will prior to when it was filed with the Belmont County Probate Court. The will provided for the transfer of Frances Batman's interest in the parcel herein to her son, the Defendant Nile Batman. The Batman Will was recorded with the Belmont County Recorder on April 10, 1989, some nineteen (19) days after the 1989 ODMA went into effect. A Certificate of Transfer was not recorded in the office of the Belmont County Recorder.

It is the position of the Defendants that the Batman Will is a title transaction and acts as a savings event pursuant to the 1989 ODMA. Ohio Rev. Code 5301.47 (F) defines a title transaction as follows:

> (F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

The failure to file the Certificate of Transfer does not negate the title transaction established by the filing of the Batman will with the Belmont County Recorder. The definition of title transaction provides for "any transaction affecting title to any interest in land including by will or descent..."See ORC 5301.47 (F). A number of other methods of

transfer are listed "...tax deed, or by trustee's, assignee's, guardians, executor's, administrator's, or sheriff's deed..." Id. Certificates of Transfer are not listed in the definition of title transaction.

In Ohio Northern Univ. v. Ramga (July 12, 1990), 3rd Dist. App. No. 2-88-1, 1990 Ohio App LEXIS 2946 at *9, the Court of Appeals held that "title to real estate generally passes by testate succession at the time of death[.]" In the dissenting opinion of Ramga, Judge Whiteside discussed the application of a certificate of transfer in regard to a transfer of real estate through the Probate Court.

> The certificate of transfer is provided by R.C. 2113.61(A) and is issued by the probate court, not as a document transferring the real estate but as a certification that the real estate has been transferred either by devise under a will or by statutory intestate succession. R.C. 2113.62 provides that such certificate of transfer may be recorded by the county recorder. The issuance of such certificate of transfer, however, is not a prerequisite to the transfer of title to the property, nor to the marketability or alienability of title to such real property. R.C. 2113.61 commences with the words, "[w]hen real estate passes * * * under a will* * * ["] clearly connoting that the transfer itself was effected by admission of the will to probate and that the certificate is merely a memorialization of such transfer which has previously occurred. Id at * 11-12.

The Second District Court of Appeals stated the following regarding the application of certificates of transfer.

> Upon proper application, a probate court must issue a certificate of transfer for record in the county in which real estate is situated, which must recite the names of devisees and the interest in the parcel of real estate inherited by each. R.C. 2113.61. Though the certificate of transfer is not a conveyance, it does constitute a memorialization by probate court of what occurred with respect to a real estate title upon the death of the decedent.

Platt v. Estate of Petrosky (July 24, 1992), 2d Dist. App. No. 91-CA-105, 1992 Ohio App. LEXIS 3953, at *3.

In accordance with Ramga and Petrosky supra, the certificate of transfer is not the conveyance document but rather the will itself is the vehicle by which the inherited property is transferred. Wherefore, this Court finds the Batman Will, recorded on April 10, 1989, to be a title transaction and savings event pursuant to the 1989 ODMA and in accordance with the spirit of the law which essentially calls for one to "use it or lose it."

THE BATMAN LEASE

When applying the "rolling look back period," in order for the Batmans to avoid abandonment of their mineral interests pursuant to the 1989 ODMA, they must be able to rely on a savings event prior to April 9, 2009. The Defendant Batmans entered into a lease with Defendant Reserve Energy. The same was recorded with the Belmont County Recorder on December 3, 2008. The Ohio Supreme Court has held that an oil and gas lease is "more than a mere license," it conveys "a vested, though limited, estate in the lands for the purposes named in the lease." Harris v. Ohio Oil Co. (1897), 57 Ohio St. 118, 130.

An oil and gas lease is a "title transaction" pursuant to Ohio Rev. Code 5301.47 (F). "The transaction must merely 'affect' the interest. Clearly, an oil and gas lease is an instrument which affects an interest in such minerals." Bender v. Morgan Columbiana Co. C.P. Case No. 2012-CV-387, at 4.

The Batman oil and gas lease recorded on December 3, 2008 fulfills the requirements of the 1989 ODMA.

EQUITY OIL AND GAS FUNDS, INC.

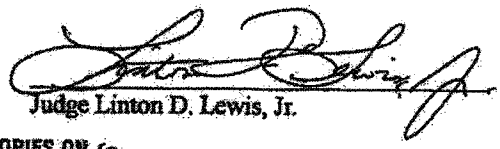
The Plaintiffs' Motion For Summary Judgment relates to the validity of the Batman lease. The Defendant Equity Oil & Gas Funds, Inc. has no interest in the Batman lease. Therefore, the Plaintiffs are foreclosed from obtaining judgment against Defendant Equity in relation to the same.

CONCLUSION

After having considered Plaintiff Wayne K. Lipperman et al.'s Motion For Summary Judgment and Defendants Reserve Energy Exploration Company and Equity Oil & Gas Funds, Inc's Motion For Summary Judgment and after construing the evidence most strongly in favor of the nonmoving parties and having determined that there is no genuine issue as to any material fact and that reasonable minds can come to but one conclusion and further that there is no just reason for delay, this Court makes the following ruling.

This Court finds that Reserve Energy Exploration Company and Equity Oil & Gas Funds, Inc. are entitled to judgment herein. This Court grants the Motion For Summary Judgment of Reserve Energy and Equity Oil and Gas. This Court denies the Motion For Summary Judgment of Plaintiffs Wayne K. Lipperman et al. Plaintiffs' Complaint is hereby dismissed with prejudice. Costs shall be assessed to the Plaintiffs herein. This is a

final appealable order. **IT IS SO ORDERED.**



Judge Linton D. Lewis, Jr.

ENDED CLERK SERVED COPIES ON ALL THE PARTIES OR THEIR ATTORNEYS

WITHIN THREE (3) DAYS OF ENTERING THIS JUDGMENT UPON THE JOURNAL, THE CLERK SHALL SERVE NOTICE OF THIS JUDGMENT AND ITS DATE OF ENTRY UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR. SERVICE SHALL BE MADE IN A MANNER PRESCRIBED IN CIVIL RULE 5 (B) AND SHALL BE NOTED IN THE APPEARANCE DOCKET. CIVIL RULE 58.

FILED

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CARROLL COMMON PLEAS
WILLIAM R. WOHLWEND

IN THE COURT OF COMMON PLEAS
FOR CARROLL COUNTY

RONALD EDWARD DAHLGREN, et al.	)	
	)	Case No. 13CVH27445
Plaintiffs	)	
	)	Judge Richard M. Markus
v.	)	(Serving By Assignment)
	)	
BROWN FARM PROPERTIES, L.L.C. et al.	)	FINAL OPINION AND
	)	JUDGMENT
Defendants	)	

FACTUAL AND PROCEDURAL HISTORY

On February 11, 2013, eight plaintiffs filed this case to quiet title for oil and gas rights they inherited from their mother or grandmother. Three defendant landowners contend that Ohio's Dormant Mineral Act deemed that the family abandoned those rights which then merged into the landowners' surface titles. The fourth defendant is a developer that holds the plaintiffs' leases for those oil and gas rights. Each defendant filed an Answer with a Crossclaim or a Counterclaim. The defendant developer supported the plaintiffs' claims.

Ohio adopted its Dormant Mineral Act as part of its Marketable Title Act on March 22, 1989, and added significant procedural provisions by an amendment on June 30, 2006. The parties agree that either the 1989 version or the 2006 version of Ohio's Dormant Minerals Act governs their dispute. No one asserted or sought to enforce an abandonment claim while the 1989 version was in effect. This Court concludes that the 2006 version controls and denies the landowners' abandonment claim, so the plaintiffs retain those rights.

On August 5, 2013, all parties jointly filed "Stipulations of Fact" which provide:

> Certain parties have recently amended their pleadings so that the only claims remaining in this action by any party sound in declaratory relief or quiet title and involve the issue of whether the Defendants have ownership of the oil and gas minerals underlying their respective properties. The parties agree and stipulate to the following facts and request that the issue of the ownership of the subject minerals be finally decided by the Court based upon the stipulated facts without the need of any trial.

Those factual stipulations provide the basis for this Court's decision.

On September 16, 1949, Carl E. Dahlgren and Leora Perry Dahlgren (husband and wife) conveyed 225.59 acres in Carroll County to William Lewis Dunlap, with a deed that provided:

> Excepting and reserving to Leora Perry Dahlgren all the oil and gas underlying said premises together with rights of way for pipe lines and ingress and egress to any drilling operations thereon and for the removal of said minerals from said property.

By that deed, the Dahlgrens severed the subsurface title for oil and gas from the surface title for that property. See *Gill v. Fletcher* (1906), 74 Ohio St. 295, paragraphs 1-3 of the syllabus.

Leora Dahlgren did not convey her retained mineral rights to anyone before her death on March 13, 1977. Her will and resulting probate court orders vested her mineral rights in her three children. They are the lawful successors to Leora Dahlgren's reserved rights, pursuant to probate court Certificates of Transfer which her daughter mistakenly filed with the Carroll County Probate Court rather than the Carroll County Recorder's Office. The Carroll County Probate Court issued a Certificate of Transfer for those oil and gas rights to those children on May 3, 1978.

Those reserved rights were not the subject of any title transaction that anyone recorded in

the Carroll County Recorder's Office between March 22, 1969 (twenty years before the effective date for the 1989 version of the Dormant Minerals Act) and September 17, 2009 (the date when one of the plaintiffs first recorded an oil and gas lease to a developer).

There was no drilling at, production from, or storage of oil or gas on that property or any property pooled with it before July 5, 2012. The severed oil and gas title was not separated from the surface title on tax lists for the Carroll County Auditor or the Carroll County Treasurer. No one filed a claim in the Carroll County Recorder's Office for oil or gas ownership on the relevant properties before one of the plaintiffs filed that claim on April 12, 2012.

The three defendant landowners are the lawful successors to William Dunlap's rights for the relevant properties, pursuant to duly recorded chains of title. In each of their chains of title the deeds are expressly subject to the oil and gas reservation set forth in the deed recorded at Volume 121, Page 300, which is the 1949 Dahlgren deed.

Two of the three landowner defendants first acquired their interests in the relevant properties after the 2006 amendment to Ohio's Dormant Mineral Act, so they did not and could not have asserted any abandonment claim before that amendment. The remaining landowner defendant acquired his interest in relevant property by deeds in 1999 and 2002.

None of the defendant landowners nor any of their respective predecessors in interests ever asserted any abandonment for the relevant mineral rights in any court proceeding before these landowner defendants filed their pleadings in this case.

In 2009, each of the plaintiffs leased their oil and gas interests for the relevant properties to a developer who recorded those leases in the Carroll County Recorder's Office in 2009 or 2010, and who later assigned those leases to the defendant developer.

In March of 2012, one of the defendant landowners sent the plaintiffs and the leaseholder developer a "Notice of Owner's Intent to Declare the Abandonment of Mineral Interest (Ohio Revised Code 5301.56)" for part of the relevant properties. There is no evidence that before then any of the defendant landowners or any of their predecessors in interest ever asserted to any of the plaintiffs or to any public official that any owner of those mineral interests had abandoned them.

Within 60 days after the landowners sent them a "Notice of Owner's Intent to Declare the Abandonment of Mineral Interest," five of the eight plaintiffs filed claims for their relevant mineral interests in the Carroll County Recorders' Office.

On September 3, 2013, the plaintiffs filed their Brief in Support of Request for Judgment. On October 18, 2013, the three defendant landowners filed their Motion for Judgment and Supporting Brief, and the defendant developer filed its Responsive Brief in Support of Plaintiffs' Request for Judgment. On November 1, 2013, the plaintiffs filed their Responsive Brief. The case is now ripe for this Court's decision.

THE UNDERLYING MARKETABLE TITLE ACT

In 1961 Ohio joined a widespread title reform movement when it enacted its Marketable Title Act as R.C. 5301.47-5301.56. In the Prefatory Note for a later proposed Uniform Marketable Title Act, the National Conference of Commissioners on Uniform State Laws explained the general purpose for those laws:

> The basic idea of the Marketable Title Act is to codify the venerable New England tradition of conducting title searches back not to the original creation of title, but for a reasonable period only. The Model Act is designed to assure a title searcher who has found a chain of title starting with a document at least 30 years old that he need search no further back in the record. Provisions for rerecording and for protection of persons using or occupying land are designed to prevent the

> possibility of fraudulent use of the marketable record title rules to oust true owners of property.
>
> The most controversial issue with respect to marketable title legislation is whether or not an exception should be made for mineral rights. This [Uniform] Act follows the Model Act in making no such exception. Any major exception largely defeats the purpose of marketable title legislation, by forcing the title examiner to search back for an indefinite period for claims falling under the exception.

As originally enacted, Ohio's Marketable Title Act governed all interests in land including severed mineral interests. It relies on a chain of title with a "root" record no more than 40 years old. It included R.C. 5301.47 ("Definitions"), 5301.48 ("Unbroken chain of recorded title"), 5301.49 ("Record marketable title; exceptions"); 5301.50 ("Prior interests"), 5301.51 ("Preservation of interest"); 5301.52 ("Contents of notice"); 5301.53 ("Certain rights not barred"); 5301.54 ("Effect of changes in law"), 5301.55 ("Liberal construction"), and R.C. 5301.56 ("Three year extension"). Between 1963 and 1989, the legislature adopted various amendments to those sections, which are not relevant here.

Effective March 22, 1989, the legislature repealed and rewrote R.C. 5301.56 to create Ohio's Dormant Minerals Act. Effective June 30, 2006, the legislature amended R.C. 5301.56 by adding procedures for a surface landowner to claim that a mineral rights holder has abandoned those rights and for the mineral rights holder to challenge that claim.

In their context, it is clear that the legislature has always intended that the Marketable Title Act (R.C. 4301.47-5301.55) and the Dormant Minerals Act (R.C. 5301.56) are integrated title laws which should be read together whenever they were in effect.

Thus, R.C. 5301.47 provides definitions that apply to R.C. 5301.47 to 5301.56 inclusive; and R.C. 5301.54 restricts the effect of all those sections on other statutory provisions. More

234 12

significantly, R.C. 5301.55 directs:

> Sections 5301.47 to 5301.56, inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 5301.48 of the Revised Code, subject only to such limitations as appear in section 5301.49 of the Revised Code.

The purpose of the Marketable Title Act is to, "simplify and facilitate land title transactions by allowing persons to rely on a record chain of title." *Collins v. Moran*, 2004-Ohio-1381 (7th Dist.), ¶20, quoting *Semachko v. Hopko* (1973), 35 Ohio App.2d 205; see also *Pinkney v. Southwick Investments, L.L.C.*, 2005-Ohio-4167 (8th Dist.) at ¶31.

Both the Marketable Title Act and its Dormant Minerals Act component support reliance on public documents rather than private communications for title transfers. For some purposes, the Marketable title Act permits reliance on public documents outside the county recorder's office.

R.C. 5301.47 defines reliable public records that document title interests and transfers:

> As used in sections 5301.47 to 5301.56, inclusive of the Revised Code:
>
> * * * *
>
> (B) "Records" includes probate and other official public records, as well as records in the office of the recorder of the county in which all or part of the land is situate.
>
> (C) "Recording," when applied to the official public records of the probate or other court, includes filing.
>
> * * * *
>
> (F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

R.C. 5301.48 defines the holder of an "unbroken chain of title" for an interest in real property and therefore a "marketable title" for that interest to include (a) a person for whom those public records show an unbroken chain of title for that interest which extends back for at least forty years; or (b) a person for whom those public records show an unbroken chain of title for an interest that a document created within the preceding forty years. If the documents in that chain of title specifically identify a recorded document that created an interest in that property, the act preserves that interest. R.C. 5301.49(A). All interests created before an unbroken chain of title that extends back at least forty years which are not otherwise preserved by the act are "null and void" [R.C. 5301.50] and "extinguished" [R.C. 5301.49(D)].

Subject to specified exceptions, the holder of an interest with an unbroken chain of title for at least forty years need not demonstrate (a) the creation of that interest more than forty years earlier; or (b) the termination of any purported limitation on that interest more than forty years earlier. The forty years are measured back from "the time the marketability is being determined" [R.C. 5301.47(E) and R.C. 5301.51(B)]; or "is to be determined" [R.C. 5301.48]

R.C. 5301.51 and 5301.52 permit the holder to preserve an otherwise unprotected interest by recording a prescribed notice. Before the 2006 amendment that created the Dormant Minerals Act, the legislature repeatedly revised R.C. 5301.56 to provide additional three year grace periods during which the prescribed notice could preserve that interest, which it ultimately extended to December 31, 1976 [more than 15 years after the act's effective date].

TWO VERSIONS OF THE DORMANT MINERALS ACT

Following the adoption of Marketable Title Acts, many states added special rules for the termination of mineral rights, including temporary lease interests and permanent fee simple

ownership. Here again, the National Conference of Commissioners on Uniform State Laws explains that history in the Prefatory Note for its Uniform Dormant Interests Act, which the Conference approved in 1986 and the A.B.A. approved on February 16, 1987:

> Transactions involving mineral interests may take several different forms. A *lease* permits the lessee to enter the land and remove minerals for a specified period of time; . . . . A fee title or other interests in minerals may be created by *severance*.
>
> A severance of mineral interests occurs where all or a portion of mineral interests are owned apart from the ownership of the surface. A severance may occur in one of two ways. First, a surface owner who also owns a mineral interest may *reserve* all or a portion of the mineral interest upon transfer of the surface. In the deed conveying the surface of the land to the buyer, the seller reserves a mineral interest in some or all of the minerals beneath the surface. . . .
>
> Second, a person who owns both the surface of the land and a mineral interest may *convey* all or a portion of the mineral interest to another person. . . . . Severed mineral interests may be owned in the same manner as the surface of the land, that is, in fee simple.
>
> Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown. Under the common law, a fee simple interest in land cannot be extinguished or abandoned by nonuse, and it is not necessary to rerecord or to maintain current property records in order to preserve an ownership interest in minerals. Thus, it is possible that the only document appearing in the public record may be the document initially creating the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned about an apparently valueless mineral interest and may not even be aware of it; hence their interests may not appear of record. If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.

* * * *

An extensive body of legal literature demonstrates the need for an effective means

of clearing land titles of dormant mineral interests. Public policy favors subjecting dormant mineral interests to termination, and legislative intervention in the continuing conflict between mineral and surface interests may be necessary in some jurisdictions. More than one-fourth of the states have now enacted special statutes to enable termination of dormant mineral interests, and some of the nearly two dozen states that now have marketable title acts apply the acts to mineral interests.

* * * *

Nonuse. A number of statutes have made *nonuse* of a mineral interest for a term of years, e.g., 20 years, the basis for termination of the mineral interest. Such a statute in effect makes nonuse for the prescribed period conclusive evidence of intent to abandon. The nonuse scheme has advantages and disadvantages. Its major attraction is that it enables extinguishment of dormant interests solely on the basis of nonuse; proof of intent to abandon is unnecessary. Its major drawbacks are that it requires resort to facts outside the record and it requires a judicial proceeding to determine the fact of nonuse. It also precludes long-term holding of mineral rights for such purposes as future development, future price increases that will make development feasible, or assurance by a conservation organization or subdivider that the mineral rights will not be exploited.

The nonuse concept should be incorporated in any dormant mineral statute. . . . .

Recording. Another approach found in several jurisdictions, as well as in USLTA [Uniform Simplification of Land Transactions Act], is based on passage of time without recording. Under this approach a mineral interest is extinguished a certain period of time after it is recorded, for example 30 years, unless during that period a notice of intent to preserve the interest is recorded. The virtues of this model are that it enables clearing of title on the basis of facts in the record and without resort to judicial action, and it keeps the record mineral ownership current. Its major disadvantages are that it permits an inactive owner to preserve the mineral rights on a purely speculative basis and to hold out for nuisance money indefinitely, and it creates the possibility that actively producing mineral rights will be lost through inadvertent failure to record a notice of intent to preserve the mineral rights. The recording concept is useful, however, and should be a key element in any dormant mineral legislation.

* * * *

Constitutionality. Constitutional issues have been raised concerning retroactive application of a dormant mineral statute to existing mineral interests. The leading case, *Texaco v. Short*, 454 U.S. 516 (1982), held the Indiana dormant mineral statute constitutional by a narrow 5-4 margin. The Indiana statute provides that a

mineral right lapses if it is not used for a period of 20 years and no reservation of rights is recorded during that time. No prior notice to the mineral owner is required. The statute includes a two-year grace period after enactment during which notices of preservation of the mineral interest may be recorded.

A combination nonuse/recording scheme thus satisfies federal due process requirements. Whether such a scheme would satisfy the due process requirements of the various states is not clear. Comparable dormant mineral legislation has been voided by several state courts for failure to satisfy state due process requirements. Uniform legislation, if it is to succeed in all states where it is enacted, will need to be clearly constitutional under various state standards. This means that some sort of prior notice to the mineral owner is most likely necessary.

For Ohio, both the 1989 version and the 2006 version of the Dormant Minerals Act create statutory conditions when the owner of subsurface minerals rights is "deemed" to have abandoned those rights. Both versions designate those conditions by excluding circumstances when the owner is not deemed to have abandoned them. In the 1989 version, R.C. 5301.56(B)(1) designated conditions that denied or disqualified a statutory claim that a mineral rights owner abandoned those rights:

(B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface, if none of the following applies:

(a) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code. However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that are not in coal may be deemed abandoned and vest in the owner of the surface of the lands subject to the interest.

(b) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(c) Within the preceding twenty years, one or more of the following has occurred:

(i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which

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the lands are located.

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(ii) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(iii) The mineral interest has been used in underground gas storage operations by the holder.

(iv) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(v) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section.

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

The 1989 version provided a three year grace period after its effective date for any of the disqualifying conditions (including the filing of a mineral rights claim) to preclude abandonment. R.C. 5301.56(B)(2).

The 2006 version designates the same conditions that deny or disqualify a statutory claim that the owner of subsurface mineral rights abandoned those rights. The critical difference between the 1989 version and the 2006 amended version of the Dormant Minerals Act is the presence in the 2006 version and the absence in the 1989 version of any express provision for its

implementation.

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For the 2006 version, the Act provides procedures for a surface owner to regain severed subsurface mineral rights in the absence of those specified circumstances. To terminate any subsurface rights the surface owner must notify each subsurface holder that he or she intends to declare that interest abandoned [R.C. 5301.56 (E)(1)] and within thirty days thereafter must file an affidavit of abandonment with the applicable county recorder [R.C. 5301.56 (E)(2)]. The notice must identify the allegedly abandoned subsurface rights and assert the statutorily defined inactivity [R.C. 5301.56 (F)]. The affidavit of abandonment must confirm the notice and allege the statutorily defined abandonment [R.C. 5301.56 (G)].

The 2006 version provides procedures for the subsurface owner to oppose the surface owner's notice by filing within sixty days thereafter a claim to preserve those rights [R.C. 5301.56 (H)(1)(a)] or an affidavit that disputes the statutorily defined abandonment. [R.C. 5301.56 (H)(1)(b)] If the subsurface holder fails to file either of those documents within that time, the recorder shall memorialize those events and thereby vest the surface owner with that subsurface holder's rights. [R.C. 5301.56 (H)(2)]

By contrast, the 1989 version of Ohio Dormant Mineral Act did not include any provision for the surface owner to notify the holder of any subsurface mineral rights about an abandonment claim before or after the alleged abandonment, or to file anything with the country recorder or anywhere else. It provided no procedure for the holder of subsurface rights to contest their alleged abandonment, and no procedure for anyone to record the abandonment anywhere.

The 2006 version for R.C. 5301.56(B)(3) permits the surface owner to send the holder of any subsurface mineral rights an abandonment notice whenever none of the statutorily defined

disqualifying events occurred within twenty years preceding that notice. The 1989 version of R.C. 5301.56(B)(1)(c) provided for its application unless: "Within the preceding twenty years one or more of the following has occurred," without specifying the event from which it measures the preceding twenty years. In lieu of the 1989 version's three year grace period after the statute's effective date for the mineral rights holder to establish any of the disqualifying events (including a filed claim), the 2006 version permits the mineral rights holder to file that claim within 60 days after the surface owner notifies him of the claimed abandonment.

Nothing in either the 1989 version or the 2006 version denies that the Marketable Title Act (R.C. 5301.47-5301.55) remains applicable to mineral rights, at least to the extent that the Dormant Minerals Act does not expressly provide differently.

In this case, the surface landowners assert (a) that the 1989 version established the claimed abandonment automatically when none of the disqualifying events occurred within twenty years preceding its effective date or the three year grace period; and (b) that the abandonment was complete before the 2006 amendment required different procedures to assert or confirm it.

By contrast, the holders of the reserved mineral rights and the developer who holds their leases contend (a) that the 2006 version controls the abandonment procedures here because the landowners first asserted any abandonment after 2006, (b) that the landowners have not complied with the procedures required by the 2006 amendment because they never filed the required abandonment affidavit which permitted them to contest that claim, and (c) that the 2006 version precludes abandonment because disqualifying events occurred after 2006.

Counsel have not cited any appellate decision that decides whether or when to apply the

1989 version of R.C. 5301.56 for an abandonment claim filed after the 2006 amendment. But see *Dodd v. Croskey*, 7th Dist. No. 12HA6, 2013-Ohio-4257 (Sept. 23, 2013)(applying the 2006 version to events that arose before its enactment without discussion of that choice). This court has found none.

After careful consideration, this Court agrees with the holders of the subsurface mineral rights. Without any contrary statutory language, this Court concludes that the 1989 version impliedly required implementation before it finally settled the parties' rights, at least by a recorded abandonment claim that permitted the adverse party to challenge its validity, if not by an appropriate court proceeding to confirm that abandonment. Circumstances that support a claimed right do not by themselves provide a completed remedy. Absent any implementation or enforcement of claimed abandonment rights before the 2006 amendment, the landowner defendants must comply with the procedures which the 2006 amendment requires.

First, the surface owners' interpretation of the 1989 version conflicts with "the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 5301.48 of the Revised Code." R.C. 5301.55. The county recorder's records would not reveal some disqualifying conditions that prevent statutory abandonment. See R.C. 5301.56(B)(3)(c)("The mineral interest has been used in underground gas storage operations by the holder"); 5301.56(B)(3)(f)("In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located"). A title examiner might well find the recorded Dahlgren deed with its reservation of mineral rights, without any record that shows whether the Dahlgrens or their

descendents preserved or abandoned those rights.

Second, interested parties could dispute compliance with disqualifying conditions, without filing anything in the recorder's office. Hence, reliance on the recorder's records to establish or avoid abandonment requires at least a recorded document if not judicial confirmation.

Third, "[f]orfeitures are not favored by the law. The law requires that we favor individual property rights when interpreting forfeiture statutes." *Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917* (1992), 65 Ohio St.3d 532, 534, quoted at *Sogg v. Zurz*, 2009-Ohio-1526, 121 Ohio St.3d 449, ¶9; see also *State v. Lilliock* (1982), 70 Ohio St.2d 23, 25; *Dodd v. Croskey, supra,* at ¶35.

Fourth, the Dormant Minerals Act employs considerably less conclusive language than the Marketable Title Act to terminate title interests. The Marketable Title Act establishes that the unprotected rights are "null and void" or "extinguished," while the Dormant Minerals Act provides that they are "deemed abandoned." Compare R.C. 5301.50 and R.C. 5301.49(D) with R.C. 5301.56(B)(1). The less conclusive language in the Dormant Minerals Act strongly suggests that it provides standards but does not resolve the issue. Compare *Blatt v. Hamilton County Bd. of Revision*, 2009-Ohio-5260, 123 Ohio St.3d , ¶22; *In Re Washington*, 2004-Ohio-6981, 10th Dist. No. 04AP429, ¶23.

Fifth, the landowners' interpretation of these provisions creates the anomaly that mineral rights are deemed abandoned when the owner has a statutorily preserved record marketable title. In this case, for example, the plaintiffs have a record marketable record title from the probate court's Certificate of Transfer less than forty years earlier, pursuant to R.C. 5301.47(A) and R.C.

5301.48; which the defendant landowners' own deeds have preserved pursuant to R.C. 5301.49 and R.C. 5301.51. See See *Toth v. Berks Title Ins. Co.* (1983), 6 Ohio St.3d 338, syllabus; *Heifner v. Bradford* (1983), 4 Ohio St. 3d 49, syllabus.

Sixth, this Court doubts that statutory abandonment is constitutionally enforceable without giving the adverse party an opportunity to dispute the relevant claims. In *Texaco v. Short* (1982), 54 U.S. 516, the federal Supreme Court ruled that Indiana's Dormant Minerals Act satisfied federal constitutional protections when a mineral owner lost his rights in specified circumstances without giving that owner advance notice. But the same opinion stated at 533-34:

> The question then presented is whether, given that knowledge, appellants had a constitutional right to be advised -- presumably by the surface owner -- that their 20-year period of nonuse was about to expire.
>
> In answering this question, it is essential to recognize the difference between the self-executing feature of the statute and a subsequent judicial determination that a particular lapse did, in fact, occur. As noted by appellants, no specific notice need be given of an impending lapse. . . . It is undisputed that, before judgment could be entered in a quiet title action that would determine conclusively that a mineral interest has reverted to the surface owner, the full procedural protections of the Due Process Clause -- including notice reasonably calculated to reach all interested parties and a prior opportunity to be heard -- must be provided. (underlining emphasis added)

Without advance notice and an opportunity to be heard, statutory abandonment may violate Art. I, Sec. 19 of the Ohio Constitution ("Private property shall ever be held inviolate"), even if it does not violate federal constitutional provisions. However, we need not determine whether statutory abandonment without prior notice satisfies that provision of the Ohio Constitution where other considerations reach the same result without addressing that concern.

In any event, Due Process requirements in both the federal and state constitutions unquestionably mandate notice and an opportunity to respond before a dispute about those rights

> interest has reverted to the surface owner, the full procedural protections of the Due Process Clause -- including notice reasonably calculated to reach all interested parties and a prior opportunity to be heard -- must be provided. (underlining emphasis added)

Without advance notice and an opportunity to be heard, statutory abandonment may violate Art. I, Sec. 19 of the Ohio Constitution ("Private property shall ever be held inviolate"), even if it does not violate federal constitutional provisions. However, we need not determine whether statutory abandonment without prior notice satisfies that provision of the Ohio Constitution where other considerations reach the same result without addressing that concern.

In any event, Due Process requirements in both the federal and state constitutions unquestionably mandate notice and an opportunity to respond before a dispute about those rights can be resolved. Courts should construe statutes in the manner that best confirms their constitutionality. *Mahoning Education Association of Developmental Disabilities v. State Employment Relations Board*, 2013-Ohio-4654, ¶19; *State v. Carnes*, 2007-Ohio-604, ¶ (7th Dist.)

For the purposes of this decision, the court accepts the defendant landowners' argument that the 1989 version of Ohio's Dormant Mineral Act deemed the plaintiffs' mineral rights abandoned if none of the disqualifying conditions existed within twenty years before March 22, 1989 (the act's effective date) or before March 22, 1992 (the statutory grace period). See *Riddel v. Layman*, 5th Dist. No. 94CA114 (July 10, 1995). However, at most the absence of those conditions created an inchoate right; it could not and did not transfer ownership without judicial confirmation or at least an opportunity for the disowned party to contest their absence or the effect of their absence.

arbitrary and unsupportable assumption that their failure to develop those minerals meant that they deliberately abandoned them forever. Could the legislature deem that a surface property owner abandoned his title if he failed to develop an empty lot for some arbitrary interval? The federal Supreme Court's decision in *Texaco v. Short, supra*, may answer: "Yes." But the property owner must have an opportunity to dispute that result.

NO ABANDONMENT UNDER THE CURRENT LAW

Each of the plaintiffs leased his or her oil and gas interests for the relevant properties to a developer who recorded those leases in the Carroll County Recorder's Office in 2009 or 2010. Those recorded leases are "title transactions" that preclude any deemed abandonment for the plaintiffs' mineral interests pursuant to the 2006 version of R.C. 5301.56(B)(3)(a).

Within 60 days after a landowner sent them a "Notice of Owner's Intent to Declare the Abandonment of Mineral Interest," five of the eight plaintiffs filed statutorily sufficient claims for their relevant mineral interests in the Carroll County Recorders' Office. Those recorded claims preclude any deemed abandonment for their interests and the interests of all the remaining plaintiffs pursuant to the 2006 version of R.C. 5301.56(B)(3)(e) and 5301.56(C)(2).

Two of the landowner defendants never complied with R.C. 5301.56(E)(1) by sending or publishing notice to "each holder" of the allegedly abandoned mineral interests. None of the defendant landowners ever complied with R.C. 5301.56(E)(2) by filing an "affidavit of abandonment" in the Carroll County Recorder's office. Without those notices or affidavits, those landowners failed to invoke the abandonment procedures which the 2006 version requires to assert an abandonment claim.

In this case, the following plaintiffs hold mineral rights for the relevant properties: Ronald Edward Dahlgren, Elsa Anne Lyle, Helen Mary Dahlgren, Martha Perry Dahlgren, Cynthia Ann Crowder, Daniel Carl Dahlgren, Charles Stephen Dahlgren, and Diane Ellen Pullins. The parties have not asked this Court to determine which plaintiff owns any allocated interest in those rights for each relevant property, and this judgment shall not serve that purpose.

In this case, the following defendants own the relevant properties: Brown Farm Properties, LLC, Brian L. Wagner, and Thomas Beadnell.

In this case, Chesapeake Exploration, LLC is the current holder of assigned leases and the defendant developer for the plaintiffs' oil and gas ownership on the relevant properties.

This Court determines and declares that each of the eight plaintiffs retains his or her respective interest in oil and gas located on or recovered from the properties designated in the Complaint and its attachments.

This Court quiets ownership and title to those mineral rights in the plaintiffs and not in the surface landowner defendants.

This Court determines and declares that each of the landowner defendants retains his or its surface ownership for those properties.

This Court determines and declares that the defendant developer retains its rights as the holder of recorded and assigned leases to those oil and gas rights.

Within sixty days after this Court files its judgment with the Clerk of the Carroll County Common Pleas Court and any subsequent appeals from that judgment are exhausted, each of the plaintiffs or their counsel shall file a copy of this Final Opinion and Judgment in the Carroll

County Recorder's Office, together with a claim that satisfies R.C. 5301.56(C)(1).

The plaintiffs shall recover the costs of this case, not including attorney fees or litigation expenses.

Richard M. Markus

Judge Richard M. Markus, Retired Judge Recalled to Service pursuant to Ohio Constitution, Art. IV, §6(C) and R.C. 141.16 and assigned to the Carroll County Common Pleas Court for this matter.

THE CLERK SHALL MAIL TIME STAMPED COPIES OF THIS FINAL OPINION AND JUDGMENT TO ALL COUNSEL AND THE ASSIGNED VISITING JUDGE

TRANSCRIPT PAGE NUMBER # 234 LINE # 27

IN THE COURT OF COMMON PLEAS BELMONT COUNTY, OHIO

FILED
COMMON PLEAS COURT
BELMONT CO., OHIO
2013 SEP 16 PM 1 42
CYNTHIA K. McGEE
CLERK OF COURT

BENJAMIN F. TAYLOR et al.,	:	
Plaintiffs,	:	Case No. 11 CV 422
vs.	:	ORDER
DONALD L. CROSBY, et al.,	:	
Defendants.	:	

This matter having come on before this Court upon Defendants Donald L. Crosby, Tammy Crosby, Richard Crosby and Janis Crosby's (Crosby's) Motion For Summary Judgment filed with this Court on November 27, 2012, Plaintiff's Cross Motion on December 28, 2012, Defendant PC Exploration and XTO Energy, Inc's (XTO's) Cross Motion For Summary Judgment and Memorandum Contra filed January 11, 2013 and Defendant Crosby's Memorandum In Opposition filed January 16, 2013. After having considered the same, this Court finds the following.

STATEMENT OF FACTS

Benjamin Belt (Belt) previously owned 108.708 acres in Richland Township, Belmont County, Ohio which is the subject of this action. In 1971, Belt transferred the property in question to Eli and Virginia Bell (collectively, the Bells). (the 1971 Transaction). Belt reserved "an undivided one half interest in and to all oil and gas in and underlying the" subject property. Mr. Belt leased the oil and gas to United Petroleum Corporation on July 10, 1975. On July 5, 1979, the Bells conveyed their entire interest to

Donald and Richard Crosby (who, together with their spouses, are the Crosby Defendants), subject to Belt's "undivided one half interest in and to all oil and gas in and underlying the" subject property. (the 1979 Transaction). From 1979 to the present, Donald and Richard Crosby have been the owners of the surface rights. Mr. Belt died on January 8, 1993. His estate was not probated until May, 2011 at which time Belt's interest in the parcel was transferred via probate.

On October 29, 2007, the Crosby Defendants leased the mineral rights in the subject property to Reserve Exploration Company (Reserve). Reserve assigned their interest in the lease to Petroleum Corporation on May 15, 2008.

SUMMARY JUDGMENT STANDARD

Ohio Rule of Civil Procedure Rule 56 provides that summary judgment is warranted when "it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." Ohio Rule of Civil Procedure 56(c).

Pursuant to Temple v. Wean United Inc., 50 Ohio St. 2d 317, 327, 364 N.E. 2d 267, 274 (1977) summary judgment is appropriate when the moving party demonstrates that (1) no genuine issues of material fact remain to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion that is adverse to the party against whom the motion is made.

PLAINTIFF'S CLAIMS

On October 19, 2011 the Plaintiff's herein filed the present action consisting of six claims.

Count One Declaratory Judgment to declare the lease between the Crosby Defendants and Reserve null and void.

Count Two Declaratory Judgment that Section 5301.56 (E) requires certified mail service to declare mineral rights abandoned.

Count Three Declaratory Judgment that Section 5301.56, the abandonment statute, is unconstitutional.

Count Four Slander of Title by recording documents in Belmont County and not affording the allegedly required notice provided in Section 5301.56.

Count Five Plaintiff's request an accounting of the "rentals and royalties paid" to the Crosby Defendants.

Count Six Injunctive Relief to preclude the implementation of the lease and removal of oil and gas.

DEFENDANT'S POSITION

The Defendants argue that the lease between Defendants Crosby and Reserve is a valid lease in that the Plaintiffs possess no interest in the oil and gas in question. For that reason it is the Defendant's position that the Plaintiffs have no claim for Slander of Title,

and accounting of the "rentals and royalties paid" nor Injunctive Relief.

The Defendants further argue that they have complied with the service requirements of ORC Section 5301.56(B) and that the abandonment statute is constitutional.

THE CONSTITUTIONALITY OF THE 1989 OHIO DORMANT MINERAL ACT

The Ohio Dormant Mineral Act was enacted in its original form on March 22, 1989. The act has been characterized as a "use it or lose it" statute. The Ohio Legislature attempted to balance the interests of property owners and the compelling public interest in drilling, producing and marketing the mineral interests of this state. Dormant and abandoned mineral interests were viewed as of no benefit to the state, while making use of the state's mineral resources was for the public good.

In order to negate the retroactive effect of the Act, the following language was inserted at 5301.56(B)(2).

> (2) A mineral interest shall not be abandoned under division (B)(1) of this section.....until three years from the effective date of this section.

The oil and gas owners thereby were given 3 years to meet one of the "Savings Events" provisions. A similar statute was enacted in Indiana and provided for a two year grace period. This act was upheld by the United States Supreme Court in Texaco Inc. v. Short, 454 US 516 (1982). In Texaco, it was held that, "There was no constitutional right for a mineral interest owner to receive individual notice that his right will expire."

Based upon Texaco, this Court finds the 1989 Ohio Dormant Mineral Act to be

constitutional.

APPLICATION OF THE 1989 OHIO DORMANT MINERAL ACT

The Ohio Dormant Mineral Act has been characterized as a "use it or lose it" statute. In order to preserve one's interest in a severed mineral right one must meet the requirements of ORC 5301.56. In accordance with (B)(1) the mineral interest held by any person, other than the owner of the surface, shall be deemed abandoned and vested in the owner of the surface unless: the interest is in coal or the interest is held by the government. ORC 5301.56 also provides protection if within the preceding 20 years the mineral interest has been the subject of a title transaction, there has been actual production or withdrawal of the minerals , underground gas storage has taken place, a drilling or mining permit has been issued, a claim to preserve the interest has been filed or a separately listed tax parcel has been created for the mineral interest.

In the case at bar the only portion of ORC 5301.56 that is applicable herein deals with whether the property in question has been the subject of a title transaction. Applying the requirements of the 1989 Ohio Dormant Mineral Act, we must first look to the years 1992 back to 1969. The act provides for a 20 year look back period from March 22, 1989, but also allows for a three year grace period to March 22, 1992.

The Plaintiffs argue that the 1989 Act is a static 20 years plus the grace period. The Defendants take the position that the look back period is a rolling 20 years. The Plaintiffs rely on Riddell v. Layman, 94 CA 114, 5th District, Licking County (1995). Riddell was presented with the question of whether a 1965 deed recorded in 1973

qualified as a title transaction. A "rolling look back period" was not an issue.

ORC 5301.56 (D)(1) provides:

> A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any of the circumstances described in division (B)(1)(C) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

A static 20 year look back period would have no need for a provision providing for indefinite preservation of mineral interests through successive filings of preservation claims. Based upon the same, this Court finds the 1989 Ohio Dormant Mineral Act to provide for a "rolling look back period."

TITLE TRANSACTIONS

In the case at bar, there are three transactions of worthy note. One is the 1971 Transaction wherein Benjamin Belt transferred the surface herein and reserved one half of the oil and gas. This transfer qualified as a Savings Event and protected the Belt mineral interest for 20 years and additionally under March 22, 1992 including the grace period.

A second transaction occurred in 1979 when the Bells conveyed their entire interest in the property in question to the Defendant Crosbys. The 1979 Transaction provided for the reservation of Belt's "undivided one half interest in and to all oil and gas in and underlying the" subject property. This Court does not find the oil and gas herein to be the subject of this title transaction as required by ORC 5301(B)(1)(C). The subject of

the transaction is that which is conveyed, being the surface and the unreserved one half oil and gas that was transferred. The crux of the Ohio Dormant Mineral Act is that it is a "use it or lose it" statute. To transfer the surface and one half the oil and gas was totally within the control of the Bells in 1979. Their transaction with the Defendant Crosbys could have been by quitclaim deed with no mention of the Belt reservation. The fact that it was mentioned does not make it the subject of the title transaction and in no way shows proof of Mr. Belt "using" the oil and gas in question. Be that as it may, the 1979 Transaction would have only protected the mineral interest until 1999 by use of the 20 year rolling look back application.

Mr. Belt's 1975 lease to United Petroleum qualifies as a title transaction and preserved the mineral interest for Mr. Belt until 1995.

Pursuant to the 1989 version of ORC 5301.56, as of 1995 the oil and gas interest held by Mr. Belt was deemed abandoned and vested in the owner of the surface. As to ORC 5301.56 effective June 30, 2006, any discussions regarding the same are moot in that any oil and gas interest of Mr. Belt and the Plaintiffs had been abandoned and vested in the Defendants prior to that date. See Wendt v. Dickerson, Tuscarawas County C.P. Case No. 2012 CV 020135, 2/21/2013, Walker v. Noon, Noble County C.P. Case No. 212-0098, March 20, 2013.

CONCLUSION

Wherefore, after having considered the Motions for Summary Judgment and after construing the evidence most strongly in favor of the nonmoving parties and having

determined that there is no genuine issue as to any material fact and further that reasonable minds can come to but one conclusion and further that there is no just reason for delay, this Court grants the Summary Judgment Motion of Defendants Crosby, Cross Motions of Defendant PC Exploration, Inc. and XTO Energy, Inc. and denies Plaintiff's Cross Motion For Summary Judgment. Plaintiff's Complaint is hereby dismissed. Costs to the Plaintiffs. This is a final appealable order. **IT IS SO ORDERED**.

Judge Linton D. Lewis, Jr.
Sitting by Assignment

WITHIN THREE (3) DAYS OF ENTERING THIS JUDGMENT UPON THE JOURNAL, THE CLERK SHALL SERVE NOTICE OF THIS JUDGMENT AND ITS DATE OF ENTRY UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR. SERVICE SHALL BE MADE IN A MANNER PRESCRIBED IN CIVIL RULE 5 (B) AND SHALL BE NOTED IN THE APPEARANCE DOCKET. CIVIL RULE 58.

IN THE COURT OF COMON PLEAS
HARRISON COUNTY, OHIO
GENERAL DIVISION

ROBERT E. DAVIS, ET AL.,
Plaintiff

CASE NO. CVH-2011-0081

vs.

CONSOLIDATION COAL COMPANY
Defendant

JUDGMENT ENTRY

This matter came before the Court on Plaintiffs Motion For Summary Judgment filed July 6, 2012 and Defendant's Cross Motion For Partial Summary Judgment filed on August 8, 2012.

SUMMARY OF CASE:

The dispute between the parties concerns competing claims regarding the ownership of the mineral rights, excluding coal, in and beneath 77.75 acres of real property in Harrison County, Ohio. Defendant Consolidation Coal Company (Herein referred to as Consol) and Plaintiffs Robert Davis, James Albright and Barbara Albright (Herein referred to as Plaintiffs) both claim title to the mineral estate. Plaintiffs file this action for declaratory judgment seeking a declaration of their rights and an order quieting title in them. Consol filed counterclaims, also seeking declaratory judgment and an order quieting title in Consol. Both parties now seek summary judgment.

STATEMENT OF THE FACTS:

On October 9, 1967 Consol sold real estate to Robert E. Davis and Marilyn Jean Davis subject to all reservations and conditions as contained in a deed from John M. Wheeler to Howard Coffland (Herein referred to as the

Wheeler deed). In the Wheeler deed, Wheeler conveyed his entire interest in the property, reserving and excepting from that conveyance however;

> .... All producing oil and gas wells on the premises aforesaid together with the right to drill and operate two additional wells on the second tract above described and all proceeds therefrom to be the property of the grantors in this deed.
>
> Grantors also have the right to extend any and all existing leases for so long as oil or gas is found in paying quantities and the proceeds of said wells under said existing leases together with two additional wells to inure to the grantors herein, their heirs and assigns forever.

Consol then expressly reserved for itself all oil and gas rights not previously excepted and reserved by Wheeler by adding the following to that reservation:

Excepting and reserving to Consol herein, its successors and assigns, all right, title, and interest in and to the oil, gas and other minerals not heretofore accepted and reserved by predecessors and title of the grantor herein, together with the right to explore and operate and extract the same by any method now or hereafter used or practiced.

Since the Wheeler deed, Consol has completed four title transactions on the subject property.

1) By deed recorded 10/9/1967, as the then fee simple owner of the property, Consol conveyed the surface rights to Plaintiffs predecessors in title, but retained ownership of the mineral estate.
2) By Memorandum of Lease recorded September 25, 1981, Consol conveyed a leasehold interest in the mineral estate to Republic Steel. Republic Steel later changed its name to LTV Steel Company.

3) By assignment of lease recorded May 30, 1985, LTV Steel Company assigned its leasehold interest in Mineral Estate to Carless Resources, Inc. later changed its name to Kelt Ohio, Inc.

4) By a partial release of lease recorded August 10, 1993 Kelt Ohio Inc. released all interest in the mineral estate resulting in the reversion of that interest to Consol. On February 22, 2011, Attorney Shawn P. Lindsay sent Consol a Notice Of Intent To Declare Oil and Gas Mineral Rights abandoned pursuant to §5301.56 of the Ohio Revised Code. This letter alleged that for the previous 20 years, starting from February 22, 1991, no Saving Act (i.e. title transaction) set forth in O.R.C. §5301.56 had occurred. On March 21, 2011, Robert Belesky, Vice President for Consol filed an affidavit to preserve the mineral interests under the Plaintiffs land citing the above title transactions as Saving Acts.

Both parties have moved for Summary Judgment. OHIO R. CIV. P. 56 provides in pertinent part:

Summary Judgment shall be rendered forthwith if the pleadings, depositions, answer to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

A Summary Judgment shall not be rendered unless it appears from such evidence and only therefrom, that reasonable minds can come to but one

conclusion and that conclusion is adverse to the party against whom the Motion for Summary Judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in his favor.

The Supreme Court of Ohio in Temple v. Wear United Inc. (1977) 50 OHIO St. 2nd 317 at 327 held "Before Summary Judgment may be granted, there must be first, no genuine issue as to any material act that remains to be litigated: second. the moving parties are entitled to Judgment as a matter of law: and third it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the Motion For Summary Judgment is made, that conclusion is adverse to that party".

IN CONSIDERING THE PARTIES MOTIONS FOR Summary Judgment, the Court finds it must examine two issues.

First, the Court must examine the "Wheeler" deed and its reservations. Secondly, the Court must apply the facts of this case to the Ohio Dormant Mineral Act §5301.56 of the Ohio Revised Code.

I. Wheeler Deed

The crux of the Plaintiffs argument is that Consol had no right to reserve or lease minerals underlying the Co-Plaintiff's property because of the reservation of producing oil and gas wells and their royalties contained in the Wheeler deed.[1] Specifically, the Co-Plaintiffs argue that because the Wheeler deed only gave Consol mineral rights subject to a reservation, the subsequent title transactions are

[1] Plaintiffs argue that the Defendants failed to follow a procedure to extinguish the excepted interest of the wells in the Wheeler Deed. However, Plaintiffs provide no citation as to what exact procedure is to be followed.

invalid to save Consol from application of Ohio's Dormant Mineral Act. However, the language from the Wheeler deed is clear that it contains only limited rights, reserving and excepting only the royalties from producing oil and gas wells with the right to drill and operate two additional wells. The language is clear that Consol, at the very least, retains the balance interest of the Mineral Estate as proscribed by the deed.

Furthermore, it is clear that all of the wells on the property cited by both defendants and plaintiffs have been plugged and abandoned and/or are "dry holes" - meaning they were never in production. (Defendant's Reply to Plaintiff's Response to Defendant's Combined Cross Motion for Partial Summary Judgment, pg. 5). It is also noteworthy that these wells were all deemed abandoned long ago - between the years 1916 and 1930. It is therefore clear that the reservation in the Wheeler deed has been self-extinguished by its own express language- given that none of the reserved wells are currently producing wells.[2] By these terms, Consol therefore retains the entire interest in the Mineral Estate to lease as it chooses.

II. Ohio Dormant Minerals Act

Plaintiffs argue that both the historic and current versions of Ohio's Dormant Mineral Act divest the interest in the Mineral Estate from Consol. Specifically, the Plaintiffs argue that the title transactions are void because Consol had no right to lease the mineral interests in the first place because of the

[2] No evidence was brought forth by Plaintiffs that any wells were drilled pursuant to the right, reserved in the Wheeler Deed, to develop two additional wells. In fact, the information provided on the wells given in Plaintiff's Exhibit M and cited in the Defendant's Reply to Plaintiff's Response (pg. 5-6) shows that the last well drilled on the property occurred prior to the date of the Wheeler Deed.

reservations contained in the Wheeler deed. While it is in dispute which version of the act should apply to the case at bar, Consol identified three record title transactions to defeat the application of both versions of the act to retain interest in the Mineral Estate.

According to the 1989 historical version of the act, if the mineral interests are found dormant, they are deemed abandoned. Title to those interests is then vested in the surface owner. However, a mineral interest is not deemed dormant if it was the subject of a recorded title transaction within the twenty-year period immediately preceding the Act's 1989 effective date.[3] O.R.C. § 5301.47(F) defines "title transaction" to mean any transaction affecting title to any interest in land . . ."

To defeat this argument, Consol has provided evidence that two separate title transactions were recorded in the Harrison County Recorders' Office during the period between March 22, 1969 and March 22, 1989. Specifically, Consol conveyed a leasehold interest to Republic Steel on September 25, 1981 for a period of 50 years of a portion of the oil and gas rights Consol possessed. (Exhibit 1, at ¶12). An Assignment of Lease was then recorded on May 30, 1985 in which Republic Steel conveyed the leasehold interest in the Mineral Estate it obtained from Consol to an entity known as Charles Resources. (Exhibit 1, at ¶14).

According to the amended/current version of the act, a mineral interest is not deemed dormant if it was the subject of a recorded title transaction within the twenty-year period immediately preceding the date on which notice is served or

published – in this case February 25, 2011. A title transaction was recorded in the Harrison County Recorders' office on August 10, 1993 – during the period between February 1991 and February 2011.

While the Plaintiff's argument would hold more merit if the reservations in the Wheeler deed did not give Consol rights to lease mineral interests, that is not the case here. It is clear that the Wheeler deed conveyed mineral interests only with certain reservations that have been self-extinguished by its own express language. Therefore, Consol did have the right to lease its Mineral Estate - making the title transactions valid and saving acts, under the Dormant Mineral Act.

The Court finds the evidence is clear and unambiguous.

The Court finds the Evidence sufficient to make findings and that no genuine issue of material fact remains to be litigated.

The Court finds that Judgment in favor of the Consolidation Coal Company is appropriate after reviewing the evidence in a light favorable to Plaintiffs.

WHEREFORE, IT IS THE ORDER of the Court that:

1. Plaintiff's Motion For Summary Judgment is denied.
2. Defendant's Motion For Partial Summary Judgment is granted.
3. Consol is granted Declaratory Judgment against Plaintiffs as sole owner of the mineral estate of the subject 77.75 acres.

---

[3] Ohio Rev. Code §5301.56(B) (1989 version).

4. Title to 77.75 acres is hereby quieted as to the mineral estate in favor of Consolidation Coal Company and against any claim of Plaintiffs.

5. Court Costs are assessed against Plaintiff and each party shall be responsible for their own attorney's fees.

SO ORDERED.

T. Shawn Hervey, Judge

NOTICE: FINAL APPEALABLE ORDER

This is a final appealable order. For each party who is not in default. serve notice to the attorney for each party and to each party who represents himself or herself by regular mail service with certificate of mailing making notation of same upon case docket.

T. Shawn Hervey, Judge

Stamped Copies:
Attorney Brad L. Hillyer
Attorney Geoffrey Mosser
Attorney Michael Dortich

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO

VIRGINIA A. BENDER,	)	CASE NO. 2012-CV-378
	)	
Plaintiff,	)	JUDGE RICHARD D. REINBOLD, JR.
	)	(By Assignment)
vs.	)	
	)	
BENNY L. MORGAN, et al.,	)	**OPINION AND JUDGMENT ENTRY**
	)	**ON MOTIONS FOR SUMMARY**
Defendants.	)	**JUDGMENT**

I. Introduction.

Before the Court are cross-motions for summary judgment filed by the plaintiff, Virginia A. Bender ("Bender"), and the defendants, Benny L. Morgan, Martha Jayne Dorr, Sherry Lee Blosser, David Blosser and Ronald Wayne Collier (collectively the "Dorr Heirs"). Plaintiff's motion was filed on October 25, 2012, and the defendants' motion was filed on November 1, 2012. The Dorr Heirs also submitted a reply brief on November 26, 2012. The Court heard oral arguments on the motions on March 15, 2013. The plaintiff Bender was represented by Attorney Mark Ropchock, and the defendant Dorr Heirs by Attorney James Mathews.

For the following reasons, the motion for summary judgment of the defendant Dorr Heirs is hereby GRANTED, and the plaintiff's motion for summary judgment is DENIED.

The material facts in this case are not in dispute. Central to the determination of the issues between the moving parties is the reservation of oil and gas interests by Harry Dorr in 1947. It is undisputed that Harry Dorr was the titled owner of the Property at issue in this case, in fee, at the time he transferred the property, and other parcels, in 1947. Pursuant to a Warranty Deed dated March 17, 1947, and recorded March 28, 1947, Dorr conveyed land to Loretta Brauninger. That deed was recorded at O.R. Vol. 716, Page 456, of the Columbia County Records. Importantly, that deed included a reservation of oil and gas rights, creating the severance at issue in this case:

> The Grantor also excepts from the operations hereof and reserves to himself, his heirs and assigns, all oil and gas in and underlying the aforesaid Tracts No. 1 and No. 2.

(Wagoner Aff., ¶7, Exhibit C-4; Vol. 716, at Page 457).

The plaintiff Bender is currently the surface owner of the Property at issue. The surface interest is described as a 52.687 acre tract (the "Property"), described in O.R. Vol. 491, Page 991 of the Columbia County Records. It is undisputed that plaintiff Bender owns the surface rights to the Property, pursuant to a Certificate of Transfer from the estate of her late father, Earl W. Lomax. In this case, the plaintiff has asserted that she is also entitled to the mineral rights (oil and gas interests in the Property), by operation of the Ohio Dormant Mineral Act, R.C. 5301.56. The Dorr Heirs, on the other hand, maintain that the plaintiff's surface ownership remains subject to the 1947 severance of the oil and gas rights, created by the predecessor in title of the Dorr Heirs.

There are two versions of the Dormant Mineral Act, or "DMA," at issue in this case. The DMA was first enacted effective March 22, 1989. The DMA was amended by the General Assembly effective June 30, 2006. Pursuant to the 1989 version, a severed mineral interest may be subject to abandonment and merger with the surface owner "automatically," unless the interest was held by the government, the interest was in coal, or otherwise preserved by a "savings event." Under the 2006 version, the potential abandonment of a mineral right must be triggered by a surface owner's publication or service of "notice," then coupled with the timely recording of an affidavit of abandonment. The Court will address the issues presented under the DMA in reverse order.

II. Plaintiff's Claim Under the 1989 Version of the DMA Fails Because The Record Demonstrates "Savings Event" – the Recording of Oil and Gas Leases – Within the 20-Year Period Predating March 22, 1989.

The parties have presented a series of recorded oil and gas leases in the relevant chain of title. These leases, with corresponding assignments, are set forth in the Wagoner Affidavit and Exhibits. The leases were recorded: Book 110, Page 258, Recorded June 15, 1976; Book 116, Page 235, Recorded February 12, 1981; Book 62, Page 919, Recorded February 13, 1985; and Book 171, Page 933, Recorded March 31, 1988. (Exhibits C-7, C-9, C-12, C-15).

Plaintiff acknowledges that one of the Savings Events found in both versions of the DMA is a "title transaction" involving the mineral interest. Former R.C. 5301.56(B)(1), (c)(i); current (B)(3)(a). The sole question presented for the Court's determination is whether an oil and gas lease represents a "title transaction." The plaintiff agrees that "[i]f the aforesaid oil and gas leases and their assignments constituted 'title transactions' under R.C. 5301.47(F), then Plaintiffs

concede that these instruments were Savings Events pursuant to the 1989 Act (R.C. 5301.56(B)(1)(c)(i)) because the oil and gas rights in the Realty were 'the subject of' these transactions." (Plaintiff's Memorandum, Sec. II(b)(ii), (p. 6). Given the nature of interest conveyed by an oil and gas lease, the Court finds that such represents a "title transaction" as defined by law.

A "title transaction" does not have to be a conveyance. R.C. 5301.47(F) broadly defines a "title transaction" as follows:

> (F) "Title transaction" means **any transaction affecting title to any interest** in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

(Emphasis added). The transaction must merely "affect" the interest. Clearly, an oil and gas lease is an instrument which affects an interest in such minerals.

Moreover, an oil and gas lease does more than merely permit use of minerals for development. Rather, an oil and gas lease does actually convey (a determinable fee interest) in the oil and gas (severed mineral interests in this case) in place, for production. That conveyance is subject to reverter in the event there is no production and the lease otherwise expires by its own terms. "Oil and gas in place are the same as any part of the realty, and capable of separate reservation or conveyance." Pure Oil Co. v. Kindall (1927), 116 Ohio St. 188, 201. A lessee to an oil and gas lease acquires a "vested, though limited, estate in the lands for the purposes named in the lease . . . ." Harris v. Ohio Oil Co. (1897), 57 Ohio St. 118, 130-31. Under the typical language of a habendum clause found in an oil and gas lease, such generally creates a

determinable fee interest, subject to reverter to the lessor if conditions are not satisfied. E.g., Tisdale v. Walla (Dec. 23, 1994), Ashtabula App. No. 94-A-0008; Kramer v. PAC Drilling Oil & Gas (Dec. 29, 2011), 2011-Ohio-6750, ¶11. As stated in Kramer, an oil and gas lease "*convey[s] ownership of the oil and gas estates*" to the lessee; again, subject to reverter. Id. (Emphasis added). Because of the possibility of reverter, the oil and gas lease conveys a fee simple determinable rather than a fee simple absolute. Id. In any event, an oil and gas lease is clearly a "title transaction" as contemplated under R.C. 5301.47(F).

It is inescapable that an instrument which conveys a fees simple determinable in oil and gas minerals (in place) is a "title transaction" as contemplated by the broad definition found in the Marketable Title Act. Thus, the oil and gas leases identified in this record were "title transactions," and the "mineral interest" (that is, the severed interest passing from Harry Dorr to Vesta Dorr, then to their children and grandchildren) was "the subject of a [series of] title transaction[s] . . . recorded in the office of the county recorder." (Exhibits C-7-15).

Using the retroactive "look back" period for the 1989 version of the DMA as described in the case of Riddel v. Layman (July 10, 1995), Licking App. No. 94 CA 114, 1995 Ohio App. LEXIS 6121, the oil and gas leases occurred within the 20-year period before the March 22, 1989 effective date. Consequently, when plaintiff's predecessor held the Property at the time the 1989 version of the DMA became effective and operative, the Dorr mineral interest could not be deemed abandoned. Likewise, when plaintiff acquired the surface estate in 1995, the 1989 version of the Act did not operate to produce any abandonment or merger of the mineral interest to the plaintiff's benefit. If one focuses attention on the 1988 oil and gas lease alone (Exhibit C-

15; Vol. 171, Pg. 933), there can be no determination of abandonment under the 1989 features of the DMA. That title transaction in the mineral estate existed within the 20-year look back before enactment of the DMA. Further, extending forward from the 1988 oil and gas lease, looking prospectively another 20-year period, that time extends beyond passage and enactment of the amended version of the Act in 2006 – at which time the 1989 version ceased to exist. Accordingly, the plaintiff Bender did not acquire any right under the former version of the DMA while it was still in effect.

III. Plaintiff's Claim Under the 2006 Version of the DMA Fails Because The Plaintiff Failed to Timely Record an Affidavit of Abandonment.

The Dormant Mineral Act is part of the Ohio Marketable Title Act, R.C. 5301.47 to 5301.56. *E.g.*, Pinkney v. Southwick, (Aug. 11, 2005), 2005-Ohio-4167, ¶31. Under R.C. 5301.56(B), if one conforms to the criteria for abandonment, the surface owner of property may claim rights to the abandoned mineral interests. Subsection (B) directs compliance with subsection (E). Thus, the first step requires that notice must be given to the mineral interest holder or the holder's successors. R.C. 5301.56(E)(1). Next, for the mineral rights to vest with the surface owner, (E)(2) requires that an affidavit of abandonment must be timely filed with the county recorder.

R.C. 5301.56 requires, in pertinent part:

> (B) Any mineral interest held by any person, . . . shall be deemed abandoned and vested in the owner of the surface of the lands subject to the interests **if the requirements established in division (E) of this section are satisfied** and none of the following applies:
>
> . . .

> (E) **Before a mineral interest becomes vested** under division (B) of this section in the owner of the surface of the lands subject to the interest, **the owner of the surface of the lands subject to the interest shall do both of the following**:
>
> (1) Serve notice by certified mail . . . If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation . . .
>
> (2) At least thirty, but **not later than sixty days after the date on which the notice required under division (E)(1) of this section is served or published**, as applicable, **file** in the office of the county recorder of each county in which the surface of the land that is subject to the interest is located **an affidavit of abandonment** . . . .

(Emphasis added). One utilizing the Act "shall do both," serve or publish notice and timely record an affidavit. When "shall" is used in a statute, it conveys something that is mandatory. *E.g.*, Paris Hill v. Erb Lumber (1998), 133 Ohio App. 3d 1. The Act specifically states that in order for the mineral rights to vest with the surface property owner, the affidavit of abandonment must be filed not later than sixty days after the publication or service of the notice.

In this instance, the plaintiff admits that her affidavit of abandonment was not recorded in a timely manner but, instead, was recorded sixty-one days after publication of her notice. Plaintiff published a notice of her intent to declare the mineral interests abandoned in the Morning Journal of Columbiana County on August 18, 2011. (Complaint ¶7; Plaintiff's Exhibit 17, p. 3). Plaintiff subsequently filed an affidavit of mineral interest abandonment, in an attempt to complete the second stage of the abandonment process. (Complaint ¶8). (However, the affidavit was filed sixty-one days after the notice was published (on October 18, 2011). (Vol. 1828, Page 599). Consequently, the Court finds that the affidavit was late and ineffective as a

matter of law. Further, the Court finds that the mineral rights in the Property, created by the 1947 severance to which the Dorr Heirs are successors, were not deemed abandoned.

The record further demonstrates that on December 16, 2011, Benny L. Morgan, on behalf of the defendant Dorr Heirs, filed a Claim to Preserve Mineral Interests in the Property. (Exhibit "C"). Consequently, the plaintiff Bender cannot simply start the process for seeking abandonment under the 2006 version of the DMA once again. If the plaintiff were to serve another notice, the date of that notice would be the reference point for the 20-year look back period under the current version of the code. The recorded Claim to Preserve of the defendant Dorr Heirs (Vol. 1844, Page 692) is a Savings Event which would preclude abandonment. Further, since the recording of the Claim to Preserve, a separate tax parcel number has been created by Columbiana County for the mineral interest of the Property, in the names of the Dorr Heirs. This separate tax parcel designation (2704111000) is another Savings Event which precludes the plaintiff Bender from attempting to use the procedures outlined in the current version of the DMA.

IV. Conclusion.

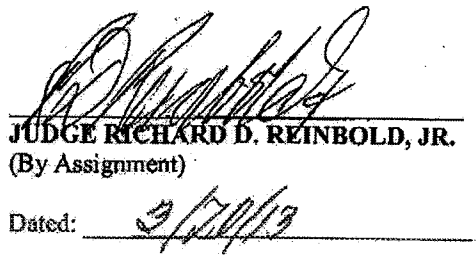
The Court finds that there are no genuine issues of material fact remaining for trial in this case, and the Dorr Heirs are entitled to judgment as a matter of law. Consequently, the motion for summary judgment of the defendant Dorr Heirs is hereby GRANTED, and the plaintiff's motion for summary judgment is DENIED.

The Court hereby declares and determines that the defendant Dorr Heirs are the holders of the mineral interests in the Property, pursuant to the 1947 severance of such interests. Thus,

title to those interests is hereby quieted in the names of the Dorr Heirs, and a certified copy of this judgment entry shall be recorded pursuant to R.C. 5303.01.

The Court further finds that there is no just reason for delay.

IT IS SO ORDERED.



JUDGE RICHARD D. REINBOLD, JR.
(By Assignment)

Dated: 3/20/13

Copies to:

Robert J. Tscholl, Esq.
James F. Mathews, Esq.
Richard V. Zurz, Jr., Esq./Mark A. Ropchock, Esq.
Steven G. Janik, Esq./Audrey K. Bentz, Esq.

TO THE CLERK OF COURT AND COUNTY RECORDER

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TO THE CLERK OF COURT

This is a Final Appealable Order, in accordance with Ohio R. Civ. P. 54(A), and the Clerk of Courts is directed to serve filed-stamped copies of this Entry to counsel of record, pursuant to Ohio R. Civ. P. 58(B).

JUDGE RICHARD D. REINBOLD, JR.
(By Assignment)

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, OHIO

FILED
COMMON PLEAS COURT
2013 JUN 17 P 3:26
JOHN A. MERIGAN
CLERK OF COURTS
JEFFERSON COUNTY, OH

DAN L. SWARTZ et al Plaintiffs -vs- JAY HOUSEHOLDER SR et al Defendants	JOURNAL ENTRY GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND OVERRULING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT Case No. 12CV328

This case arises as a dispute over the ownership of the mineral, oil, gas, etc rights of certain real estate (hereinafter referred to as the "subject real estate"). The parties have entered into stipulations of fact which resolve the factual issues, and both the plaintiffs and defendants have filed motions for summary judgment. The Court, therefore, considers each parties motion in accordance with Civil Rule 56 and the standard required by said rule and the case law applicable thereto.

The parties stipulate that plaintiffs are the owners of the entire surface of the subject real estate of approximately 71.8 acres but dispute the ownership of the mineral, oil and gas rights.

The plaintiffs contend that they are the owner of the oil and gas (the "mineral interest") rights as they are the surface owner of the real estate and, that by virtue of ORC§5301.56, the Dormant Minerals Act of 1989 (hereinafter the "DMA of 1989"), they are vested with said mineral interest by operation of law.

The plaintiffs additionally contend that they are the owner of the mineral rights by virtue of ORC§5301.56, the Dormant Minerals Act of 2006 (hereinafter the "DMA of 2006").

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The defendants contend that the DMA of 1989 did not divest them of the mineral interest and, secondly, that they had preserved their mineral interest in accordance with the DMA of 2006.

Two issues are addressed by the parties in their motions for summary judgment as being dispositive of the issues of ownership of the mineral interest underlying the subject real estate, and the Court addresses each issue as follows:

Issue #1 is the application of ORC§5301.56, the Dormant Minerals Act of 1989, as if existed prior to 2006 (hereinafter referred to as the DMA of 1989), and whether said DMA of 1989 was self-executing as to the abandonment of **mineral, oil, gas, etc. rights** which had been reserved under reservation clauses included in deeds conveying title to real estate.

Issue #2 is the application of ORC§5301.56, the Dormant Minerals Act of 2006, as it currently exists after having been amended by legislation in 2006 (hereinafter referred to as the DMA of 2006). Said DMA of 2006 is very similar to the DMA of 1989 but includes notification actions to be taken by the surface owner of the real estate in order to effectuate the abandonment of dormant mineral rights.

Plaintiffs chain of title and the subject reservations contained therein are not at issue.

The Court finds the following facts have been established by the parties stipulation and the documents which have been properly submitted by the parties:

As Regards the 1946 Reservation of the Mineral Interest:

On August 30, 1946, Elva L. Lawrence, Alma J. Lawrence, Chellissa Swickard, Walter Swickard, Jetta A. Householder, and Arthur L. Householder (the "reserving parties"), transferred the property to Cleve Landis and Marie Landis, husband and wife, by Warranty

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Deed recorded September 12, 1946, at Volume 214, page 127, of the Official Records of Jefferson County, Ohio, reserving the mineral interest to themselves (the "reserving deed"). (See Stip., ¶3) The reserving deed conveyed the property with the following limitation:

> Excepting and reserving all minerals underlying said premises. This reservation of minerals includes coal, clay, oil, and gas, and any and all other minerals whether named herein or not, underlying the above described premises, together with all mineral rights incident to the mining and removing or developing said minerals.

(See Ex. B attached to plaintiff's Complaint)

Defendants claim to own the mineral interest as heirs of the reserving parties based upon the reserving deed (See Stip. ¶1; Ex.F; Answer ¶5). The reserving parties never conveyed the mineral interest to any of the defendants (nor to anyone else, for that matter) (See Stip. ¶10). Defendants are, however, the only living heirs of the reserving parties, and so it is believed that they are entitled to ownership of the mineral interest if it has not been abandoned by operation of law (See Stip. ¶¶4, 10). Plaintiffs are the fee owners of the property, which was conveyed to them by warranty deed without reservations recorded May 8, 2002, at Official Record Volume 486, page 873 (See Stip.¶1; Ex.B). If the mineral interest has vested in the surface owner of the property, it has vested in the plaintiffs (See Stip.¶1; See Ex. B).

As to Issue #1, the Court finds that the DMA of 1989 is applicable to the issue of the ownership of the mineral interest, that by the clear wording of said DMA of 1989 (§5301.56(B)(1), as highlighted below) said statute was self-executing and that under the facts as stipulated in this case the excepting and reserving clause contained within plaintiffs' chain of title is not now effective having been abandoned by inaction as contemplated by said statute.

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The Court finds, therefore, that by virtue of the application of the DMA of 1989, the plaintiffs are the owner of the mineral interest.

Said DMA of 1989 states, in pertinent part as follows:

§5301.56(B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, *shall be deemed abandoned* and *vested in the owner of the surface*, if none of the following applies:

(a) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code.

(b) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(c) Within the preceding twenty years, one or more of the following has occurred:

(i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located;

(ii) There as been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located;

(iii) The mineral interest has been used in underground gas storage operations by the holder.

(iv) The drilling or mining permit has been issued to the holder, provide that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 of the Revised Code, in the office of the county recorder of the county in which the lands are located.

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(v) A claim to preserve the interest has been filed in accordance with division (c) of this section.

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

[Emphasis added]

Subsequent to the conveyance by Elva Lawrence and Alma Lawrence to the plaintiffs' predecessor in title (to-wit: Cleve Landis and Maris Landis on August 30, 1946), and on March 17, 1978, Elva L Lawrence and Alma J Lawrence executed an oil and gas lease as lessors to Beldon and Blake Corp (Lease Volume 54, page 710) for a term of twenty (20) years; however, no activity was ever commenced.

Also, subsequent to the conveyance by Elva Lawrence and Alma Lawrence to the plaintiffs said predecessors in title on July 12, 1979, a Certificate of Transfer was recorded from Elva Lawrence to Alma Lawrence (Volume 588, page 284) purporting to transfer the subject real estate but also containing the same exception and reserving clause previously referenced.

Neither the mineral lease to Belden and Blake Corp, nor the Certificate of Transfer (Volume 588, page 284), are activities which under the statute prevent the abandonment of said mineral interests. No activities were ever commenced under said oil and gas lease. The Certificate of Transfer was executed subsequent to the conveyance of the subject real estate to the plaintiffs (therefore there was no interest to be transferred) and, further, the Certificate of Transfer specifically contained the same previously referenced excepting and reserving clause, so even had it been effective, it would not have been a title transaction of which the mineral interest had been the subject.

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Further, even had the oil and gas lease (dated March 17, 1978) or the Certificate of Transfer (dated July 12, 1979) been considered as such a title transaction, the twenty year period of inactivity would have run, at the latest, on July 13, 1999, prior to the effective date of the DMA of 2006 and subsequent to the effective date of the DMA of 1989 which, including the three (3) year grace period, is March 22, 1992. Thus, the mineral rights vested in the surface owner on or before July 13, 1999.

Defendants contention that the twenty (20) year term of the lease caused a tolling of the twenty (20) year statutory period of inactivity contemplated by the DMA of 1989 is unpersuasive and not supported by any persuasive authority.

Said statute (DMA of 1989) is found to be self-executing upon the happening of the actions stated therein and no action on behalf of the plaintiffs was necessary to effectuate the abandonment. None of the provisions listed in §5301.56(B)((1)(a)-(c) applies to the facts in this case.

Plaintiffs are, therefore, found to be the owner of the mineral interest.

As to Issue #2, the Court finds that the issues in this case have been determined as stated in the findings under **Issue #1**, and that **Issue #2**, the DMA of 2006, is not applicable to this matter but rather the DMA of 1989 is determinative. Further, the Court finds that the DMA of 2006 is not retroactive but applies only prospectively in accordance with ORC§1.48 as the same was not "expressly made retroactive" as is required under said statute.

The Court finds, based upon the pleadings, all matters in the court file and affidavits timely filed in this action, that there is no genuine issue of material fact and, reasonable minds can come to but one conclusion even when viewing the evidence most favorably in favor of the

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defendant, and that conclusion is adverse to the defendant, and plaintiffs are entitled to judgment as a matter of law, and the Court hereby GRANTS summary judgment in favor of the plaintiffs.

The plaintiffs as owners of the surface are found to be the owner of the mineral rights underlying the subject real estate, and title to the same shall be quieted in favor of the plaintiffs.

Further, based upon the above, the defendants' motion for summary judgment is hereby OVERRULED.

The Court is aware that this ruling has the effect of finding that, based upon the DMA of 1989, many excepting and reserving clauses in current deeds actually may be of no effect, in that they no longer except or reserve the mineral rights and, thus, surface land owners may actually also be owners of the mineral rights as regards minerals underlying the surface lands, not withstanding an exception or reservation of mineral clause included in the deed conveying the real estate to the surface owner; however, that is the clear intent of the legislators in their enactment of the DMA of 1989, as well as the DMA of 2006. The function of the Court in this matter is to interpret and apply the law as enacted by the legislature as there was no challenge to the statute itself.

The plaintiffs shall prepare any documents necessary for recording and quieting plaintiffs' mineral interest.

THIS IS A FINAL APPEALABLE ORDER AND THERE IS NO JUST CAUSE FOR DELAY.

Judge David E Henderson

cc:
Clinton G Bailey Esq
Brandon Cogswell Esq

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IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, OHIO

FILED
COMMON PLEAS COURT
2013 JUL 17 P 3:26
JOHN CORRIGAN
CLERK OF COURTS
JEFFERSON COUNTY, OH

ERNEST SHANNON et al Plaintiffs	:	JOURNAL ENTRY GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND OVERRULING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
-vs-	:	
JAY HOUSEHOLDER SR et al	:	
Defendants	:	Case No. 12CV226

This case arises as a dispute over the ownership of the mineral, oil, gas, etc rights of certain real estate (hereinafter referred to as the "subject real estate"). The parties have entered into stipulations of fact which resolve the factual issues, and both the plaintiffs and defendants have filed motions for summary judgment. The Court, therefore, considers each parties motion in accordance with Civil Rule 56 and the standard required by said rule and the case law applicable thereto.

The parties stipulate that plaintiffs are the owners of the entire surface of the subject real estate of approximately 118 acres but dispute the ownership of the mineral, oil and gas rights.

Three issues are addressed by the parties in their motions for summary judgment as being dispositive of the issues of ownership of the mineral, oil, gas, etc. underlying the subject real estate, and the Court addresses each issue as follows:

Issue #1 is the interpretation and meaning of the following clause (hereinafter referred to as the reservation clause with limitations) which is included in plaintiffs' deed to the subject

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real estate as conveyed to the plaintiffs from Elva Lawrence and Alma Lawrence by warranty deed recorded at Deed Volume 542, page 515 (dated April 9, 1976), to-wit:

> EXCEPTING AND RESERVING all the coal, oil and gas and other minerals in, on and under said premises, with all the mining rights necessary and incident thereto. And further the right to mine and remove the said coal and to make all the necessary openings and entries in doing so; with the further right to erect all ventilation and other necessary openings in mining and removing said coal therefrom, with the further right to erect and construct tipples and tracks and other structures on the land. And also the right to drill and operate for oil and gas on said premises, with all the rights necessary and incident thereto.
>
> These exceptions and reservations are limited to those property rights which have been excepted and reserved in Grantors' chain of title.

Issue #2 is the application of ORC§5301.56, the Dormant Minerals Act of 1989, as it existed prior to 2006 (hereinafter referred to as the "DMA of 1989"), and whether said DMA of 1989 was self-executing as to the abandonment of **mineral, oil, gas, etc. rights** which had been reserved under reservation clauses included in deeds conveying title to real estate.

Issue #3 is the application of ORC§5301.56, the Dormant Minerals Act of 2006, as it currently exists after having been amended by the legislation in 2006 (hereinafter referred to as the "DMA of 2006"). Said DMA of 2006 is very similar to the DMA of 1989 but includes <u>notification actions</u> to be taken by the surface owner of the real estate in order to effectuate the abandonment of dormant mineral rights.

Plaintiffs chain of title and the subject reservations contained therein are not at issue. For ease of analysis the plaintiffs refer to mineral rights in their chain of title in two manners, to-wit:

> (1) **the one-half "transferred mineral rights"** as relates to the conveyance from the Estate of J H Lawrence of a 1/4 interest to his daughter, Elva L Lawrence, and of a 1/4 interest to his daughter, Alma J Lawrence (Certificate of Transfer Volume 213, page 252, on August 9, 1946) and, thereafter, from Elva L

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Lawrence and Alma J Lawrence to plaintiffs (Warranty Deed Volume 542, page 515, on August 9, 1976). Said Certificate of Transfer (Volume 213, page 252) contains no mineral reservation clause.

(2) the one-half "reserved mineral interest" as relates to the conveyances from the estate of J H Lawrence of a 1/4 interest to his daughter, Chellissa Swickard, (Certificate of Transfer Volume 213, page 252) and of a 1/4 interest to his daughter, Jetta Householder, (Certificate of Transfer Volume 213, page 252). The Certificate of Transfer contains no mineral reservation clause. However, the subsequent conveyance from Chellissa Swickard (Volume 349, page 384) to Elva Lawrence and Alma Lawrence, as well as the subsequent conveyance from the heirs of Jetta Householder (Volume 283, page 213 and Volume 283, page 209) to Elva Lawrence and Alma Lawrence do contain "coal, oil, gas and other minerals" reservations, to-wit:

EXCEPTING AND RESERVING all the coal, oil and gas and other minerals in, on and under said premises, with all the mining rights necessary and incident thereto. And further the right to mine and remove the said coal and to make all the necessary openings and entries in doing so, with the further right to erect all ventilation and other necessary openings in mining and removing said coal therefrom, with the further right to erect and construct tipples and tracks and other structures on the land. And also the right to drill and operate for oil and gas on said premises, with all the rights necessary and incident thereto.

As to Issue #1, the Court finds that the excepting and reserving clause with limitations contained in plaintiffs' deed from Elva L Lawrence and Alma J Lawrence (the grantors)(Deed Volume 542, page 515, dated April 9, 1976) is not effective to have reserved the mineral rights as to the referenced "one-half transferred rights". The Court finds that the language in said excepting and reserving clause is clear and unambiguous and clearly states that:

> These exceptions and reservations are limited to those property rights which have been excepted and reserved in Grantors' chain of title.

Thus, this limitation clause is clearly a part of and related to the claimed excepting and reserving clause. There were no mineral rights reservations contained within the grantors' chain of title when conveyed from the Estate of J. H. Lawrence to Elva L. Lawrence and Alma J. Lawrence, nor were there any conveyances of said mineral rights from Elva Lawrence and Alma

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Lawrence prior to their conveyance to the plaintiffs on April 9, 1976. Therefore, by the clear wording of said conveyance there were no mineral rights reserved, as there were no property rights excepted and reserved within the chain of title when conveyed to the plaintiffs.

Plaintiffs are, therefore, found to be the owner of the "one-half transferred mineral rights".

As to Issue #2, the Court finds that the DMA of 1989 is applicable to the issue of the ownership of the "one-half reserved mineral interest", that by the clear wording of said DMA of 1989 (§5301.56(B)(1), as highlighted below) said statute was self-executing and that under the facts as stipulated in this case the excepting and reserving clause contained within plaintiffs' chain of title is not now effective having been abandoned by inaction as contemplated by said statute.

The Court finds, therefore, that by virtue of the application of the DMA of 1989, the plaintiffs are the owner of the "one-half reserved mineral interest".

Said DMA of 1989 states, in pertinent part as follows:

> §5301.56(B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, *shall be deemed abandoned* and *vested in the owner of the surface*, if none of the following applies:
>
> (a) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code.
>
> (b) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.
>
> (c) Within the preceding twenty years, one or more of the following has occurred:
>
> (i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder

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of the county in which the lands are located;

(ii) There as been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located;

(iii) The mineral interest has been used in underground gas storage operations by the holder.

(iv) The drilling or mining permit has been issued to the holder, provide that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(v) A claim to preserve the interest has been filed in accordance with division (c) of this section.

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

[Emphasis added]

Subsequent to the conveyance by Elva Lawrence and Alma Lawrence to the plaintiffs (dated April 9, 1976), on March 17, 1978, Elva L Lawrence and Alma J Lawrence executed an oil and gas lease as lessors to Beldon and Blake Corp (Lease Volume 54, page 710); however, no activity was ever commenced.

Also, subsequent to the conveyance by Elva Lawrence and Alma Lawrence to the plaintiffs (dated April 9, 1976), on July 12, 1979, a Certificate of Transfer was recorded from

Elva Lawrence to Alma Lawrence (Volume 588, page 284) purporting to transfer the subject real estate but also containing the same exception and reserving clause previously referenced.

Neither the mineral lease to Belden and Blake Corp, nor the Certificate of Transfer (Volume 588, page 284), are activities which under the statute prevent the abandonment of said mineral interests. No activities were ever commenced under said oil and gas lease. The Certificate of Transfer was executed subsequent to the conveyance of the subject real estate to the plaintiffs (therefore there was no interest to be transferred) and, further, the Certificate of Transfer specifically contained the same previously referenced excepting and reserving clause, so even had it been effective, it would not have been a title transaction of which the mineral interest had been the subject.

Further, even had the oil and gas lease (dated March 17, 1978) or the Certificate of Transfer (dated July 12, 1979) been considered as such a title transaction, the twenty year period of inactivity would have run, at the latest, on July 13, 1999, prior to the effective date of the DMA of 2006 and subsequent to the effective date of the DMA of 1989 which, including the three (3) year grace period, is March 22, 1992. Thus, the mineral rights vested in the surface owner on or before July 13, 1999.

Said statute (DMA of 1989) is found to be self-executing upon the happening of the actions stated therein and no action on behalf of the plaintiffs was necessary to effectuate the abandonment. None of the provisions listed in §5301.56(B)((1)(a)-(c) applies to the facts in this case.

Plaintiffs are, therefore, found to be the owner of the "one-half reserved mineral interest".

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As to Issue #3, the Court finds that the issues in this case have been determined as stated in the findings under Issue #1 and Issue #2, and that Issue #3, the DMA of 2006, is not applicable to this matter but rather the DMA of 1989 is determinative. Further, the Court finds that the DMA of 2006 is not retroactive but applies only prospectively in accordance with ORC§1.48 as the same was not "expressly made retroactive" as is required under said statute.

The Court finds, based upon the pleadings, all matters in the court file and affidavits timely filed in this action, that there is no genuine issue of material fact and; reasonable minds can come to but one conclusion even when viewing the evidence most favorably in favor of the defendant, and that conclusion is adverse to the defendant, and plaintiffs are entitled to judgment as a matter of law, and the Court hereby GRANTS summary judgment in favor of the plaintiffs.

The plaintiffs are found to be the owner of the mineral rights underlying the subject real estate, and title to the same shall be quieted in favor of the plaintiffs.

Further, based upon the above, the defendants' motion for summary judgment is hereby OVERRULED.

The Court is aware that this ruling has the effect of finding that many excepting and reserving clauses in current deeds actually may be of no effect, in that they do not except or reserve the mineral rights and, thus, surface land owners may actually also be owners of the mineral rights as regards minerals underlying the surface lands, not withstanding an exception or reservation of mineral clause included in the deed conveying the real estate to the surface owner; however, that is the clear intent of the legislators in their enactment of the DMA of 1989, as well as the DMA of 2006. The function of the Court in this matter is to interpret and

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apply the law as enacted by the legislature as there was no challenge to the statute itself.

The plaintiffs shall prepare any documents necessary for recording and quieting plaintiffs' mineral interest.

THIS IS A FINAL APPEALABLE ORDER AND THERE IS NO JUST CAUSE FOR DELAY.

Judge David E Henderson

cc:

Clinton G Bailey Esq
Brandon Cogswell Esq

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Current through Legislation passed by the 130th General Assembly
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*** Annotations current through April 14, 2014 ***

TITLE 15. CONSERVATION OF NATURAL RESOURCES
CHAPTER 1551. ENERGY

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ORC Ann. 1551.18 (2014)

§ 1551.18. State energy planning purposes declared

The general assembly finds and declares that it is an essential government function and public purpose of the state to promote the efficient utilization of energy, encourage the increased utilization of the state's indigenous energy resources, promote the development of renewable energy resources, and foster increased cooperation among all levels of government for the preservation or creation of jobs and employment opportunities, the encouragement of economic growth, the promotion of the general welfare, the protection of the public health and safety, and the protection of environmental quality.

HISTORY:

137 v H 415. Eff 12-14-77.

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TITLE 53. REAL PROPERTY
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES
MARKETABLE TITLE ACT

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ORC Ann. 5301.47 (2014)

§ 5301.47. Definitions

As used in sections 5301.47 to 5301.56, inclusive, of the Revised Code:

(A) "Marketable record title" means a title of record, as indicated in section 5301.48 of the Revised Code, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in section 5301.50 of the Revised Code.

(B) "Records" includes probate and other official public records, as well as records in the office of the recorder of the county in which all or part of the land is situate.

(C) "Recording," when applied to the official public records of the probate or other court, includes filing.

(D) "Person dealing with land" includes a purchaser of any estate or interest therein, a mortgagee, a levying or attaching creditor, a land contract vendee, or any other person seeking to acquire an estate or interest therein, or impose a lien thereon.

(E) "Root of title" means that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.

(F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

HISTORY:

129 v 1040. Eff 9-29-61.

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*** Annotations current through April 14, 2014 ***

TITLE 53. REAL PROPERTY
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES
MARKETABLE TITLE ACT

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ORC Ann. 5301.55 (2014)

§ 5301.55. Liberal construction

Sections 5301.47 to 5301.56, inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in section 5301.48 of the Revised Code, subject only to such limitations as appear in section 5301.49 of the Revised Code.

HISTORY:

129 v 1040. Eff 9-29-61.

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TITLE 53. REAL PROPERTY
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES
MARKETABLE TITLE ACT

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ORC Ann. 5301.56 (2014)

§ 5301.56. Abandonment of mineral interest and vesting in owner of surface of lands

(A) As used in this section:

(1) "Holder" means the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) "Drilling or mining permit" means a permit issued under Chapter 1509., 1513., or 1514. of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(3) "Mineral interest" means a fee interest in at least one mineral regardless of how the interest is created and of the form of the interest, which may be absolute or fractional or divided or undivided.

(4) "Mineral" means gas, oil, coal, coalbed methane gas, other gaseous, liquid, and solid hydrocarbons, sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or another material or substance of commercial value that is excavated in a solid state from natural deposits on or in the earth.

(5) "Owner of the surface of the lands subject to the interest" includes the owner's successors and assignees.

(B) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface of the lands subject to the interest if the requirements established in division (E) of this section are satisfied and none of the following applies:

(1) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code. However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that are not in coal may be deemed abandoned and vest in the owner of the surface of the lands subject to the interest.

(2) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(3) Within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section, one or more of the following has occurred:

(a) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.

(b) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands,

or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(c) The mineral interest has been used in underground gas storage operations by the holder.

(d) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(e) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section.

(f) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

(C) (1) A claim to preserve a mineral interest from being deemed abandoned under division (B) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be recorded in accordance with division (H) of this section and sections 317.18 to 317.20 and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

(a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;

(b) Otherwise complies with section 5301.52 of the Revised Code;

(c) States that the holder does not intend to abandon, but instead to preserve, the holder's rights in the mineral interest.

(2) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

(3) Any holder of an interest for use in underground gas storage operations may preserve the holder's interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

(D) (1) A mineral interest may be preserved indefinitely from being deemed abandoned under division (B) of this section by the occurrence of any of the circumstances described in division (B)(3) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

(2) The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section 5301.332 of the Revised Code.

(E) Before a mineral interest becomes vested under division (B) of this section in the owner of the surface of the lands subject to the interest, the owner of the surface of the lands subject to the interest shall do both of the following:

(1) Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned. If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each county in which the land that is subject to the interest is located. The notice shall contain all of the information specified in division (F) of this section.

(2) At least thirty, but not later than sixty days after the date on which the notice required under division (E)(1) of this section is served or published, as applicable, file in the office of the county recorder of each county in which the surface of the land that is subject to the interest is located an affidavit of abandonment that contains all of the information specified in division (G) of this section.

(F) The notice required under division (E)(1) of this section shall contain all of the following:

(1) The name of each holder and the holder's successors and assignees, as applicable;

(2) A description of the surface of the land that is subject to the mineral interest. The description shall include the volume and page number of the recorded deed or other recorded instrument under which the owner of the surface of the lands claims title or otherwise satisfies the requirements established in division (A)(3) of section 5301.52 of the Revised Code.

(3) A description of the mineral interest to be abandoned. The description shall include the volume and page number of the recorded instrument on which the mineral interest is based.

(4) A statement attesting that nothing specified in division (B)(3) of this section has occurred within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section;

(5) A statement of the intent of the owner of the surface of the lands subject to the mineral interest to file in the office of the county recorder an affidavit of abandonment at least thirty, but not later than sixty days after the date on which notice is served or published, as applicable.

(G) An affidavit of abandonment shall contain all of the following:

(1) A statement that the person filing the affidavit is the owner of the surface of the lands subject to the interest;

(2) The volume and page number of the recorded instrument on which the mineral interest is based;

(3) A statement that the mineral interest has been abandoned pursuant to division (B) of this section;

(4) A recitation of the facts constituting the abandonment;

(5) A statement that notice was served on each holder or each holder's successors or assignees or published in accordance with division (E) of this section.

(H) (1) If a holder or a holder's successors or assignees claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned, the holder or the holder's successors or assignees, not later than sixty days after the date on which the notice was served or published, as applicable, shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located one of the following:

(a) A claim to preserve the mineral interest in accordance with division (C) of this section;

(b) An affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section.

The holder or the holder's successors or assignees shall notify the person who served or published the notice under division (E) of this section of the filing under this division.

(2) If a holder or a holder's successors or assignees who claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned fails to file a claim to preserve the mineral interest, files such a claim more than sixty days after the date on which the notice was served or published under division (E) of this section, fails to file an affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section, or files such an affidavit more than sixty days after the date on which the notice was served or published under that division, the owner of the surface of the lands subject to the interest who is seeking to have the interest deemed abandoned and vested in the owner shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located a notice of failure to file. The notice shall contain all of the following:

(a) A statement that the person filing the notice is the owner of the surface of the lands subject to the mineral interest;

(b) A description of the surface of the land that is subject to the mineral interest;

(c) The statement: "This mineral interest abandoned pursuant to
affidavit of abandonment recorded in volume ....., page ....."

Immediately after the notice of failure to file a mineral interest is recorded, the mineral interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder or the former holder's successors or as-

signees against the owner of the surface of the lands formerly subject to the interest. However, the abandonment and vesting of a mineral interest pursuant to divisions (E) to (I) of this section only shall be effective as to the property of the owner that filed the affidavit of abandonment under division (E) of this section.

(I) For purposes of a recording under this section, a county recorder shall charge the fee established under section 317.32 of the Revised Code.

HISTORY:

142 v S 223. Eff 3-22-89; 151 v H 288, § 1, eff. 6-30-06; 2013 HB 72, § 1, eff. Jan. 30, 2014.