ORIGINAL

Case No. 2014-0067

In the Supreme Court of Ohio

ON CERTIFICATION OF QUESTION OF STATE LAW FROM
THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION
CASE NO. 2:12-CV-00916

CHESAPEAKE EXPLORATION, L.L.C., ET AL.,
Petitioners-Petitioners,
v.
KENNETH BUELL, ET AL.,
Defendants-Respondents.

RESPONDENTS ARIEH AND SUNNI ORDRONNEAU, DENNIS AND MARGARET ELIAS, AND JEFFREY AND JANICE ELIAS' MERIT BRIEF - APPENDIX

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APPENDIX

EXHIBIT

A

OH ST § 5301.56

<<+SEC. 5301.56. (A) AS USED IN THIS SECTION:+>>

<<+(1) "HOLDER" MEANS THE RECORD HOLDER OF A MINERAL INTEREST. AND ANY PERSON WHO DERIVES HIS 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.+>>

<<+(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 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. 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 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.+>>

(2) <<+A MINERAL INTEREST SHALL NOT BE DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION BECAUSE NONE OF THE

CIRCUMSTANCES DESCRIBED IN THAT DIVISION APPLY. UNTIL THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION.+>>

<<+(C)(1) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION MAY BE FILED FOR RECORD BY ITS HOLDER. SUBJECT TO DIVISION (C)(3) OF THIS SECTION. THE CLAIM SHALL BE FILED AND RECORDED IN ACCORDANCE WITH SECTIONS 317.18 TO 317.201 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. HIS 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 HIS 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)(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.+>>

(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.+>>

Section 2. That existing sections 317.08. 317.18. 317.20. 317.201. and 5301.53 and section 5301.56 of the Revised Code are hereby repealed.

Approved December 21. 1988.

OH LEGIS 314

EXHIBIT

B

2006 ORC Ann. 5301.56

2006 Ohio Code Archive

PAGE'S OHIO REVISED CODE ANNOTATED > *TITLE 53.* > *CHAPTER 5301.* > *MARKETABLE TITLE ACT*

§ 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 [5301.25.2] 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 filed and recorded in accordance with division (H) of this section and *sections 317.18* to *317.201 [317.20.1]* 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 [5301.33.2] 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 cause the county recorder of each applicable county to memorialize the record on which the severed mineral interest is based with the following: "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ....., page ....."

Immediately after the county recorder memorializes the record, 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 assignees 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*.

A county recorder who uses microfilm as provided under section 9.01 of the Revised Code may require the memorial "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ....., page ....." to be located on the affidavit of abandonment instead of the record on which the severed mineral interest is based, and the affidavit may be recorded under section 317.08 of the Revised Code.

History

142 v S 223. Eff 3-22-89; *151 v H 288, § 1, eff. 6-30-06.*

PAGE'S OHIO REVISED CODE ANNOTATED

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EXHIBIT

C

ORC Ann. 5301.56

Current through Legislation passed by the 130th General Assemblyand filed with the Secretary of State through File 94 Annotations current through April 14, 2014

Page's Ohio Revised Code Annotated > *TITLE 53. REAL PROPERTY* > *CHAPTER 5301. CONVEYANCES; ENCUMBRANCES* > *MARKETABLE TITLE ACT*

§ 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 assignees 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.*

Annotations

Notes

Section Notes

Editor's Notes

Not analogous to former 5301.56 (129 v 1040; 130 v 1247; 135 v S 267; 135 v H 1231) repealed 142 v S 223, eff 3-22-89.

EFFECT OF AMENDMENTS

The 2013 amendment, in the second sentence of the introductory language of (C)(1), deleted "filed and" following "claim shall be" and substituted "sections 317.18 to 317.20 and 5301.52" for "sections 317.18 to 317.201 and 5301.52"; in the introductory language of (H)(1), substituted "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" for "cause the county recorder of each applicable county to memorialize the record on which the severed mineral interest is based with the following" in the first sentence and added the second sentence; added (H)(2)(a) and (H)(2)(b); added the (H)(2)(c) designation; added "The statement" to the beginning of (H)(2)(c); and substituted "notice of failure to file a mineral interest is recorded" for "county recorder memorializes the record" in the first sentence of the second paragraph of (H)(2); and deleted the second paragraph of (I), pertaining to the usage of the microfilm by the county recorder.

151 v H 288, effective June 30, 2006, rewrote the section.

Case Notes

ABANDONMENT.
APPLICABILITY.
NOTICE.
PRESERVING INTERESTS.
SUMMARY JUDGMENT.

Case Notes

ANALYSIS

ABANDONMENT.

Mere mention of the mineral interest reservation in the 1970 and 1977 deeds did not make the mineral interest "the subject of" the title transactions; instead, "the subject of" those title transactions

was the conveyance of the surface estate, and thus, the 1970 and 1977 deeds were not savings events under either the 1989 version or the current version of R.C. 5301.56. Walker v. Shondrick-Nau, 2014 Ohio App. LEXIS 1443, 2014-Ohio-1499, (Apr. 3, 2014).

Trial court's decision to grant summary judgment to heirs on the basis of subsection (B)(3)(a) was incorrect because gas and mineral interest were not the subject of the title transaction, and there was no evidence in the record that the oil and gas interests were the "subject of" a title transaction in the 20 years immediately preceding the publishing of the notice to claim the mineral interests were abandoned. Dodd v. Croskey, 2013 Ohio App. LEXIS 4475, 2013-Ohio-4257, (Sept. 23, 2013).

APPLICABILITY.

2006 version of R.C. 5301.56 did not specifically provide for retroactive application; thus, the 1989 version, which was in effect at the relevant time to render the mineral interest vested in the surface owner, controlled. Walker v. Shondrick-Nau, 2014 Ohio App. LEXIS 1443, 2014-Ohio-1499, (Apr. 3, 2014).

NOTICE.

Alleged inadequate notice did not provide a reason for granting summary judgment to heirs because the published notice intent to claim abandonment reached one of the parties claiming to have interest, and that party took timely action to preserve the mineral interests, and thus, failure to strictly comply with the notice requirement amounted to harmless error; the language of subsection (F), indicates that there must be an attempt to notify by certified mail. Dodd v. Croskey, 2013 Ohio App. LEXIS 4475, 2013-Ohio-4257, (Sept. 23, 2013).

PRESERVING INTERESTS.

Heirs preserved their mineral rights because they filed an affidavit preserving minerals within sixty days of owners' published notice of intent to claim abandonment of oil and gas interests in their property, and the affidavit complied with subsection (H)(1)(a). Dodd v. Croskey, 2013 Ohio App. LEXIS 4475, 2013-Ohio-4257, (Sept. 23, 2013).

Subsection (H)(1)(a) allows for a mineral interest holder to take a present action by filing a claim to preserve the mineral interest after notice, even though the claim was not filed within the 20 years immediately preceding notice; the law requires that the courts favor individual property rights when interpreting forfeiture statutes, and allowing for a present act to prevent forfeiture of the mineral interest favors individual property rights. Dodd v. Croskey, 2013 Ohio App. LEXIS 4475, 2013-Ohio-4257, (Sept. 23, 2013).

Clear language of subsection(H)(1)(a) does not require the claim to preserve the mineral interest to have been filed within the 20 years immediately preceding the notice, but rather it requires the claim to be filed within 60 days after the notice; the mere reference in subsection (C) to subsection (B) does not mean that a claim filed under subsection (H)(1)(a) has the same 20 year requirement that a claim filed under subsection (B) does. Dodd v. Croskey, 2013 Ohio App. LEXIS 4475, 2013-Ohio-4257, (Sept. 23, 2013).

SUMMARY JUDGMENT.

Trial court did not err in granting heirs summary judgment in owners' action to quiet title to the oil and gas interests because the owners did not provide any evidence to dispute the information

in the heirs' affidavit that the individuals listed in the affidavit preserving minerals were not mineral interest holders. *Dodd v. Croskey, 2013 Ohio App. LEXIS 4475, 2013-O*hio-4257, (Sept. 23, 2013).

Research References & Practice Aids

Cross-References to Related Statutes

Direct and reverse indexes, *RC § 317.18*.

Notice index, *RC § 317.201*.

Records to be kept by county recorder, *RC § 317.08*.

Sectional indexes, *RC § 317.20*.

Practice Manuals & Treatises

Anderson's Ohio Residential Real Estate Manual § 5.01 Overview of marketable title act

Anderson's Ohio Residential Real Estate Manual § 5.05 Exceptions

Page's Ohio Revised Code Annotated:
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EXHIBIT

D

SIGNED AND ACKNOWLEDGED IN PRESENCE OF:

Robert H. Farber

Ethel Bolier

The Muskingum Watershed Conservancy District -seal-

MUSKINGUM WATERSHED CONSERVANCY DISTRICT

By Newton Mansfield, ITS PRESIDENT

By Bryce O. 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 O. 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 22, 1944

Robert H. Farber, Notary Public

STATE OF OHIO, HARRISON COUNTY, ss.
Transfer not necessary-March 2, 1943 MH
Received for Record on March 2, 1943 at 5 P. M.
Recorded March 4, 1943
Fee $1.00 paid.

FRANK R. STEWART, Recorder

#1255 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 5 and 9; thence N. 1° 22" E. 93.6 perches to a

Date 2-13-13
Vol. DV 113 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

DEFENDANT'S EXHIBIT 4

post a white oak 24" N. 32° N. 58 links; thence N. 32½° W. 35.2 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. 50.8° 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 128 acres, 5 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 15, 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° 15' E. 20.94 feet; thence S. 28° 10' E. 654.27 feet to a post; thence N. 89° 20' E. 155.33 feet to a stake; thence S. 19° 18' W. 186.49 feet to a stake; thence S. 28° 10' E. 590.04 feet to a stake in the public road, from which a tack in a 36 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° 38' 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. 85.14 feet; thence S. 3° 30' W. 2007.50 feet to a post; thence S. 84° 14' E. 989.15 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. 15° 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. 1378.55 feet to a stake in the road from which a tack in a 24 in. wild cherry tree bears S. 25° 36' E. 59.0 feet and a tack in a 5 in. wild cherry tree bears N. 47° 12' W. 32.5 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° 28' 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. 32.15 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. 60° 07' E. 384.56 feet to a stake at the forks of the road; thence N. 4° 05' E. 3869.25 feet to a stone; thence N. 44° 56' W. 321.31 feet to a post; thence S. 56° 53' W. 1285.00 feet; thence S. 52° 30' W. 1237.5 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° 06' W. 380 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. 581;

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. 86.16 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. 62½° West 28 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, 3 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. 13° 02' E. 306.3 feet to a point in the center of the road, where a white oak 15 inches is East 16.55 feet; thence S. 8° 3' 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. 176.5 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 dated June 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 C. Worley, Agent, from The North American Coal Corporation, recorded in mortgage records of Harrison County, Ohio, Volume 63, p. 594.

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:

A part of the West half of Section No. 34, 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 2½° West 62.8 perches to a post and corner to lands owned by the heirs or Otho Baker, dec'd; thence North 88° West 156 perches to a post a white oak 28 inches South 6° West 57½ links; thence North 2½° East 102.2 perches to a post, a white oak 28 inches North 13° East 15 links a white oak 24 inches South 3 3/4° West 9 links; thence South 73° East 153 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. 156.

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 said 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.

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:

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 76.88 perches to a post; a white ash 20 inches, South 24½° East 71 links; thence North 87½° West 164.6 perches to a post on the quarter line, a white oak 28 inches North 7½° East 82 links; thence South 2¼° West 74.72 perches ~~passes~~ to a post a hickory 42 inches South 33½° East 38 links; thence South 86 3/4° East 183.56 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 91 links; thence North 86½° West 52 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 5½° 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 24.64 perches to the beginning, containing 15 acres, 2 roods and 25 perches.

FOURTH TRACT: A part of the Northwest quarter of Section 53 and a part of the Southwest Quarter of Section 54, in Township 10, Range 4. Beginning at a post on the west line of Section 54, and corner to lands of W. S. 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 67.54 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 53° East 12 links; thence North 88° West 67.54 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. 154.

Subject to a Mortgage Deed dated August 18, 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, 1943, and this deed is made subject to same, with right to harvest and remove wheat sowed in Fall of 1942.

Z. 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. 87 links; thence S. 1 3/4° W. 50 perches; thence S.87° E. 55 perches, a white oak 30" S. 53 3/4° E. 42 links and another White Oak 16" S. 47° E. 53 links; thence N. 1 3/4° E. 68.35 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. 17.53 perches; thence N. 1/2° E. 21.72 perches; thence N. 15 3/4° W. 14.8 perches a

chestnut 15" S. 13 3/4° W. 3 links; thence N. 87° W. 85.6 perches, a white oak 18" S. 14° E. 28 links; thence S. 1 3/4° W. 54 perches, a white oak 30" N. 65° W. 21½ links; thence S. 19° E. 20 perches to a post; thence S. 12½° W. 37.75 perches; thence S. 38½° W. 12.56 perches; thence S. 87° E. 125 perches to the beginning, containing 89 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. 55.9 perches, a white oak stump 24" N. 40½° W. 43 links; thence S. 3½° W. 42.23 perches; thence N.79° W. 36.4 perches to a post on the quarter section line; thence N. 2° 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. 3½° W. 23.6 perches; thence N. 78½° W. 40.53 perches to a black walnut 15" in diameter; thence N. 39° E. 22.86 perches in the road; thence S. 83° E. 28.66 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. 529.

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 said 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.

5. 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 86° 56' East 1508.5 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 82° 40' West 503.4 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 349.3 feet to a post on Pennsylvania Railroad right-of-way; thence South 35° 16' West 396.0 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 56, 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. 203 links; thence South 3° West 77.84 perches to a stone corner on the center on the West 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 29.3 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. 394.

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 56, 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. 203 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 25° 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.1948.

Signed in the presence of

M H. Rossnow

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, 1948.

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

$126.40 U. S. Rev. stamps attached & cancelled.

STATE OF OHIO, HARRISON COUNTY, ss.
Transferred March 2, 1948 MH
Received for Record on March 2, 1948 at 4:15 P. M.
Recorded March 5, 1948
Fee $7.00 paid.

FRANK R. STEWART, Recorder

#1254 WARRANTY DEED

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

KNOW ALL MEN BY THESE PRESENTS: That Frank S. Culbertson, Allie M. Culbertson, husband and wife and Nora Edith Gaston Ulingan (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° 24' E. 384 feet to a stone at the corner of Edward's land; thence N. 51° 32' E. 686 feet to a spike in the center of the road, where a locust 18 inches is S. 68½° W. 21 feet; thence S. 32° 02' E. 348.5 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. 804.5 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 Bituminous 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.

EXHIBIT

E

#29381

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 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 305.5 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.

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. OV 142 Pg. 330, 331
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
Tracy L. Boyer
By [signature] Deputy

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.
By Walter K. Johnson, Secretary.

O.K.T.M.

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 IH.
Received Nov. 8, 1958 at 10:40 A.M.
Recorded Nov. 10, 1958 Fee: $2.95 paid. GRACE HUCKSTUHL, Recorder.

#29596

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 N. 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 Cramblet's Addition to the Town of Tippecanoe, Ohio. (Prior conveyance, Volume 115, 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

EXHIBIT

F

#29572
33-JP
12/23/58

AGREEMENT FOR MERGER.

The Powhatan Mining Company to North American Coal Corp.

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

WITNESSETH:

WHEREAS, The North American Coal Corporation, and 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. S/ H. G. Schmidt, President.

Attest S/ Arthur L. Dougan, Secretary (Seal)

THE POWHATAN MINING COMPANY.

By S/ H. G. Schmidt, President.

Attest. S/ Walter K. Johnson, Secretary

(Seal)

Date 2-13-13
Vol. Spec Rec. 12 Pg. 147
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

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.

S/ H. G. Schmidt, President.

S/ Arthur L. Dougan, Secretary (Seal)

EXHIBIT

G

WARRANTY DEED

TUTBLANK REGISTERED U.S. PATENT OFFICE
Little Law Blank, Bellefontaine, Ohio
Standard Ohio Form 86

Know all Men by these Presents

That Clarence Sedoris and Annabelle Sedoris, husband and wife

Date 2-13-13
Vol. DV. 11 Pg. 147, 148, 149
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 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 16" 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 178.3 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 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.

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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
FR... ...ranich, Auditor
FEE 35 BY

To have and to hold *said premises with all the privileges and appurtenances thereunto belonging, to the said Grantees* Jerry Torck and Janice Torck, 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 Torck and Janice Torck, 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. PARRISH, Clerk, Twp

5195 Rg + a

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

VOL 161 PAGE 148

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

Lorna M. 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.

VOL. 161 PAGE 149

EXHIBIT

H

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. DV 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.
Tracy L. Boyer
By Megan Bonett Deputy
Recorder

the Grantor s,

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, Nolaesville, 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 142, 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.H.

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¢ BY L.E.J.

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 Rec.

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 Grantees, their heirs, successors and assigns forever. And* we, *the said Grantors, do for* ourselves *and* our *heirs, executors and administrators, covenant with the said Grantees, 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 Grantees, 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 Grantees, 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, Attorney in Fact

Susan Wilgus

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 Lillian 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

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

EXHIBIT

I

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 §301 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.*

APPENDIX 00041

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 $5 pd BY [illegible]

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
[illegible]

DEED VOL. 214 PAGE 362

Also 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 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 seal on the day and year last aforesaid.

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.
By Tracy L. Boyer Deputy
Recorder

(Notary Public) Joyce M. McKay
Notary Public State of Ohio
My Commission Expires April 24, 1989
Holmesville, O.

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)

FROM 38622
Levi A. Miller and Naomi Miller

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
Walter C. Blackburn County Recorder

EXHIBIT

J

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 66805 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 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.

Transferred Dec. 4 1989
PATRICK J. MOORE, Auditor
FEE 504 PD

This conveyance has been examined and Grantor has complied with Section 319.202 of the Revised Code.
FEE $
PATRICK J. MOORE, County Auditor

DEED VOL 231 PAGE 14

CM

Date 2-13-13
Vol. OR 231 Pg. 14-15
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 Elias, 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. Pirritti

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

EXHIBIT

K

Requested By: mcm 02/13/2013

Form 821 — Survivorship Deed
Rev. 4/1/85

TUTTLE LAW PRINT, PUBLISHERS, PUTLAND, NY 07701

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
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
Vol. 98 17 for
I, Tracy L. Bayer, Recorder, do hereby certify that this instrument has been duly entered and is a true copy of the original.
Tracy L. Bayer
By

V. 17 PG 204

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. MOONEY, AUDITOR
BY

17 PG 204

Reproduced By Ident 02/13/2018

AUG 24 '95

~~THEREBY CONVEYING~~
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. Edwards

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

David J. Scarpone, Attorney
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 O.R.C.

David J. Scarpone
NOTARY PUBLIC

i. 17 PAGE 215

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

Dated. April 13 1995

Lay C A M E

TRACY L. [illegible]
Harrison Co. Recorder
Received [illegible] 19 [illegible]
at [illegible] o'clock [illegible] M
Recorded [illegible] 19 [illegible]
Receipt # [illegible] Amount [illegible]

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

EXHIBIT

L

Requested By: mep 10/18/2018

Form 83 — Survivorship Deed
Rev. 4/1/85

TUTHILL® 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

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. 15° 41' 41" W. 122.55 feet to a railroad spike;
N. 04° 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 Boyer, Deputy Recorder

33 PAGE 192

Reg: V C A
9600002548
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOVER
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 $ Not D.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 *19* 96

In Presence of:

Janice M Elias — DENNIS M. ELIAS
Jeffrey S Elias — M. Sue 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. 19* 96

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

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

APPROVED HARRISON CO. ENGR. REJECTED
DATE 10-29-96 BY

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

EXHIBIT

M

Instrument Book Page
200800001776 OR 177 634

HARRISON COUNTY AUDITOR
PATRICK J. MOORE
REAL ESTATE TRANSFER BY D.C.
CONV.FEE 10.00 EX.
TRANS.FEE 8.50 DATE 8-13-08

Date 2-13-13
Vol. OR 177 Pg. 634,635

HARRISON COUNTY ENGINEER'S OFFICE
DEED CHECKED FOR TRACT DESCRIPTION ONLY
APPROVED 10 REJECTED
DATE 8-13-08 BY DEE
ROBERT STERLING, ENGINEER

I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
By Tracy Boyer
Recorder

200800001776
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

200800001776
RECORDED BY HARGRAVE
TRACY L. BOYER
STEUBENVILLE OH 43952

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

EXHIBIT

N

Instrument 201100002825 OR | Book 190 | Page 913

201100002825
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
07-28-2011 At 11:03 am.
SURV DEED 34.00
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 576.00 EX
TRANSFER 50 DATE 7-28-11

Date 2-13-13
Vol. OR 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 Deanna 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 Arleh 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

Requested By: mcc 02/15/2012

STATE OF OHIO,
HARRISON COUNTY, SS:

The foregoing instrument was acknowledged before me this 27th day of _____, 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

_____
Notary Public

My Commission Expires: 4-11-12

(seal)

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

EXHIBIT

O

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, [illegible]

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, [illegible]

2. In consideration of the premises the said parties covenant and agree as follows: [illegible]

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, [illegible]

4. [illegible]

5. [illegible]

6. [illegible]

7. [illegible]

8. It is agreed that the [illegible] 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 [illegible] 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. [illegible]

12. All covenants and conditions between the parties hereto shall extend to their heirs, executors, successors and assigns [illegible]

Any additions to the above agreement that are noted on the reverse side form 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]

E. R. Knezevich Vice-President

MAR-07-2013 THU 01:42 PM CLERK OF COURTS FAX No. 740 942 4693 P. 008

Exhibit "A"

Archer Township, Harrison County

Tract No.	Acres	Grantor	Date	Vol.	Pg.	Pres. Surface Owner
1	19.98	Merle V Bolitho	9-13-43	113	187	M & L Takacshi
2	128.98	"	"	"	"	"
3	50.00	"	8-18-43	"	96	"
4	26.28	"	"	"	"	"
5	19.64	"	"	"	"	"
6	158.42	"	"	"	97	D Green & E.Porter
7	99.25	"	"	"	"	J C & Helen Carson
8	77.00	"	"	"	"	D Green & E.Porter
9	18.00	"	"	"	"	"
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 F Freshwater	5-3-43	112	438	"
13	32.76	"	"	"	"	"
14	50.00	"	6-28-43	"	585	Geo Valesko
15	60.00	Ralph E Galbreith	8-24-44	115	188	"
16	71.80	Jesse S Ball	6-19-43	112	539	O E & E D Corban
17	27.28	"	"	"	"	Nacco
18	56.47	Ray V Strausbaugh	9-7-43	113	468	O E & E D Corban
19	0.50	"	"	"	"	"
20	35.71	Cleve Hines	5-23-42	110	531	O E & E 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 Galbreith	12-31-41	110	51	"
26	86.43	J E 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	"	625	"
31	5.19	J E Thompson etal	8-17-43	113	85	Jewett Sportsmen &
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	110.80	"	"	"	"	"
41	61.80	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 E 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	123	504	Nacco
54	36.18	"	"	"	"	"

3,038.12 Acres Total

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MAR-07-2013 THU 01:40 PM CLERK OF COURTS FAX No. 740 942 4693 P. 008

EXHIBIT

P

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 6960 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 lease, by lease from North American Coal Corporation, dated January 30, 1974, recorded in Volume 53, Page 667, of the Harrison County Records, covering 3,023.12 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, 1976.

Witnesses:

NATIONAL PETROLEUM CORPORATION

By John C. Hawkins, President

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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. Hanbaker, 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 Company
6560 North High Street
Worthington, Ohio 43085

18956 Page M.R.

LABAN E. BLACKBURN
Harrison Co. Recorder
Received May 27 19 75
at 9:55 o'clock A.M.
Recorded May 27 19 75

$3.00
M.R. 504

Vol. 134

-2-

EXHIBIT

Q

Assigned Lease Vol 70. 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 G. E. 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, [illegible] 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 [illegible] unto lessee, exclusively, for the purposes of prospecting and exploring by geophysical and other methods, drilling, mining, operating for and producing oil and gas, and of laying pipelines, building and maintaining [illegible] and of building tanks, power stations and structures thereon to produce, [illegible], care for and remove said production, all that certain tract of land situate 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 [illegible], Township [illegible], Range [illegible], and containing 3,033.12 acres, more or less, and including all [illegible] thereto, 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 [illegible] within said primary term or any extension thereof, lessee shall have the right to continue drilling to completion with reasonable diligence and [illegible] thereafter as oil and gas, or either of them is or can be produced by lessee from said land or from a [illegible] 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 [illegible] or into the pipe line to which lessee may connect wells on said land, the equal one-eighth (⅛) part of all oil produced and saved from the leased premises.

To pay lessor one-eighth (⅛) 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 (⅛), 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 as royalty the sum of One Dollar ($1.00) multiplied by the number of acres subject to this 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 (⅛) of the proceeds, payable monthly at the prevailing market rate at the wellhead.

Lessor agrees to pay one-eighth (⅛) 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 amounts 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 19 85, 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 at [illegible] or its successors, as 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 post office, 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. [illegible] the down payment, covers not only the privilege granted to the date when 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 [illegible] in whole or in part as to parties, amounts, or depositories shall nevertheless be sufficient to [illegible] 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 correct 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 said land or land communitized therewith, or, if during the primary term of this lease production on said 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 rental has 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 resumes the payment of rentals in the amount and manner hereinbefore provided.

6. If lessor owns a less interest in the above described land than the entire and 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. [oil and gas estate]

7. Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for lessee's operation 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 comprise an oil development unit of not more than approximately One Hundred Sixty (160) acres [illegible] and/or a gas development unit of not more than approximately [illegible] 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 located, 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 (⅛) royalty from such oil and/or gas development unit only in the proportion that the number of acres owned by lessor within the limitations 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 at 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, executors, 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 adjusted in accordance with such change of ownership or assignment at the next succeeding rental anniversary after [illegible] 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 it covers a part or parts of said lands upon which the said lessee or any assignee thereof shall make due 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 on a commercial scale, lessor shall pay to lessor the sum of One Hundred Dollars ($100.00) per year for each well so used in addition to all other consideration specified in this lease. The injection of water, brine, or other fluids into said stratum shall be made only into strata below those containing recoverable fresh water and lessor agrees to provide adequately lessee's fresh water supply lower than as a match 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 rentals 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 drill 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 lands, hereinbefore described, and agrees that lessee shall have the right at any time to redeem for lessor, by payment, any mortgage, 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 rights of dower and homestead may in any way affect the purposes for which this lease is made as recited herein.

14. Lessor 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 lessee, 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 storage 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 release 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 in which the land is located 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 therefrom shall have stored in such stratum or strata. For and during the period or periods that Lessee may use 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 thirty (30) 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 for 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 hereinbefore specified, but this lease, insofar as it gives 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 AMENDMENT, attached hereto and made a part hereof.

IN TESTIMONY WHEREOF WE SIGN, This the 16th day of January 1986

Signed and Acknowledged in the Presence of:

Robert E. Uhler
Andrew S. Good

THE NORTH AMERICAN COAL CORPORATION

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

BY: Thomas A. Ross, Secretary

C.E. Beck, Lessee

CORPORATION ACKNOWLEDGEMENT

STATE OF OHIO
COUNTY OF CUYAHOGA } SS.

Be it remembered that on this 20th day of January in 86, before me a Notary Public, the undersigned, personally appeared Oren Bennett, Jr. and Thomas A. Ross the aforesaid Chairman and Chief Executive Officer and Secretary of The North American Coal Corporation, and they being duly sworn, did each depose and say that they are officers of said corporation, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by Oren Bennett, Jr. as Chairman and Chief Executive Officer and Secretary.

Notary Public
My Commission Expires March 8, 1988

STATE OF PENNSYLVANIA
COUNTY OF VENANGO } SS. ACKNOWLEDGMENT TO THE LEASE

On this 20th day of January A.D. 19 86 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 for the uses and purposes therein mentioned.

M. JAMES HUNSICKER, Notary Public
Oil City, Venango Co., Pa.
My Commission Expires October 24, 1988

Notary Public County.
Acting in County.

This lease prepared by C. E. Beck, 32 National Transit Building, Oil City, PA 16301

BK 68 PG 598

MAR-01-2013 THU 01:41 PM CLERK OF COURTS FAX No. 740 942 4693 P. 003

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	19.92	Merle W Bolitho	9-13-43	113	167	M & L Tabacchi
2	128.98	"	"	"	"	"
3	50.80	"	8-18-43	"	96	"
4	26.28	"	"	"	"	"
5	19.64	"	"	"	"	"
6	158.42	"	"	"	97	D Green & R.Fox
7	89.85	"	"	"	"	J C & Helen Car
8	77.00	"	"	"	"	D Green & R.Fox
9	15.00	"	"	"	"	"
10	68.00	Otway T. Dunlap	4-14.45	116	355	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 Valasko
15	60.00	Ralph D Galbraith	8-24-44	115	188	"
16	71.80	Jesse S Hall	6-19-43	112	539	O H & H D Corb
17	27.28	"	"	"	"	Nacco
18	56.47	Ray V Strausbaugh	5-7-43	113	468	O H & H D Corb
19	0.50	"	"	"	"	"
20	35.71	Cleve Hines	5-23-42	110	531	O H & H D Corb
21	22.46	Oakley A Hennis	10-14-43	113	480	Oakley A Henni
22	20.39	B Frank Thompson	7-2-43	112	620	Nacco
23	34.54	Frank Wright	4-30-46	119	520	"
24	165.28	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 Campbe
27	9.93	"	"	"	"	"
28	70.21	Cleve Hines	5-23-42	110	531	William Galbre
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 Sportsm
32	8.32	"	"	"	"	Farmers Club
33	95.70	"	"	"	"	"
34	15.88	John C Arbaugh	6-16-42	111	23	"
35	52.64	"	"	"	"	"
36	80.21	"	"	"	"	Clarence Sado
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 Dosso
42	8.86	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	132.80	Pgh. Con. Coal	4-30-48	123	504	Edwin E Hills
52	55.99	Asbury Freshwater	"	"	147	Max Edwards
53	40.00	Pgh. Con. Coal	4-30-48	"	504	Nacco
54	35.18	"	"	"	"	"

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

BY: Thomas A. Kosa, Secretary

C. E. Beck, Lessee

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MAR-07-2013 THU 01:41 PM CLERK OF COURTS FAX No. 740 942 4093 P. 004

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 does 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: Otto Bempeck, Jr., Chairman and Chief Executive Officer

BY: Thomas A. Koza, Secretary

C. E. Beck, Lessee

37388

Date 3-7-2013 Pg 517-542
Vol. LV 168

LaTonya L. Boone, Recorder, Authority provided under Section 147.03 of the Revised Code of Ohio

By LaTonya L. Boone

Mark Scott

IABAN C. BLACKBURN
Harrison Co. Recorder
Received FEB 16 1984
at 1:45 o'clock P.M.
Recorded FEB 16 1984

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589

MAR-07-2013 THU 01:41 PM CLERK OF COURTS FAX No. 740 942 4693 P. 005

EXHIBIT

R

ASSIGNMENT OF OIL AND GAS LEASES

39782

LABAN C. BLACKBURN
Harrison Co. Recorder
Received May 30 19 85
at 10:53 o'clock A.M.
Recorded May 30 19 85

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. JANE HITCHCOCK, Notary Public
Oil City, Venango Co., Pa.
My Commission Expires October 24, 1988

MAR-07-2018 THU 01:40 PM CLERK OF COURTS FAX No. 740 942 4893 P. 009

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LEASE SCHEDULE

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

LEASE NO.	LESSOR	LESSEE	DATE	DESCRIPTION	RECORDER BOOK	RECORDER PAGE
446-A	Carl Schaney and Theresa Schaney, husband and wife	Electro-Seine 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 E. 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
484	Zelma Kenkpf	"	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	3-26-83	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 F. 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.	66	107

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 S. Cargo, her husband	C. E. Beck	8-25-83	An approximate 177.54 acre tract located in Archer Township, Harrison County, Ohio, as further described in the lease.	68	375
010453	George E. Valesko and Linda Valesko, his wife	"	9-9-83	An approximate 58.88 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 Kate 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	"	1-16-86	An approximate 3,033.12 acre tract located in Archer Township, Harrison County, Ohio, as further described in the lease.	68	597

Date 3-7-2013
Vol. LV 70 Pg 317-319
I, Tracy L. Shaver, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
By [illegible]
Recorder
Harrison Co.

EXHIBIT

S

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.

[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

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[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

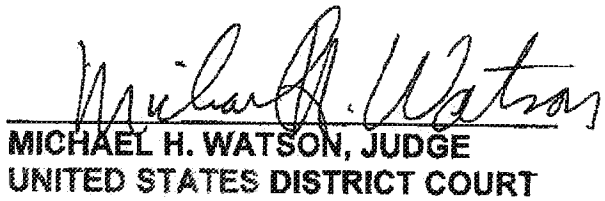
In accordance with Rule 9.03(A) of the Rules of Practice of the Supreme Court of Ohio, the Clerk of the United States District Court for the Southern District of Ohio is hereby instructed to serve copies of this certification order upon counsel for the parties and to file this certification order under 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

EXHIBIT

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

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

WHEREAS, the Board of Directors of the Corporation 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 [illegible] 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

EXHIBIT

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Date 2-13-13
Vol. OR 183 Pg. 804-810
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

Instrument 201000000737 IR Book 183 Page 804

OIL & GAS LEASE

Lease No. _____

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, Lesssor 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

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

My commission expires:

KAREN 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. Pae
Notary Public

My commission expires: 2-28-13

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

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	01-0000246000	19.98	17	11	5	SE
2	29.27	113	167	01-0000259000	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	01-0000642000	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	530	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	9.95	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	639	01-0000611000	part of 135.64	4	11	5	SW
	64.46	110	639	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	55.28	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	01-0000643000	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	01-0000508000	.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 26.9239	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	1.099	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

3833.13 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

EXHIBIT

V

Requested By: amer 02/18/2013

Instrument 201000000992 OR Book 183 Page 2107

Date 2-13-13
Vol. OR 183 Pg. 2107-2111
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
By Tracy Boyer Tracy L. Boyer Recorder

201000000992
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
06-14-2010 At 12:17 pm.
ASSIGN LEAS 71.00
OR Book 183 Page 2107 - 2111

ASSIGNMENT OF OIL AND GAS LEASES

201000000992
DALE PROPERTY SERVICES PENN LP

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 1870 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

Requested by: mep 03/13/2013

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 Teslovich
President

ASSIGNEE: Dale Property Services Penn, LP

By: DPS Penn GP, LLC its general partner

Bennett A. Wood Jr.
President

CORPORATE ACKNOWLEDGMENT

STATE OF PA)
) SS:
COUNTY OF WASHINGTON)

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 11, 2012

My Commission Expires: JULY 11 2012
Signature/Notary Public:
Name/Notary Public (print): LORENZO COLA

CORPORATE ACKNOWLEDGMENT

STATE OF PA)
) SS:
COUNTY OF Washington)

On this the 8th day of June, 2010, before me, the undersigned authority, personally appeared Barnett A. 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 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: Sarah D. Wolcott
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
39.6	112/585 & 115/168	01-0000022000	part of 99.6	33	10	4	SW
60	112/585 & 115/168	01-0000022000	part of 99.6	33	10	4	SW
19.03	123/504	01-0000042000	408.589	2	11	5	NW
35.71	110/531	01-0000100000	35.73	10	11	5	SE
71.8	112/539	01-0000101000	71.8	10	11	5	SE
56.47	113/468	01-0000102000	part of 56.97	10	11	5	SE
0.5	113/468	01-0000102000	part of 56.97	10	11	5	SE
70.21	110/531	01-0000143000	70.21	4	11	5	NW
50	123/504	01-0000147000	50	2	11	5	NW
67.75	123/504 & 115/50	01-0000150000	part of 132.75	8	11	5	NE
65	123/504 & 115/50	01-0000150000	part of 132.75	8	11	5	NE
99.85	113/97	01-0000152000	99.85	10	11	5	NE
5.19	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
15	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	31.84	10	11	5	NE
2.37	116/402	01-0000229000	42	2	11	5	NE
151.94	113/97	01-0000233000	151.94	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	113/167	01-0000244000	19.98	17	11	5	SE
1	116/402	01-0000246000	1	2	11	5	NE
51.03	116/402	01-0000247000	51.03	3	11	5	SE
7.5	116/402	01-0000247001	7.5	3	11	5	SE
99.71	113/96	01-0000252000	part of 217.36	16	11	5	NE
50	113/96	01-0000252000	part of 217.36	16	11	5	SE
26.28	113/96	01-0000252000	part of 217.36	16	11	5	SE
19.64	113/96	01-0000252000	part of 217.36	16	11	5	SE
6.48	113/97	01-0000253000	6.48	10	11	5	NW
5.57	113/454	01-0000263000	5.57	10	11	5	NE
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
29.27	113/167	01-0000269000	29.27	16	11	5	NE
0.72	123/504	01-0000485000	0.715	8	11	5	NW
25.78	113/554	01-0000497000	part of 31.088	4	11	5	NW
9.93	113/554	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
0.92	123/504	01-0000502000	0.918	8	11	5	NW
124.37	123/504	01-0000510000	126.94	8	11	5	NW
3.17	123/504	01-0000510001	3.17	8	11	5	NW
3.392	113/454	01-0000513000	4.31	4	11	5	NW
13.907	123/142	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	01-0000542002	2.1413	8	11	5	SW
11.53	123/147	01-0000543000	11.533	8	11	5	SW
51.69	113/454	01-0000584000	51.69	4	11	5	NW
19.07	112/438	01-0000609000	part of 329.49	3	11	5	NW

13.69	112/438	01-00006090000	part of 329.49	9	11	5	NE
27.28	112/438	01-00006090000	part of 329.49	9	11	5	NE
165.29	112/438	01-00006090000	part of 329.49	9	11	5	NE
123.39	112/438	01-00006090000	part of 329.49	9	11	5	NW
107.18	110/531	01-00006110000	part of 135.64	4	11	5	SW
34.54	110/531	01-00006110000	part of 135.64	4	11	5	SW
10.07	112/438	01-00006140000	435.056	3	11	5	NE/SE
102.53	112/438	01-00006140000	435.056	3	11	5	NW
44.46	112/438	01-00006140000	435.056	3	11	5	NW
4.56	112/438	01-00006140000	435.056	3	11	5	NW
40	123/405	01-00006210000	part of 76.18	8	11	5	SE
36.18	123/405	01-00006210000	part of 76.18	8	11	5	SE
20.39	112/620	01-00006250000	part of 65.32	10	11	5	SW
34.54	112/620	01-00006250000	part of 65.32	10	11	5	SW
13.32	124/523	01-00006320000	part of 136.42	34	10	4	NW
41.1	124/523	01-00006320000	part of 136.42	34	10	4	SW
27.25	124/523	01-00006320000	part of 136.42	8	11	5	NE
60	116/395	01-00006450000	part of 128.9	33	10	4	SW
68.9	116/395	01-00006450000	part of 128.9	33	10	4	NW
2,772.12	Net Mineral Acreage Total						

EXHIBIT

W

Instrument Book Page
201000002268 OR 186 96

201000002268 C MEC A P
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
11-15-2010 At 02:05 pm.
ASSIGN LEAS 92.00
OR Book 186 Page 96 - 100
201000002268
DALE PROPERTY SERVICES PENN LP

COMMONWEALTH OF OHIO

COUNTY OF HARRISON

JULY 12, 2010

ASSIGNMENT OF OIL AND GAS LEASES

CONVEYANCE

Dale Property Services Penn, 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 purposes 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.

Date 2-13-13
Vol. OR 186 Pg. 96-100
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

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

Requested By: mep 03/13/2013

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 28, 2014

Katherine Elizabeth Wolcott
Notary Public, Commonwealth of Pennsylvania

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

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.

CHASITY A. MATHIS
Notary Public
State of Oklahoma
Commission # 10003181 Expires 04/18/14

Chasity A. Mathis
Notary Public, State of Oklahoma

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

Chasity 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.

NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	78.040000	10.400000	01-0000020.000	HARRISON	ARCHER	A-201030-003	001	32	10	4 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	99.800000	99.600000	01-0000022.000	HARRISON	ARCHER	A-201030-003	001	33	10	4 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	408.589000	19.030000	01-0000042.000	HARRISON	ARCHER	A-201030-003	001	2	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	35.780000	35.710000	01-0000100.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	71.800000	71.800000	01-0000101.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	56.970000	56.970000	01-0000102.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	70.210000	70.210000	01-0000143.000	HARRISON	ARCHER	A-201030-007	001	4	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	50.000000	50.000000	01-0000147.000	HARRISON	ARCHER	A-201030-003	001	2	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	132.750000	132.750000	01-0000150.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	99.850000	99.850000	01-0000152.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	187.720000	177.[redacted]00	01-0000171.000	HARRISON	ARCHER	A-201030-003	001	4	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	31.840000	22.460000	01-0000180.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	42.000000	2.370000	01-0000229.000	HARRISON	ARCHER	A-201030-003	001	2	11	5 NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	151.940000	151.940000	01-0000233.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	92.000000	92.000000	01-0000234.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	19.980000	19.980000	01-0000244.000	HARRISON	ARCHER	A-201030-003	001	17	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	1.000000	1.000000	01-0000246.000	HARRISON	ARCHER	A-201030-003	001	3	11	5 NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	51.030000	51.030000	01-0000247.000	HARRISON	ARCHER	A-201030-003	001	3	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	7.500000	7.500000	01-0000247.001	HARRISON	ARCHER	A-201030-003	001	3	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	217.360000	195.630000	01-0000252.000	HARRISON	ARCHER	A-201030-003	001	16	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	6.480000	6.480000	01-0000253.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	5.570000	5.570000	01-0000263.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	59.660000	59.660000	01-0000265.000	HARRISON	ARCHER	A-201030-003	001	4	11	5 NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	10.370000	10.370000	01-0000269.001	HARRISON	ARCHER	A-201030-003	001	4	11	5 NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	20.180000	20.180000	01-0000269.002	HARRISON	ARCHER	A-201030-003	001	4	11	5 NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	29.270000	29.270000	01-0000269.000	HARRISON	ARCHER	A-201030-003	001	16	11	5 NE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	.720000	0.720000	01-0000485.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	35.710000	35.730000	01-0000497.000	HARRISON	ARCHER	A-201030-003	001	4	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	.900000	0.900000	01-0000500.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	1.920000	1.920000	01-0000501.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	.920000	0.920000	01-0000502.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	126.940000	124.370000	01-0000510.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	3.170000	3.170000	01-0000510.001	HARRISON	ARCHER	A-201030-003	001	8	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	4.310000	3.392000	01-0000519.000	HARRISON	ARCHER	A-201030-003	001	4	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	13.907000	13.907000	01-0000528.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	1.090000	1.090000	01-0000528.001	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	26.025800	25.100000	01-0000542.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	2.210000	2.210000	01-0000542.001	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	2.140000	2.140000	01-0000542.002	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	11.530000	11.580000	01-0000543.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	51.650000	51.680000	01-0000584.000	HARRISON	ARCHER	A-201030-003	001	4	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	348.720000	348.720000	01-0000609.000	HARRISON	ARCHER	A-201030-003	001	3	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	141.720000	141.720000	01-0000611.000	HARRISON	ARCHER	A-201030-003	001	4	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	435.058000	161.620000	01-0000614.000	HARRISON	ARCHER	A-201030-003	001	3	11	5 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	76.180000	76.180000	01-0000621.000	HARRISON	ARCHER	A-201030-003	001	8	11	5 SE
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	65.320000	54.930000	01-0000625.000	HARRISON	ARCHER	A-201030-003	001	10	11	5 SW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	136.420000	81.670000	01-0000632.000	HARRISON	ARCHER	A-201030-003	001	34	10	4 NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	28-Jan-09	05-May-10	201000000737	128.900000	128.900000	01-0000645.000	HARRISON	ARCHER	A-201030-003	001	33	10	4 SW

Instrument 201000002268 Book 184 Page 99

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	15-May-10	02-Jun-10	201000000927	.918000	0.918000	01-0000316.000	HARRISON	ARCHER	1-301946-000	001	17	11	5	SW
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000928	168.550000	168.550000	01-0000505.000	HARRISON	ARCHER	1-301948-000	001	17	11	5	SW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	03-Jun-10	201000000925	40.250000	40.250000	01-0000261.000	HARRISON	ARCHER	1-301948-000	001	11	11	5	SW
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	03-Jun-10	201000000978	18.428000	18.428000	23-0000816.002	HARRISON	ARCHER	1-301949-000	001	29	10	4	NW
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	03-Jun-10	201000000978	1.780000	1.780000	24-0000531.001	HARRISON	ARCHER	1-301949-000	001	5	11	5	NW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000975	50.479000	50.479000	01-0000229.000	HARRISON	ARCHER	1-301951-000	004	35	10	4	SE
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000975	.720000	0.720000	01-0000222.000	HARRISON	ARCHER	1-301951-000	004	29	10	4	NW
DONALD DWAINE ROSE ETUX	DALE PROPERTY SERVICES PENN, LP	03-Jun-10	16-Jun-10	201000001026	49.164000	49.164000	01-0000237.000	HARRISON	ARCHER	1-301958-000	001	2	11	5	NW
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000927	.290000	0.290000	05-0001901.000	HARRISON	CADIZ	1-301945-001	002	35	9	4	SW
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000927	28.945100	28.945100	05-0001802.000	HARRISON	CADIZ	1-301945-001	002	35	9	4	SW
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000927	18.880000	18.880000	05-0002359.000	HARRISON	CADIZ	1-301945-001	002	34	9	4	NE
SKYLINE FARMS INC	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000927	34.540000	6.908000	05-0001808.000	HARRISON	CADIZ	1-301945-001	003	35	9	4	SW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	19-May-10	02-Jun-10	201000000927	13.950000	2.790000	05-0001804.000	HARRISON	CADIZ	1-301945-001	003	35	9	4	SW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000975	.555000	0.555000	11-0000090.001	HARRISON	GERMAN	1-301951-000	003	35	10	4	SE
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000975	81.130000	81.130000	11-0000173.000	HARRISON	GERMAN	1-301951-000	003	29	10	4	SW
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000975	94.500000	94.500000	11-0000174.000	HARRISON	GERMAN	1-301951-000	003	29	10	4	SW
CHARLES M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000976	81.468400	81.468400	01-0000182.000	HARRISON	RUMLEY	1-301949-000	002	11	11	5	SW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000976	6.022800	6.022800	01-0000183.001	HARRISON	RUMLEY	1-301949-000	002	5	11	5	SW
ALAN M THOMPSON ETAL	DALE PROPERTY SERVICES PENN, LP	27-May-10	09-Jun-10	201000000975	18.978000	18.978000	23-0000317.000	HARRISON	RUMLEY	1-301951-000	002	35	10	4	NE

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 201000002269 OR Book 183 Page 1803

EXHIBIT

X

Requested By: [illegible] 02/13/2013

Instrument Book Page
201100002372 OR 189 2267

201100002372
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
06-28-2011 At 12:59 pm.
A ROY INT 9 140.00
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

Date 2-13-13
Vol. OR 189 Pg. 2267-2278
I, Tracy L. Boyer, Recorder, do hereby certify that this instrument is a true and correct copy of the original.
Tracy L. Boyer
By [illegible] Deputy Recorder

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

Acknowledgement

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 09, 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

Exhibit "A"

Attached to that certain Assignment and Conveyance from Dale Property Services Penn, LP to Dale Pennsylvania Royalty, LP, dated 6/19/2011.

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

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	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	196.6300	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	20.1800	20.1800	01-0000265.002	HARRISON	ARCHER	A-201030-003	001	4	11	S	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	S	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	S	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	S	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	S	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	S	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	S	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	125.9400	124.3700	01-0000510.000	HARRISON	ARCHER	A-201030-003	001	8	11	S	NW

Requested By: mep 02/12/2013

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	S	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	4	11	S	NW
NORTH AMERICAN COAL ROYALTY CO	DALE PROPERTY SERVICES PENN, LP	1/28/2009	5/5/2010	201000000737	13.8070	13.8070	01-0000528.000	HARRISON	ARCHER	A-201030-003	001	8	11	S	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	S	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	S	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	S	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	S	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	S	SW

Recorded electronically 06/13/2011

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	01-0000589.000	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	9	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	65.9200	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	01-0000336.000	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	201000000928	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	4	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

Requested By: mcp 06/06/2016

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	05-0002359.000	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	18.9780	18.9780	23-0000217.000	HARRISON	RUMLEY	1-301951-000	002	35	10	4	NE

EXHIBIT

Y

Doc ID --> 201135600573

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
12/22/2011	201135600573	MERGER/DOMESTIC (MER)	125.00	200.00		.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

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

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

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

1933630

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

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

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

Ohio Secretary of State

Form 811 Prescribed by the
Ohio Secretary of State

Central Ohio: (614) 466-3910
Toll Free: (877) SOS-FILE (767-3453)

www.sos.state.oh.us
Business@sos.state.oh.us

Expedite this form (check box)
Mail to one of the following:

☐ Express PO Box 1390
Columbus, OH 43216

☐ Ex Regular PO Box 1129
Columbus, OH 43216

CERTIFICATE OF MERGER

Filing Fee $125
(1344-8229)

In accordance with the requirements of Ohio law, the undersigned corporations, banks, savings banks, savings and loan associations, limited liability companies, partnerships, limited partnerships and/or limited liability partnerships, desiring to effect a merger, set forth the following facts:

I. SURVIVING ENTITY

A. Name of the entity surviving the merger: Chesapeake Exploration, L.L.C.

B. Name Change: As a result of this merger, the name of the surviving entity has been changed to the following:

_____

(Complete only if name of surviving entity is changing through the merger)

C. The surviving entity is a (Please check the appropriate box and fill in the appropriate blanks)

☐ Domestic (Ohio) For-Profit Corporation, charter number _____

☐ Domestic (Ohio) Nonprofit Corporation, charter number _____

☐ Foreign (Non-Ohio) For-Profit Corporation incorporated under the laws of the jurisdiction of _____ and licensed to transact business in the state of Ohio under license number _____

☐ Foreign (Non-Ohio) For-Profit Corporation incorporated under the laws of the jurisdiction of _____ and NOT licensed to transact business in the state of Ohio

☐ Foreign (Non-Ohio) Nonprofit Corporation under the laws of the jurisdiction of _____ and licensed to transact business in the state of Ohio under license number _____

☐ Foreign (Non-Ohio) Nonprofit Corporation under the laws of the jurisdiction of _____ and NOT licensed to transact business in the state of Ohio

☐ Domestic (Ohio) For-Profit Limited Liability Company, with registration number _____

☐ Domestic (Ohio) Nonprofit Limited Liability Company, with registration number _____

☒ Foreign (Non-Ohio) For-Profit Limited Liability Company organized under the laws of the jurisdiction of Oklahoma registered to do business in the state of Ohio under registration number 1947883

☐ Foreign (Non-Ohio) For-Profit Limited Liability Company organized under the laws of the jurisdiction of _____ and NOT registered to do business in the state of Ohio

RECEIVED
SECRETARY OF STATE
2011 DEC 22 PM 12:35
CLERK'S SECTION

Form 811 Page 1 of 20 End Revised 12/06/2006

☐ Foreign (Non-Ohio) Nonprofit Limited Liability Company organized under the laws of the jurisdiction of _____ and registered to do business in the state of Ohio under registration number _____

☐ Foreign (Non-Ohio) Nonprofit Limited Liability Company organized under the laws of the jurisdiction of _____ and NOT registered to do business in the State of Ohio

☐ Partnership, registration number, if any, _____

☐ Partnership NOT registered with the state of Ohio _____

☐ Domestic (Ohio) Limited Partnership, with registration number _____

☐ Foreign (Non-Ohio) Limited Partnership organized under the laws of the jurisdiction of _____ and registered to do business in the state of Ohio under registration number _____

☐ Foreign (Non-Ohio) Limited Partnership organized under the laws of the jurisdiction of _____ and NOT registered to do business in the state of Ohio

☐ Domestic (Ohio) Limited Liability Partnership, with the registration number _____

☐ Foreign (Non-Ohio) Limited Liability Partnership organized under the laws of the jurisdiction of _____ and registered to do business in the state of Ohio under registration number _____

☐ Foreign (Non-Ohio) Limited Liability Partnership organized under the laws of the jurisdiction of _____ and NOT registered to do business in the state of Ohio

II. CONSTITUENT ENTITY
Provide the name, charter/license/registration number, type of entity, jurisdiction of formation, for each entity merging out of existence. (If this is insufficient space to reflect all merging entities, please attach a separate sheet listing the additional merging entities)

Name	Charter, License, Registration, or Registration Number	Jurisdiction of Formation	Type of Entity
Ohio Buckeye Energy, L.L.C.	1933620	Ohio	LLC

III. MERGER AGREEMENT ON FILE
The name and mailing address of the person or entity from whom/which eligible persons may obtain a copy of the merger agreement upon written request:

Chesapeake Exploration, L.L.C.
Name

6100 N. Western
Mailing Address

Oklahoma City
City

OK
State

73118
Zip Code

IV. **EFFECTIVE DATE OF MERGER**

This merger is to be effective on 12/22/2011 (The date specified must be on or after the date of the filing; the effective date of the merger cannot be earlier than the date of filing. If no date is specified, the date of filing will be the effective date of the merger).

V. **MERGER AUTHORIZED**

Each constituent entity has complied with all of the laws under which it exists and the laws permit the merger. The agreement of merger is authorized on behalf of each constituent entity and each person who signed the certificate on behalf of each entity is authorized to do so.

VI. **STATEMENT OF MERGER**

Upon filing this Certificate of Merger, or upon such later date as specified herein, the merging entity/entities listed herein shall merge into the listed surviving entity.

VII. **STATUTORY AGENT**

If the surviving entity is a foreign entity NOT licensed to transact business in Ohio, OR if the surviving entity is a domestic corporation, limited liability company, or limited partnership entity updating its agent information, provide the name and address of statutory agent upon whom any process, notice or demand may be served.

Name _____ Mailing Address _____

City _____ Ohio State _____ ZIP Code _____

VIII **ACCEPTANCE OF AGENT**

If the new entity is a domestic corporation, domestic limited liability company, partnership or domestic limited partnership, then the agent must accept appointment.

The undersigned, named herein as the statutory agent upon whom service of process against any constituent entity or the surviving entity may be served, hereby acknowledges and accepts the appointment of statutory agent.

Signature of Agent _____ Date _____

☐ If the agent is an individual using a P.O. Box, the agent must check this box to confirm that he or she is an Ohio resident

IX **AMENDMENTS**

In the case of a merger into a domestic corporation, limited liability company, or limited partnership, any amendments to the articles of incorporation, articles of organization, or certificate of limited partnership of the surviving domestic entity shall be filed with the certificate of merger.

☐ Amendments are attached ☒ No Amendments

X **REQUIREMENTS OF CORPORATIONS MERGING OUT OF EXISTENCE**

If a domestic or foreign corporation licensed to transact business in Ohio is a constituent entity and the surviving or new entity resulting from the merger is not a domestic or foreign corporation that is to be licensed to transact business in Ohio, the certificate of merger must be accompanied by the affidavits, receipts, certificates, or other evidence required by division (H) of section 1701.86 and division (G) of section 1702.47 of the Revised Code with respect to each domestic corporation, and by the affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code with respect to each foreign constituent corporation licensed to transact business in Ohio.

XI QUALIFICATION OR LICENSURE OF FOREIGN SURVIVING ENTITY

A. The surviving foreign entity desires to transact business in Ohio as a foreign corporation, bank, savings bank, savings and loan, limited liability company, partnership, limited partnership, or limited liability partnership, and hereby appoints the following as its statutory agent upon whom process, notice or demand against the entity may be served in the state of Ohio.

Name _____ Mailing Address _____

City _____ State _____ Zip Code _____

☐ If the agent is an individual using a P.O. Box, check the box to confirm that the agent is an Ohio resident.

The surviving foreign corporation, bank, savings bank, savings and loan, limited liability company, limited partnership, or limited liability partnership ("surviving entity") irrevocably consents to (1) service of process on the statutory agent listed above so long as authority of the agent continues, and (2) to service of process upon the Secretary of State of Ohio if the agent cannot be found. If the surviving entity fails to designate another agent, as required by Ohio law, the surviving entity's license or registration to do business in Ohio expires or is cancelled.

B. The qualifying entity also states as follows: (Complete only if applicable)

1. Foreign Qualifying Corporation (Section 1703.04)
[If the qualifying entity is a foreign corporation, the following information must be completed.]

(a) Name of the corporation in its jurisdiction of formation

_____

(b) If the corporate name is not available, the trade name under which it will do business in Ohio

_____

(c) Location and complete address of its principal office

Mailing Address _____

City _____ State _____ Zip Code _____

(d) Name of the county in which its principal office in Ohio, if any, is to be located

_____

(e) A brief summary of the corporate purpose to be exercised within Ohio

_____

_____

_____

(f) To procure a license to transact business in Ohio, a foreign corporation for-profit must file with the secretary of state a certificate of good standing or substantial, dated not earlier than 90 days prior to the filing of the application, under the seal of the secretary of state, or other proper official, of the jurisdiction under the laws of which such corporation was incorporated, setting forth: (1) the exact corporate title; (2) the date of incorporation; and (3) the fact that the corporation is in good standing or has a subsisting incorporation.

2. Foreign Status (Section 1701.[illegible])
(If the qualifying entity is a foreign bank, savings bank, or savings and loan, the following information must be completed.)

(a) Name of the Foreign nationally/federally chartered bank, savings bank, or savings and loan association

(b) Any trade name(s) under which the corporation will conduct business in Ohio

(c) Location of the corporation's main office (Non-Ohio)

Mailing Address

City State Zip Code

(d) Principal office location in Ohio

Mailing Address

City Ohio State Zip Code

(If there will not be an office in Ohio, please state "None" on the form)

(e) The corporation will exercise the following purpose(s) in Ohio

3. Foreign Qualifying Limited Liability Company (Section 1705.[illegible])
(If the qualifying entity is a foreign limited liability company, the following information must be completed.)

Already registered: No. 1347363

(a) Name of the For-Profit or Nonprofit limited liability company in its jurisdiction of formation

(b) Name under which the limited liability company desires to transact business in Ohio (if different from its name in its jurisdiction of formation)

(c) The limited liability company was formed on _____ Date
under the laws of the jurisdiction of _____ Jurisdiction

(d) Address to which interested persons may direct requests for copies of the articles of organization, operating agreement, bylaws, or other similar documents of the company

Mailing Address

City State Zip Code

4. Foreign Qualifying Limited Partnership under section 1703.48
(If the qualifying entity is a foreign limited partnership, the following information must be completed.)

(a) Name of the limited partnership

(b) The limited partnership was formed on: Date

Under the laws of the jurisdiction of: Jurisdiction

(c) Address of the office of the limited partnership in its jurisdiction of formation:

Mailing Address

City State Zip Code

(d) Address of the limited partnership's principal office

Mailing Address

City State Zip Code

(e) The names and business or residence addresses of the general partners of the partnership are as follows:

Name Mailing Address

Name Mailing Address

Name Mailing Address

Name Mailing Address

(Please attach additional separate sheet(s) listing other general partners and their addresses as needed)

(f) The address of the office where a list of the names and business or residence addresses of the limited partners and their respective capital contributions is to be maintained

Mailing Address

City State Zip Code

The limited partnership hereby certifies that it shall maintain such records until the registration of the limited partnership in Ohio is cancelled or withdrawn.

5. Foreign Qualifying Limited Liability Partnership (Section 1775.06) (If the qualifying entity is a foreign limited liability partnership, the following information must be completed.)

(a) Name of the partnership

Name must include one of the following phrases or abbreviations: "registered limited liability partnership," "limited liability partnership," "R.L.L.P.," "L.L.P." "RLLP," or "LLP."

(b) The partnership was formed under the laws of the jurisdiction of

(c) Address of the partnership's chief executive office

Mailing Address

City State Zip Code

(d) If the chief executive office is not in Ohio, the address of any office of the partnership in Ohio, if one exists

Mailing Address

City Ohio State Zip Code

(e) Foreign limited liability partnership must attach evidence of existence in its jurisdiction of formation (origin).

(Proceed to page 8 for signatures of authorized officers, partners and representatives.)

The undersigned constituent entities have caused this certificate of merger to be signed by its duly authorized officers, partners and representatives on the date(s) stated below

Ohio Buckeye Energy, L.L.C.
Exact name of entity

By: [signature]
Signature

Its: Vice President of Manager, Chesapeake Operating, Inc.
Title

Date: 12/22/2011

Chesapeake Exploration, L.L.C.
Exact name of entity

By: [signature]
Signature

Its: Vice President of Manager, Chesapeake E&P Holding Corporation
Title

Date: 12/22/2011

Exact name of entity

By: _____
Signature

Its: _____
Title

Date: _____

Exact name of entity

By: _____
Signature

Its: _____
Title

Date: _____

Exact name of entity

By: _____
Signature

Its: _____
Title

Date: _____

An authorized representative of each constituent corporation, partnership, or entity must sign the merger certificate (ORC 1701.81(A), 1702.43 (A), 1705.39(A), 1775.70(A), 1782.43(A)).

#195560 UNITED STATES OF AMERICA,
STATE OF OHIO,
OFFICE OF THE SECRETARY OF STATE

I, Jon Husted, Secretary of State of the State of Ohio, do hereby certify that the foregoing is a true and correct copy, consisting of 10 pages, as taken from the original record now in my official custody as Secretary of State.

WITNESS my hand and official seal at Columbus, Ohio, this 10th day of February A.D. 2015

JON HUSTED
Secretary Of State

By: [illegible]

NOTICE: This is an official certification only when reproduced in red ink

EXHIBIT

Z

Received Electronically 02/12/2013

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 SEAN CATES
405-202-1842

Date 2-13-13
Vol. OR 197 Pg. 2350-2357 2496 only
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 Boyer Deputy
Recorder

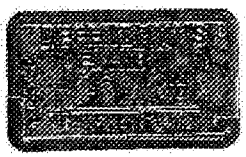
ASSIGNMENT, BILL OF SALE AND CONVEYANCE

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 Dage
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.

Linn D. Y
Notary Public

My Commission Expires: 6-11-15
Commission Number: 03008905

LINN D. YOUSEY
NOTARY
03008905
EXP. 06/11/15
PUBLIC
STATE OF OKLAHOMA

Instrument 201200002343 OR Book 197 Page 2357

ASSIGNEE 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.

Linn D. Yousey
Notary Public

My Commission Expires: 08.11.15
Commission Number: 08008905

LINN D. YOUSEY NOTARY # 08008905 EXP. 08/11/15 PUBLIC STATE OF OKLAHOMA

Instrument 201200002343 OR Book 197 Page 2496

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
95574 DOHR	ZIMMER, ROBERT J.	CHESAPEAKE EXPLORATION, LLC.	9/27/2011	NE 25-11N-5W SE 26-11N-5W	ARCHER	HARRISON	OH	199	1773	
OH0000009-001	NORTH AMERICAN COAL ROYALTY COMPANY	MOUNTAINEER NATURAL GAS COMPANY	1/26/2009	NE/4, NW/4 2 11N 5W NE/4, NW/4, SE/4, SW/4 10 11N 5W NE/4, NW/4, SE/4, SW/4 4 11N 5W NE/4, NW/4, SE/4, SW/4 8 11N 5W NE/4, SE/4 16 11N 5W NW/4 32 10N 4W NW/4 34 10N 4W NW/4, SE/4 3 11N 5W SE/4 17 11N 5W SW/4 33 10N 4W	ARCHER	HARRISON	OH	153	804	201000000737
PA30	BEAL, DAVID JR.	PATRIOT LAND CO, LLC	12/21/2010	NE 17-9N-3W NW, NE 34-8N-4W		HARRISON	OH	189	277	
PA32	OSZUST, EDWARD P. & DELORES E.	PATRIOT LAND CO, LLC	4/26/2011	NE 19-9N-4W SE 13-9N-4W	SHORTCREEK	HARRISON	OH	189	786	
PA33	SAYRE, TOM T. & PAMELA S.	PATRIOT LAND CO, LLC	1/6/2011	NW 16-11N-6W	NOTTINGHAM	HARRISON	OH	187	31	
PA39	SCHLABACH, ANGELA ROSE FAMILY TRUST	PATRIOT LAND CO, LLC	6/1/2011	NE 3-9N-4W	SHORTCREEK	HARRISON	OH	193	334	
PA41	MCTAGGIERT, KATHY	PATRIOT LAND CO, LLC	5/11/2011	NE 31-11N-5W	STOCK	HARRISON	OH	189	798	

IT IS THE INTENTION OF THE ASSIGNOR TO CONVEY THE LEASES INSOFAR AND ONLY INSOFAR AS THE LEASE IS LOCATED WITHIN THE DESCRIBED TOWNSHIP.

EXHIBIT

AA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHESAPEAKE EXPLORATION, L.L.C., et al.,	)	CASE NO: 2:12-cv-00916
	)	JUDGE: Michael H. Watson
	)	MAGISTRATE JUDGE: Terence P. Kemp
Plaintiffs,	)	**AFFIDAVIT OF DENNIS ELIAS**
vs.	)	
KENNETH BUELL, et al.	)	
Defendants.	)	

I, Dennis Elias, after being first duly sworn and deposed according to law, state on my personal knowledge as follows:

1. I am over the age of 18 years old, have personal knowledge of the matters set forth herein, and am competent to testify regarding the same.

2. In 1943, The North American Coal Corporation owned approximately one-hundred (100) acres of the Real Estate in Harrison County in the state of Ohio. On January 30, 1943, by virtue of a Quit Claim Deed filed in the Harrison County Recorder's office, The North American Coal Corporation conveyed the Real Estate to the Powhatan Mining Company. (A certified copy of the Quit Claim Deed dated January, 30, 1943 and recorded in the Harrison County Records in Deed Volume 112, Page 14-21, is attached hereto as **Exhibit A**).

3. On October 29, 1958, by virtue of a Warranty Deed filed in the Harrison County Recorder's office, the Powhatan Mining Company conveyed the Real Estate to Clarence and Anna Belle Sedoris. (A certified copy of the Warranty Deed dated October 29, 1958 and

recorded in the Harrison County Records in Deed Volume 142, Page 330-331, is attached hereto as **Exhibit B**).

4. In this Warranty Deed (Exhibit B), the Powhatan Mining Company specifically reserved all coal, oil, gas, or other mineral rights underlying the Real Estate.

5. The Powhatan Mining Company and The North American Coal Corporation merged into a single company called, The North American Coal Corporation, on January 1, 1959. (A certified copy of the Agreement for merger dated January 1, 1959 and recorded in the Harrison County Records in Special Records 12, Page 142, is attached hereto as **Exhibit C**). As a result of this merger, the Reservation Powhatan held was transferred to The North American Coal Corporation.

6. In 1968, by virtue of a Survivorship Deed that was filed in the Harrison County Recorder's office, Clarence and Anna Belle Sedoris conveyed the surface estate of Real Estate to Jerry and Janice Torok. (A certified copy of the Warranty Deed dated April 18, 1968 and recorded in the Harrison County Records in Deed Volume 161, Page 147-149, is attached hereto as **Exhibit D**).

7. On March 2, 1983, by virtue of a Survivorship Deed that was filed in the Harrison County Recorder's office, Jerry and Janice Torok conveyed the surface estate of the Real Estate to Levi and Naomi Miller. (A certified copy of the Warranty Deed dated March 2, 1983 and recorded in the Harrison County Records in Deed Volume 209, Page 614-616, is attached hereto as **Exhibit E**).

8. On September 17, 1984, by virtue of a Survivorship Deed that was filed in the Harrison County Recorder's office, Levi and Naomi Miller conveyed the surface estate of the Real Estate to my former wife, Linda Elias, and me. (A certified copy of the Survivorship Deed

dated September 17, 1984 and recorded in the Harrison County Records in Deed Volume 214, Page 361-363, is attached hereto as **Exhibit F**).

9. Through a Quit Claim deed that was filed in the Harrison County Recorder's office, my ex-wife, Linda Elias, conveyed her interest in the surface estate of the Real Estate to me on December 4, 1989. (A certified copy of the Quit Claim Deed dated December 4, 1989 and recorded in the Harrison County Records in Deed Volume 231, Page 14-16, is attached hereto as **Exhibit G**).

10. By virtue of a Deed that was filed in the Harrison County Recorder's office, I conveyed approximately 10.37 acres of the Real Estate to Jeffrey and Janice Elias on April 14, 1995. (A certified copy of the Deed dated April 14, 1995 and recorded in the Harrison County Records in OR Book 17, Page 204-205, is attached hereto as **Exhibit H**).

11. On October 29, 1996, by virtue of a Survivorship Deed that was filed in the Harrison County Recorder's office, I conveyed approximately 20.17 acres of the Real Estate to John and Marilyn Jackson. (A certified copy of the Quit Claim Deed dated October 29, 1996 and recorded in the Harrison County Records in OR Book 33, Page 192, is attached hereto as **Exhibit I**).

12. These conveyances left me with title to approximately 59.66 acres of the Real Estate.

13. North American Coal Royalty Company took no action with respect to the mineral estate until 1973 when it entered an oil and gas lease with National Petroleum Corporation. (A certified copy of the Oil and Gas Lease dated January 30, 1973 and recorded in the Harrison County Records in Deed Volume 53, Page 667-669, is attached hereto as **Exhibit J**).

14. North American Coal Royalty Company again leased the mineral estate in 1984 when it entered into an oil and gas lease with C.E. Beck. (A certified copy of the Oil and Gas Lease dated January 16, 1984 and recorded in the Harrison County Records in Deed Volume 68, Page 597-599, is attached hereto as **Exhibit K**).

15. C.E. Beck assigned the lease to Carless Resources, Inc. in April of 1985, and the lease subsequently expired under its own terms. (A certified copy of the Assignment of Oil and Gas Leases dated April 11, 1985 and recorded in the Harrison County Records in Deed Volume 70, Page 317-319, is attached hereto as **Exhibit L**).

16. To my knowledge, after receiving the Reservation underlying the Real Estate on January 1, 1959, North American Coal Royalty Company did not transfer the Reservation or the mineral estate to any other individual or entity, nor did North American take any action to preserve the mineral interest in accordance with Ohio law.

17. After sleeping on its rights, and after the date on which the mineral estate vested to us of the Real Estate, The North American Coal Royalty Company entered into a lease with Mountaineer Natural Gas Company on January 28, 2009. (A certified copy of the Oil and Gas Lease dated January 28, 2009 and recorded in the Harrison County Records in OR Book 183, Page 804-810, is attached hereto as **Exhibit M**). The minerals leased were those subject to the Reservation underlying the Real Estate.

18. Mountaineer Natural Gas Company, by virtue of an Assignment of Oil and Gas Leases that was recorded in the Harrison County Recorder's office, assigned the Lease to Dale Property Services Penn, LP. (A certified copy of the Assignment of Oil and Gas Leases dated May 6, 2010 and recorded in the Harrison County Records in OR Book 183, Page 2107-2111, is attached hereto as **Exhibit N**).

19. Dale Property Services Penn, LP assigned the Lease to Ohio Buckeye Energy, L.L.C. (A certified copy of the Assignment dated July 12, 2010 and recorded in the Harrison County Records in OR Book 186, Page 96-100, is attached hereto as **Exhibit O**). In doing so, Dale Property Services Penn, LP retained a 1.25% overriding royalty interest in the Lease; such retention is contained in the Assignment of Oil and Gas Leases that was recorded in the Harrison County Recorder's office.

20. Dale Property Services Penn, LP subsequently assigned its overriding royalty interest in the Lease to Dale Pennsylvania Royalty, LP. (A certified copy of the Assignment of Overriding Royalty Interest dated June 13, 2011 and recorded in the Harrison County Records in OR Book 189, Page 2267-2278, is attached hereto as **Exhibit P**).

21. On December 22, 2011, by virtue of Domestic Merger Documents that were filed with the Ohio Secretary of State, Ohio Buckeye Energy, L.L.C. merged with Chesapeake Exploration, L.L.C. (A certified copy of the Domestic Merger Documents dated December 22, 2011 and filed with the Ohio Secretary of State as Document Number 201135600573, is attached hereto as **Exhibit Q**). As a result of this merger, Chesapeake Exploration, L.L.C. became the lessee of the Lease.

22. On November 1, 2011, Chesapeake Exploration, L.L.C. assigned an 89.2857% interest in the Lease to Total E&P USA, Inc. by virtue of an Assignment Bill of Sale and Conveyance that was recorded in the Harrison County Recorder's office. (A certified copy of the Assignment, Bill of Sale and Conveyance dated November 1, 2011 and recorded in the Harrison County Records in OR Book 197, Page 2350-2496, which is attached hereto as **Exhibit R**).

23. In July of 2010, Margaret and I attempted to lease our oil and gas rights with Kenyon Energy, LLC. As a result of The North American Coal Royalty Company's invalid claim to the Reservation, we were unable to enter into an oil and gas lease.

24. The current leasing value for oil and gas rights in Archer Township, Harrison County is between $5,000.00 and $6,000.00 per acre in up-front signing bonus and 20% gross royalty.

25. None of the mineral interest underlying the Real Estate has ever been owned by the United States, State of Ohio, or any political subdivision, body politic, or agency of the United States or Ohio during the effective dates of the Act. The oil and gas reservation at issue includes mineral interests other than coal. Further, from March 22, 1972 through June 29, 2006, none of the following occurred with respect to the mineral rights underlying the Real Estate:

a. The mineral rights were not the subject of a title transaction that was filed and recorded in the office of the County Recorder;

b. The mineral rights were not subject to actual production or withdrawal of minerals by the Holders from the Real Estate, from lands covered by a lease to which the Oil and Gas Reservation is subject, from a mine (a portion of which is located beneath the Real Estate), 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 Oil and Gas reservation is participating (provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests have 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 rights were not used in underground gas storage operations by the Holders or the Holders' heirs;

d. The mineral rights were not subject to a drilling permit issued to the Holders or the heirs of the Holders and filed in the Harrison County Recorder's Office;

e. The mineral rights were not subject to a claim to preserve the Oil and Gas Reservations filed in accordance with Division (C) of O.R.C. §5301.56 of Act; and

f. The mineral rights were not subject to a separately created tax parcel number listed in the Harrison County Auditor's tax list and the Harrison County Treasurer's duplicate tax list.

FURTHER AFFIANT SAYETH NAUGHT.

Dennis Elias

Dennis Elias

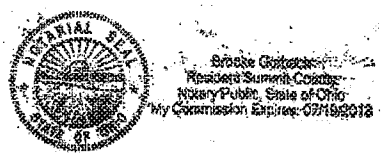
STATE OF OHIO)
) SS.
STARK COUNTY)

BEFORE ME, a Notary Public and for said County and State, personally appeared the above-named Dennis Elias who acknowledged that he 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 official seal this 5th day of March, 2013.

Brooke M Gobach

NOTARY PUBLIC



EXHIBIT

BB

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHESAPEAKE EXPLORATION, L.L.C., et al.,	)	CASE NO: 2:12-cv-00916
	)	JUDGE: Michael H. Watson
Plaintiffs,	)	MAGISTRATE JUDGE: Terence P. Kemp
vs.	)	**AFFIDAVIT OF ARIEH ORDRONNEAU**
KENNETH BUELL, et al.	)	
Defendants.	)	

I, Arieh Ordronneau, after being first duly sworn and deposed according to law, state on my personal knowledge as follows:

1. I am over the age of 18 years old, have personal knowledge of the matters set forth herein, and am competent to testify regarding the same.

2. In 1943, The North American Coal Corporation owned approximately one-hundred (100) acres of the Real Estate in Harrison County in the state of Ohio. On January 30, 1943, by virtue of a Quit Claim Deed filed in the Harrison County Recorder's office, The North American Coal Corporation conveyed the Real Estate to the Powhatan Mining Company. (A certified copy of the Quit Claim Deed dated January, 30, 1943 and recorded in the Harrison County Records in Deed Volume 112, Page 14-21, is attached hereto as **Exhibit A**).

3. On October 29, 1958, by virtue of a Warranty Deed filed in the Harrison County Recorder's office, the Powhatan Mining Company conveyed the Real Estate to Clarence and Anna Belle Sedoris. (A certified copy of the Warranty Deed dated October 29, 1958 and

recorded in the Harrison County Records in Deed Volume 142, Page 330-331, is attached hereto as **Exhibit B**).

4. In this Warranty Deed (Exhibit B), the Powhatan Mining Company specifically reserved all coal, oil, gas, or other mineral rights underlying the Real Estate.

5. The Powhatan Mining Company and The North American Coal Corporation merged into a single company called, The North American Coal Corporation, on January 1, 1959. (A certified copy of the Agreement for merger dated January 1, 1959 and recorded in the Harrison County Records in Special Records 12, Page 142, is attached hereto as **Exhibit C**). As a result of this merger, the Reservation Powhatan held was transferred to The North American Coal Corporation.

6. In 1968, by virtue of a Survivorship Deed that was filed in the Harrison County Recorder's office, Clarence and Anna Belle Sedoris conveyed the surface estate of Real Estate to Jerry and Janice Torok. (A certified copy of the Warranty Deed dated April 18, 1968 and recorded in the Harrison County Records in Deed Volume 161, Page 147-149, is attached hereto as **Exhibit D**).

7. On March 2, 1983, by virtue of a Survivorship Deed that was filed in the Harrison County Recorder's office, Jerry and Janice Torok conveyed the surface estate of the Real Estate to Levi and Naomi Miller. (A certified copy of the Warranty Deed dated March 2, 1983 and recorded in the Harrison County Records in Deed Volume 209, Page 614-616, is attached hereto as **Exhibit E**).

8. On September 17, 1984, by virtue of a Survivorship Deed that was filed in the Harrison County Recorder's office, Levi and Naomi Miller conveyed the surface estate of the Real Estate to Dennis Elias and Linda Elias. (A certified copy of the Survivorship Deed

dated September 17, 1984 and recorded in the Harrison County Records in Deed Volume 214, Page 361-363, is attached hereto as **Exhibit F**).

9. On October 29, 1996, by virtue of a Survivorship Deed that was filed in the Harrison County Recorder's office, Dennis Elias conveyed approximately 20.17 acres of the Real Estate to John and Marilyn Jackson. (A certified copy of the Quit Claim Deed dated October 29, 1996 and recorded in the Harrison County Records in OR Book 33, Page 192, is attached hereto as **Exhibit G**).

10. On August 13, 2008, John and Marilyn Jackson, by virtue of a Warranty Deed that was filed in the Harrison County Recorder's office, conveyed approximately 20.17 acres of the Real Estate to Benjamin D. Wiker. (A certified copy of the Warranty Deed dated August 13, 2008 and recorded in the Harrison County Records in OR Book 177, Page 634-635, which is attached hereto as **Exhibit H**).

11. Benjamin D. Wiker, by virtue of a Survivorship Deed that was recorded in the Harrison County Recorder's office, conveyed approximately 20.17 acres of the Real Estate to my wife Sunni and me. (A certified copy of the Survivorship Deed dated July 28, 2011 and recorded in the Harrison County Records in OR Book 190, Page 913-915, which is attached hereto as **Exhibit I**). Sunni and I currently own approximately 20.17 acres of the Real Estate, which includes both the surface and mineral estate.

12. To my knowledge, after receiving the Reservation underlying the Real Estate on January 1, 1959, North American Coal Royalty Company did not transfer the Reservation or the mineral estate to any other individual or entity, nor did North American take any action to preserve the mineral interest in accordance with Ohio law.

13. After sleeping on its rights, and after the date on which the mineral estate vested to us of the Real Estate, The North American Coal Royalty Company entered into a lease with Mountaineer Natural Gas Company on January 28, 2009. (A certified copy of the Oil and Gas Lease dated January 28, 2009 and recorded in the Harrison County Records in OR Book 183, Page 804-810, is attached hereto as **Exhibit J**). The minerals leased were those subject to the Reservation underlying the Real Estate.

14. Mountaineer Natural Gas Company, by virtue of an Assignment of Oil and Gas Leases that was recorded in the Harrison County Recorder's office, assigned the Lease to Dale Property Services Penn, LP. (A certified copy of the Assignment of Oil and Gas Leases dated May 6, 2010 and recorded in the Harrison County Records in OR Book 183, Page 2107-2111, is attached hereto as **Exhibit K**).

15. Dale Property Services Penn, LP assigned the Lease to Ohio Buckeye Energy, L.L.C. (A certified copy of the Assignment dated July 12, 2010 and recorded in the Harrison County Records in OR Book 186, Page 96-100, is attached hereto as **Exhibit L**). In doing so, Dale Property Services Penn, LP retained a 1.25% overriding royalty interest in the Lease; such retention is contained in the Assignment of Oil and Gas Leases that was recorded in the Harrison County Recorder's office.

16. Dale Property Services Penn, LP subsequently assigned its overriding royalty interest in the Lease to Dale Pennsylvania Royalty, LP. (A certified copy of the Assignment of Overriding Royalty Interest dated June 13, 2011 and recorded in the Harrison County Records in OR Book 189, Page 2267-2278, is attached hereto as **Exhibit M**).

17. On December 22, 2011, by virtue of Domestic Merger Documents that were filed with the Ohio Secretary of State, Ohio Buckeye Energy, L.L.C. merged with Chesapeake

Exploration, L.L.C. (A certified copy of the Domestic Merger Documents dated December 22, 2011 and filed with the Ohio Secretary of State as Document Number 201135600573, is attached hereto as **Exhibit N**). As a result of this merger, Chesapeake Exploration, L.L.C. became the lessee of the Lease.

18. On November 1, 2011, Chesapeake Exploration, L.L.C. assigned an 89.2857% interest in the Lease to Total E&P USA, Inc. by virtue of an Assignment Bill of Sale and Conveyance that was recorded in the Harrison County Recorder's office. (A certified copy of the Assignment, Bill of Sale and Conveyance dated November 1, 2011 and recorded in the Harrison County Records in OR Book 197, Page 2350-2496, which is attached hereto as **Exhibit O**).

19. My wife, Sunni Ordronneau, and I also attempted to enter into an oil and gas lease with Chesapeake Exploration, L.L.C. in October, 2011.

20. We were unable to lease the mineral rights underlying the Real Estate due to the Lease that North American Coal Royalty Company had already entered into without owning the mineral rights therein.

21. The current leasing value for oil and gas rights in Archer Township, Harrison County is between $5,000.00 and $6,000.00 per acre in up-front signing bonus and 20% gross royalty.

22. None of the mineral interest underlying the Real Estate has ever been owned by the United States, State of Ohio, or any political subdivision, body politic, or agency of the United States or Ohio during the effective dates of the Act. The oil and gas reservation at issue includes mineral interests other than coal. Further, from March 22, 1972 through June 29, 2006, none of the following occurred with respect to the mineral rights underlying the Real Estate:

a. The mineral rights were not the subject of a title transaction that was filed and recorded in the office of the County Recorder;

b. The mineral rights were not subject to actual production or withdrawal of minerals by the Holders from the Real Estate, from lands covered by a lease to which the Oil and Gas Reservation is subject, from a mine (a portion of which is located beneath the Real Estate), 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 Oil and Gas reservation is participating (provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests have 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 rights were not used in underground gas storage operations by North American Coal Royalty Company or its heirs;

d. The mineral rights were not subject to a drilling permit issued to North American Coal Royalty Company or its heirs and filed in the Harrison County Recorder's Office;

e. The mineral rights were not subject to a claim to preserve the Oil and Gas Reservations filed in accordance with Division (C) of O.R.C. §5301.56 of Act; and

f. The mineral rights were not subject to a separately created tax parcel number listed in the Harrison County Auditor's tax list and the Harrison County Treasurer's duplicate tax list.

FURTHER AFFIANT SAYETH NAUGHT.

Arieh Ordronneau

STATE OF OHIO)
) SS.
STARK COUNTY)

BEFORE ME, a Notary Public and for said County and State, personally appeared the above-named Arieh Ordronneau who acknowledged that he 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 official seal this 8th day of March, 2013.

NOTARY PUBLIC

NOTARIAL SEAL STATE OF OHIO

Beatte Gorbach
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 07/19/2013

EXHIBIT

CC

PROPONENT TESTIMONY ON BEHALF OF
SENATE BILL 233 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.

EXHIBIT

DD

FISCAL NOTE

BILL	Sub. S.B. 223	DATE	November 18, 1988
STATUS	As Reported by House Civil and Commercial Law	SPONSOR	Sen. Cupp

Fund & Time	Revenues	Expenditures	Appropriations
State and Political Subdivisions (owning land, but not the mineral rights) - FY 1991 and annually thereafter	Potential increase in asset value	-0-	-0-

This bill would make changes in mineral rights law.

EXPLANATION OF ESTIMATE:

The bill would allow non-coal mineral rights to revert to the surface landowner if the mineral right holder does nothing to the rights for 20 years. To extend their rights, a mineral right holder would simply have to file an extension with the local county recorder.

The bill would mainly affect properties where the mineral rights ownership has been lost, forgotten, or ignored for a long period of time. To the extent that the state owns such property, after a three-year grace period, the state (or any governmental unit, including the federal government) can file a claim for affected mineral rights through the county recorder's office. Owning the mineral rights would presumably increase the value of the property. Since the state would have to issue a permit for mineral rights holders to extract from state land anyway, it is unlikely that they would need to go through this process. However, it might be something that a political subdivision might choose to do.

FR

EXHIBIT

EE

ORC Ann. 5301.47

Current through Legislation passed by the 130th General Assemblyand filed with the Secretary of State through File 94 Annotations current through April 14, 2014

Page's Ohio Revised Code Annotated > *TITLE 53. REAL PROPERTY* > *CHAPTER 5301. CONVEYANCES; ENCUMBRANCES* > *MARKETABLE TITLE ACT*

§ 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.

Page's Ohio Revised Code Annotated:
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EXHIBIT

FF

Caution
As of: June 3, 2014 5:09 PM EDT

Back v. Ohio Fuel Gas Co.

Supreme Court of Ohio
June 24, 1953, Decided
No. 33347

Reporter: 160 Ohio St. 81; 113 N.E.2d 865; 1953 Ohio LEXIS 458; 51 Ohio Op. 1; 2 Oil & Gas Rep. 1410

BACK, APPELLANT, v. THE OHIO FUEL GAS CO., APPELLEE

Prior History: **[***1]** APPEAL from the Court of Appeals for Ashland county.

The plaintiff, W. F. Back, appellant herein, is the owner in fee simple of a tract of land consisting of one and three-fourths acres located in Vermillion township, Ashland county, having acquired it by deed of conveyance from Charley Byerly, as commissioner of the estates of W. E. Byerly and Amanda Byerly, under date of January 14, 1949. There were no exceptions or reservations of oil or gas rights or interests in this conveyance and it was duly recorded in the deed records of Ashland county.

Under date of September 30, 1914, a predecessor in title of the plaintiff to the land in question executed and delivered to the Ohio Fuel Supply Company an instrument in writing in the general form of a general warranty deed conveying to the latter "all the oil and gas in and under" the premises in question. Subsequently, the Ohio Fuel Supply Company assigned the gas rights granted by the instrument last above described to the defendant, the Ohio Fuel Gas Company, appellant herein and hereinafter designated as the gas company. Both the instrument and its assignment to the gas company were duly recorded in the lease records of Ashland **[***2]** county before the plaintiff purchased the premises as above stated. The evidence discloses that plaintiff made no search of the deed or lease records of the county before purchasing the premises.

The plaintiff brought this action to quiet his title to the premises in question against the claimed title of the gas company in and to the oil and gas rights, claiming that he was a bona fide purchaser for value of the premises without actual or constructive notice of the claimed rights of the gas company. He disclaims constructive notice on the claimed ground that the instrument conveying the oil and gas to the Ohio Fuel Supply Company and its assignee, the gas company, should have been recorded in the deed records and not in the lease records of the county.

The trial court found that the plaintiff was a bona fide purchaser for value without actual or constructive notice of the rights claimed by the gas company and ordered that plaintiff's title be quieted against the gas company and all persons claiming through or under it. On appeal on questions of law and fact to the Court of Appeals, that court found in favor of the gas company.

The cause is now in this court for review on appeal **[***3]** from the Court of Appeals by reason of the allowance of a motion to certify the record.

Disposition: *Judgment affirmed.*

Core Terms

lease, convey, oil, license, deed, oil and gas, petroleum, tenement, grantee, surface, belong, realty, tract, oil and gas rights, personal property, ownership, successor, mineral, natural gas,

bargain, owner of land, drill well, parol, pipe

Case Summary

Procedural Posture
Appellant land owner sought review of a decision by the Court of Appeals for Ashland County (Ohio), which reversed a trial court decision rendered in favor of the owner in his action to quiet title against appellee gas company.

Overview
The owner obtained title by a deed recorded in the county's deed records, which recited no exceptions or reservations of oil or gas rights. Many years earlier, the owner's predecessor in title had granted all the oil and gas in and under the land, with the rights and privileges necessary to obtain the oil and gas, to a grantee in the form of a warranty deed. The grantee assigned its rights to the gas company, and the deed and assignment were recorded in the county's lease records before the owner bought the land without searching the deed or lease records. The owner filed a quiet title action claiming he was a bona fide purchaser for value without actual or constructive notice of the claimed rights, and the trial court agreed, but the appellate court found in favor of the gas company. On review, the court held that the disputed instrument was a license properly recorded in the lease records, and that the recording was sufficient to constitute constructive notice of the instrument to subsequent purchasers.

Outcome
The court affirmed the judgment of the appellate court.

LexisNexis® Headnotes

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Energy & Utilities Law > Leases & Licenses > General Overview

Real Property Law > Deeds > General Overview

Real Property Law > Encumbrances > Limited Use Rights > Licenses

HN1 Ohio Gen. Code § 2757 provides, in part, for a record of leases, in which shall be recorded all leases. All instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record.

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Energy & Utilities Law > Financing > Grants & Reservations > Assignments & Subleases

Energy & Utilities Law > Leases & Licenses > General Overview

Real Property Law > Deeds > General Overview

Real Property Law > Landlord & Tenant > Lease Agreements > Assignments

HN2 Ohio Gen. Code § 8518 provides, in part, that all leases and licenses and assignments thereof, or of any interest therein, given or made, for, upon, or concerning lands or tenements in Ohio , whereby any right is given or granted to operate, or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record, forthwith, and recorded in such lease record, without delay.

Real Property Law > Deeds > General Overview

HN3 Ohio Gen. Code § 2757 provides, in part, that the recorder shall keep five separate sets of records, including a record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements and hereditaments.

Contracts Law > Personal Property > Bona Fide Purchasers

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

HN4 Ohio Gen. Code § 8543 provides that all other deeds and instruments of writing for the conveyance or incumbrance of lands, tenements, or hereditaments, executed agreeably to the provisions of that chapter, shall be recorded in the office of the recorder of the county in which the premises are situated, and until so recorded or filed for record, they shall be deemed fraudulent, so far as relates to a bona fide

purchaser having, at the time of purchase, no knowledge of the existence of such former deed or instrument.

Energy & Utilities Law > Oil, Gas & Mineral Interests > Conveyances > General Overview

Energy & Utilities Law > ... > Conveyances > Mineral Interests > General Overview

Energy & Utilities Law > Oil, Gas & Mineral Interests > General Overview

Energy & Utilities Law > Oil, Gas & Mineral Interests > Absolute & Qualified Ownership

Energy & Utilities Law > Oil, Gas & Mineral Interests > Personalty & Realty Interests

Energy & Utilities Law > Oil, Gas & Mineral Interests > Surface Use Interests

HN5 There are many decisions which declare that gas and oil in place belong to the owner of the land and that he can convey or encumber them in the same manner as any other mineral estate, subject, of course, to the possibility of their escape and a resultant loss of title. Although that view has been adopted in a number of jurisdictions, it has been severely criticized, and in most of the producing states the courts hold that gas and oil in situ are not subject to absolute ownership, that the land owner's only right is to extract them, and that he has no title to them until he does so. That means, of course, that he cannot convey them in place and that there can be no ownership of them separate or distinct from the land.

Energy & Utilities Law > Oil, Gas & Mineral Interests > General Overview

Energy & Utilities Law > Oil, Gas & Mineral Interests > Personalty & Realty Interests

Real Property Law > Encumbrances > Adjoining Landowners > Oil & Gas

Real Property Law > Mining > Surface Rights

HN6 Petroleum oil is a mineral, and while it is in the earth, it forms part of the realty; and when it reaches a well and is produced on the surface, it becomes personal property and belongs to the owner of the well. Petroleum oil is a mineral, and while in the earth it is part of the realty, and should it move from place to place by percolation or otherwise, it forms part of the tract of land in which it tarries for the time being, and if it moves to the next adjoining tract, it becomes a part and parcel of that tract; and it forms part of some tract, until it reaches a well and is raised to the surface, and then for the first time it becomes the subject of distinct ownership separate from the realty, and becomes personal property, the personal property of the person into whose well it came. It is the property of, and belongs to the person who reaches it by means of a well and severs it from the realty and converts it into personalty.

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Energy & Utilities Law > Leases & Licenses > General Overview

Real Property Law > Deeds > General Overview

HN7 Ohio Gen. Code § 8518 provides, in part, that all leases and licenses given for, upon, or concerning lands or tenements in Ohio , whereby any right is given or granted to operate, or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record, and recorded in such lease record.

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Energy & Utilities Law > Leases & Licenses > General Overview

Real Property Law > Deeds > General Overview

HN8 Ohio Gen. Code § 8518 applies to all oil and gas leases and licenses, including those entered into prior, as well as subsequent, to the first day of September, 1888, it makes special provision with respect to their registration, and it prescribes the consequences of omission to have them recorded as required. Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases, and such cases are governed by the special provisions. Under that rule § 8518 takes leases and licenses to which it is applicable out of the operation of Ohio Rev. Stat. §§ 4112 and 4134 and itself furnishes the rule governing the registry of such

instruments, and the effect upon their validity of the failure of registration.

Headnotes/Syllabus

Headnotes

Real property -- Conveyances -- Oil and gas leases and licenses -- To be filed and recorded -- Section 8518, General Code -- Instrument in general form of deed -- Conveying oil and gas rights and privilege of operating -- Filed in record of leases -- Constructive notice to subsequent purchasers of land.

Syllabus

1. By virtue of the provisions of Section 8518, General Code, "all leases and licenses and assignments thereof, or of any interest therein, given or made, for, upon, or concerning lands or tenements in this state, whereby any right is given or granted to operate, or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record, forthwith," and recorded in the record of leases of the county wherein such lands or tenements are located.

2. The recording in the record of leases, as provided by Sections 8518 and 8519, General Code, of an instrument in the general form of a deed but conveying to the grantee oil and gas under certain land, with the right and privilege of operating upon such **[***4]** land to obtain such oil and gas and with the right and privilege to lay pipe over such land to transfer oil and gas to pipe lines, and granting the right to hold such oil and gas rights forever, is sufficient to constitute constructive notice of the existence, operation and effect of the instrument to a subsequent purchaser of such land.

Counsel: *Messrs. Mason & Nichols*, for appellant.

Messrs. Henderson & Henderson, Mr. C. H. Wilson, Messrs. Eagleson & Laylin, Mr. W. F. Laird and *Mr. K. S. Hampton*, for appellee.

Judges: HART, J. WEYGANDT, C. J., MIDDLETON, TAFT, MATTHIAS, ZIMMERMAN and STEWART, JJ., concur.

Opinion by: HART

Opinion

[*83] **[**866]** The question presented is whether, in order to constitute constructive notice to subsequent purchasers of land of an instrument in the general form of a deed but conveying to the grantee oil and gas in and under such land, with the right and privilege of operating upon the land to obtain the oil and gas and with the right and privilege to lay pipe over the land to transfer the oil and gas to pipe lines, and granting the right to hold the oil and gas rights forever, such instrument should be recorded in the record of leases under the **[***5]** provisions of Sections 8518 and 8519, General Code, or in the record of deeds under the provisions of Sections 2757 and 8543, General Code.

The pertinent portions of the instrument conveying the oil and gas rights in the premises in question to the gas company's assignor are as follows:

"* * * we * * * the grantors, for the consideration of three hundred dollars * * * *do give, grant, bargain, sell and convey unto the said grantee, its successors and assigns, all the oil and gas in and under the following described premises.* * *

"* * *

"Said grantors further give, grant, bargain, sell and convey unto the said grantee, its successors and assigns, the *right and privilege of operating upon the said premises as aforesaid for the obtaining of such oil and gas*, with the right to use water therefrom, and all the rights and privileges necessary or convenient for conducting said operations, *and all the rights and privileges to lay pipes over and across such premises* as aforesaid *in order to transport such oil and gas to pipe lines.* * * *

[*84] "* * *

"To have and to hold the above granted and bargained *oil and gas rights*, with the appurtenances thereunto belonging, **[***6]** unto the said grantee, its successors and assigns, forever.

"And we * * * covenant with the said grantee, its successors and assigns, that * * * we are well seized *of the oil and gas rights* in, upon and under the above described premises * * * and have good *right to bargain and sell the same* * * * and that we will warrant and defend the said grant as aforesaid to the said grantee, its successors and assigns forever * * *

"And we * * * do hereby remise, release and forever quit claim unto the said grantee, its successors and assigns, all our right and title of dower * * * as relating to the said *oil and gas rights and privileges* herein granted." (Italics supplied.)

The pertinent parts of the applicable statutes making provision for the recording of leases are as follows:

[867]** ***HN1*** Section 2757. "* * * fifth, a record of leases, in which shall be recorded all leases. All instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record."

HN2 Section 8518. "All leases and licenses and assignments thereof, or of any interest therein, given or made, for, upon, or concerning lands or tenements in this state, whereby **[***7]** any right is given or granted to operate, or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record, forthwith, and recorded in such lease record, without delay * * *."

The pertinent parts of the applicable statutes making provision for the recording of deeds are as follows:

HN3 Section 2757. "The recorder shall keep five separate sets of records, namely: First, a record of deeds, in which shall be recorded all deeds and other instruments **[*85]** of writing for the absolute and unconditional sale or conveyance of *lands, tenements* and *hereditaments* * * *." (Italics supplied.)

HN4 Section 8543. "All other deeds and instruments of writing for the conveyance or incumbrance of lands, tenements, or hereditaments, executed agreeably to the provisions of this chapter, shall be recorded in the office of the recorder of the county in which the premises are situated, and until so recorded or filed for record, they shall be deemed fraudulent, so far as relates to a bona fide purchaser having, at the time of purchase, no knowledge of the existence of such former deed or instrument."

Counsel for the gas company, in their **[***8]** brief, frankly say:

"It is clear upon the face of the statutes that they provide for the method of recording two types of instruments namely (a) leases and (b) licenses (together with assignments thereof or of any interests therein) * * *.

"Admittedly, the instrument in question is not a 'lease' because it grants rights in perpetuity, reserves nothing in the nature of rent, and the rights granted are not subject to defeasement upon the happening of any conditions. But if it is a 'license * * * to operate * * * for natural gas and petroleum or either' it is within the statute and should be recorded in the lease record, even though not a lease in form.

"* * *

"No question is made by the appellee about the general form of the instrument in question. It has all the attributes of a deed, viz: language of grant, bargain and sale, habendum, warranty, release of dower, etc., and is made in perpetuity, *i. e.*, to the grantee, its successors and assigns.

"On the other hand no question should be made as to the fact that the instrument does on its face

grant **[*86]** a license to operate on the lands to which it relates for oil and gas."

The character of the instrument of conveyance **[***9]** reveals that it is other than a grant of real property. Possession 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. The very sale of oil and gas, separate and apart from the real estate surface, constitutes, in law, a constructive severance such as occurs in the case of sale of standing timber or growing crops.

The instrument of conveyance, as a whole, bears the earmarks of a license. It grants operating privileges on the land surface, just as would be necessary to remove standing timber or growing crops in a sale thereof. In the habendum clause of the instrument here, which measures the estate granted, the interests granted or conveyed are designated as "the above granted and bargained oil and gas rights, with the appurtenances thereunto belonging," and are not characterized as oil and gas in place. Likewise, the covenant of seizin and warranty relates solely to "the oil and gas rights in, upon and under the said above described premises." It is significant, also, that when the parties **[***10]** chose **[**868]** to transfer an interest granted under the original instrument of conveyance they did so by a mere assignment of the instrument and not by a new and subsequent deed which would be necessary in case real property was being transferred.

As a matter of fact, many authorities hold that the owner of the land surface does not own any oil or gas which may be "in place" thereunder. The position of such authorities is that the owner has the exclusive right to drill wells on his premises for these minerals **[*87]** and to take the products of such wells as his own personal property from whatever source they may come to such wells.

On this subject, 24 American Jurisprudence, 520, Section 4, says:

HN5 "* * * there are many decisions which declare that gas and oil in place belong to the owner of the land and that he can convey or incumber them in the same manner as any other mineral estate, subject, of course, to the possibility of their escape and a resultant loss of title. Although this view has been adopted in a number of jurisdictions, it has been severely criticized, and in most of the producing states the courts hold that gas and oil *in situ* are not subject to absolute **[***11]** ownership [*Callahan* v. *Martin*, 3 Cal. (2d), 110, 43 P. (2d), 788, 101 A. L. R., 871; *Kolachny* v. *Galbreath*, 26 Okla., 772, 110 P., 902, 38 L. R. A. (N. S.), 451; *LaLaguna Ranch Co.* v. *Dodge, Admr.*, 18 Cal. (2d), 132, 114 P. (2d), 351, 135 A. L. R., 546, 550; *Jilek* v. *Chicago, Wilmington & Franklin Coal Co.*, 382 Ill., 241, 47 N. E. (2d), 96, 146 A. L. R., 871, 880], that the land owner's only right is to extract them, and that he has no title to them until he does so. This means, of course, that he cannot convey them in place and that there can be no ownership of them separate or distinct from the land."

Cited as supporting the later doctrine of ownership as expressed in the text are the cases of *Kelley* v. *Ohio Oil Co.*, 57 Ohio St., 317, 49 N. E., 399, 63 Am. St. Rep., 721, 39 L. R. A., 765; and *Nonamaker* v. *Amos*, 73 Ohio St., 163, 170, 76 N. E., 949, 112 Am. St. Rep., 708.

In the case of Nonamaker v. Amos, supra, the question involved was whether the amount of royalty to be paid to the land owner for oil and gas produced under a written instrument could be changed by parol agreement between the parties. The land owner claimed **[***12]** **[*88]** that such parol agreement was void because it related to an interest in or concerning land. The court in the course of its opinion said:

"It is claimed for the lessor who commenced the action under review, that, (1) the parol contract relied on relates to an interest in or concerning land; and, (2) that the contract was not to be performed within the space of one year from the making thereof. We cannot assent to either

proposition. The title to the land is not involved, nor is any interest or estate therein. The question arises on a lease supplemented by a parol contract with reference to the consideration. There is no controversy over the extent of the grant, and the parol contract does not undertake to lessen or enlarge the estate granted. Touching the division of the oil when brought to the surface, the written lease stipulates that the lessees shall yield and pay 'to the lessor the one-sixth part of the oil produced and saved from the premises, delivered free of expense into the tanks or pipe line to the lessor's credit * * *.'

"* * * In *Kelley* v. *The Ohio Oil Co.*, 57 Ohio St., 317, this court held that ***HN6*** petroleum oil is a mineral, and while it is in the **[***13]** earth, it forms part of the realty; and when it reaches a well and is produced on the surface, it becomes personal property and belongs to the owner of the well. In the opinion by Burket, J., on page 328, it is said: 'Petroleum oil is a mineral, and while in the earth it is part of the realty, and should it move from place to place by percolation or otherwise, it forms part of the tract of land in which it tarries for the time being, and if it moves to the next adjoining tract, it becomes a part and parcel of that tract; **[**869]** and it forms part of some tract, until it reaches a well and is raised to the surface, and then for the first time it becomes the subject of distinct ownership separate from the realty, and becomes personal property, the personal property of the person into whose well **[*89]** it came. * * * It is the property of, and belongs to the person who reaches it by means of a well and severs it from the realty and converts it into personalty.'"

Applying the statutes above quoted to the terms of the granting instrument here under consideration as it deals with the peculiar character of the property to which it relates, this court is of the view that the instrument **[***14]** in question is a license rather than a deed of conveyance. ***HN7*** Section 8518, General Code, seems to have specific application to the instrument in question. The language is plain. "All leases and *licenses* * * * given * * * for, upon, or concerning lands or tenements in this state, *whereby any right is given or granted to operate, or to sink or drill wells thereon for natural gas and petroleum* or either, or pertaining thereto, *shall be filed for record*, * * * and recorded *in such lease record.*" (Italics supplied.)

In the early case of *Northwestern Ohio Natural Gas Co.* v. *City of Tiffin*, 59 Ohio St., 420, 54 N. E., 77, this court in construing ***HN8*** Section 4112*a*, Revised Statutes (now Section 8518, General Code), said:

"This statute * * * applies to all oil and gas leases and licenses, including those entered into prior, as well as subsequent, to the first day of September, 1888, makes special provision with respect to their registration, and prescribes the consequences of omission to have them recorded as required. It is a settled rule of construction, that special statutory provisions for particular cases operate as exceptions to general provisions which might **[***15]** otherwise include the particular cases, and such cases are governed by the special provisions. *Under that rule this statute takes leases and licenses to which it is applicable out of the operation of Sections 4112 and 4134, Revised Statutes, and itself furnishes the rule governing the registry of such instruments*, and the effect upon their validity of the failure of registration." (Italics supplied.)

[*90] The recording of the instrument in question in the record of leases was sufficient to constitute constructive notice of the existence, operation and effect of the instrument to the plaintiff as a subsequent purchaser of the land in question.

The judgment of the Court of Appeals is affirmed.

Judgment affirmed.

EXHIBIT

GG

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

Approved by the American Bar Association
New Orleans, Louisiana, February 16, 1987

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, 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) _____.

EXHIBIT

HH

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 containing the claim has been recorded;

(D) The type of claim asserted; and on the opposite page on the corresponding line a pertinent description of the property affected as appears in such notice.

Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code~~,~~ shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING:

(A) ~~To bar any~~ ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;

(B) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose;

(C) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;

(D) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;

(E) ~~To bar or extinguish any~~ ANY right, title, estate, or interest in coal, and any mining or other rights pertinent thereto or exercisable in connection therewith;

(F) ~~To bar or extinguish any~~ ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;

(G) ~~To bar or extinguish any~~ ANY right, title, or interest of the United States, or of ~~the state of Ohio~~ THIS STATE, or any political subdivision, body politic, or agency thereof.

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; 8.8

(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
OPERATIONS. 8.35

(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
HELD BY ANY GOVERNMENTAL ENTITY. 9.15

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

As Reported by the Senate Judiciary Committee 1.4

117th General Assembly 1.6

Regular Session Sub. S. B. No. 223 1.7

1987-1988 1.8

MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE 1.10

1.11

A B I L L 1.12

To amend sections 317.18, 317.20, 317.201, and 1.14
5301.53, to enact new section 5301.56, and to 1.15
repeal section 5301.56 of the Revised Code to 1.16
provide a method for the termination of dormant
mineral estates and the vesting of their title in 1.17
the surface owners, in the absence of certain 1.18
occurrences within the preceding 20 years, 1.19
including the filing by the holder of the mineral 1.20
interest of a notice of claim.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: 1.23

Section 1. That sections 317.18, 317.20, 317.201, and 1.25
5301.53 be amended and new section 5301.56 of the Revised Code be 1.26
enacted to read as follows: 1.27

Sec. 317.18. At the beginning of each day's business the 1.30
county recorder shall make and keep up general alphabetical 1.31
indexes, direct and reverse, of all the names of both parties to 1.33
all instruments theretofore received for record by him. The 1.34
volume and page where such instrument is recorded may be omitted 1.35
until it is actually recorded if the file number is entered in 1.36
place of the volume or page~~, but such file number may be omitted~~ 2.1
~~from any index volume in use on April 21, 1896, if the form of~~ 2.3
~~the index volume is not adapted to entering the file number.~~ The 2.5
indexes shall show the kind of instrument, the range, township, 2.7
and section or the survey number and number of acres, or the 2.8
permanent parcel number provided for under section 319.28 of the 2.9
Revised Code, or the lot and sublot number and the part thereof, 2.10
all as the case requires, of each tract, parcel, or lot of land 2.12
described in any such instrument of writing. The name of each 2.13

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, 1911,~~ 3.22
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 containing the claim has been recorded;

(D) The type of claim asserted; and on the opposite page on the corresponding line a pertinent description of the property affected as appears in such notice.

Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OR THE FOLLOWING:

(A) ~~To bar any~~ ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;

(B) ~~To bar or extinguish any~~ ANY easement or interest in ~~the~~ nature of an easement created or held for any railroad or public utility purpose;

(C) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;

(D) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;

(E) ~~To bar or extinguish any~~ ANY right, title, estate, or interest in coal, and any mining or other rights pertinent thereto or exercisable in connection therewith;

(F) ~~To bar or extinguish any~~ ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;

(G) ~~To bar or extinguish any~~ ANY right, title, or interest of the United States, or of ~~the state of Ohio~~ THIS STATE, or any political subdivision, body politic, or agency thereof.

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 MINERAL INTEREST HAS BEEN THE SUBJECT OF A TITLE 7.30
TRANSACTION WHICH HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE 7.32
COUNTY RECORDER OF THE COUNTY IN WHICH THE LAND IS LOCATED;

(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, PROVIDED THAT THE 8.4
INSTRUMENT CREATING OR PROVIDING FOR THE POOLING OR UNITIZATION 8.5
OF OIL OR GAS INTERESTS HAS BEEN FILED OR RECORDED IN THE OFFICE 8.6
OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS THAT ARE 8.7
SUBJECT TO THE POOLING OR UNITIZATION ARE LOCATED; 8.8

(c) THE INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE 8.11
OPERATIONS BY THE HOLDER;

(d) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE 8.13
HOLDER, PROVIDED THAT AN AFFIDAVIT STATING THE NAME OF THE PERMIT 8.15

HOLDER, THE PERMIT NUMBER, THE TYPE OF PERMIT, AND A LEGAL 8.16
DESCRIPTION OF THE LAND AFFECTED BY THE PERMIT HAS BEEN FILED OR 8.17
RECORDED, IN ACCORDANCE WITH SECTION 5301.252 OF THE REVISED 8.18
CODE, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH 8.19
THE LAND IS LOCATED;

(e) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED UNDER 8.22
DIVISION (C) OF THIS SECTION;

(f) IN THE CASE OF A SEPARATED MINERAL INTEREST, A 8.24
SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CREATED FOR THE 8.25
MINERAL INTEREST IN THE AUDITOR'S TAX LIST AND THE TREASURER'S 8.26
DUPLICATE TAX LIST IN THE COUNTY IN WHICH THE LAND IS LOCATED. 8.27

NO MINERAL INTEREST SHALL BE DEEMED ABANDONED UPON THE 8.29
BASIS OF FAILURE OF COMPLIANCE WITH DIVISION (B) OF THIS SECTION 8.31
PRIOR TO THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION. 8.32

(C) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 8.34
DEEMED ABANDONED UNDER DIVISION (B) OF THIS SECTION MAY BE FILED 8.36
FOR RECORD BY THE HOLDER WITH THE COUNTY RECORDER OF THE COUNTY 9.1
IN WHICH THE LAND IS LOCATED. THE CLAIM SHALL COMPLY WITH ALL OF 9.2
THE FOLLOWING:

(1) BE FILED IN ACCORDANCE WITH SECTION 5301.52 OF THE 9.4
REVISED CODE; 9.5

(2) STATE THE RECORDING INFORMATION, IF ANY, UPON WHICH 9.7
THE CLAIM IS BASED; 9.8

(3) STATE THAT THE CLAIMANT DOES NOT INTEND TO ABANDON BUT 9.10
TO PRESERVE HIS RIGHTS IN THE MINERAL INTEREST DESCRIBED. 9.11

SUCH CLAIM PRESERVES THE RIGHTS OF ALL HOLDERS OF A MINERAL 9.14
INTEREST IN THE SAME LAND. ANY HOLDER OF AN INTEREST FOR USE IN 9.15
UNDERGROUND GAS STORAGE OPERATIONS MAY PRESERVE HIS INTEREST, AND 9.16
THOSE OF ANY LESSOR THEREOF, BY A SINGLE CLAIM, DEFINING THE 9.17
BOUNDARIES OF THE STORAGE FIELD OR POOL AND ITS FORMATIONS, 9.18
WITHOUT DESCRIBING EACH SEPARATE INTEREST CLAIMED. SUCH A CLAIM 9.19
ALSO ESTABLISHES PRIMA-FACIE EVIDENCE OF THE USE OF SUCH INTEREST 9.20
IN UNDERGROUND GAS STORAGE OPERATIONS. 9.21

(D) A CLAIM FILED UNDER DIVISION (C) OF THIS SECTION SHALL 9.24
BE RECORDED AS PROVIDED IN SECTIONS 317.18 TO 317.201 AND 5301.52 9.25
OF THE REVISED CODE.

(E) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY FROM 9.28
THE PRESUMPTION OF ABANDONMENT UNDER THIS SECTION BY OCCURRENCE 9.29
OF ANY OF THE EVENTS DESCRIBED IN DIVISION (B)(2) OF THIS 9.30
SECTION, INCLUDING SUCCESSIVE FILINGS OF CLAIMS UNDER DIVISION 9.31
(C) OF THIS SECTION. THE FILING OF A CLAIM UNDER DIVISION (C) OF 9.32
THIS SECTION DOES NOT AFFECT THE RIGHT OF A LESSOR OF AN OIL OR 9.33
GAS LEASE TO OBTAIN ITS FORFEITURE UNDER SECTION 5301.332 OF THE 9.34
REVISED CODE.

(F) THIS SECTION DOES NOT APPLY TO ANY MINERAL INTEREST 9.36
HELD BY ANY GOVERNMENTAL ENTITY. 10.1

Section 2. That existing sections 317.18, 317.20, 317.201, 10.3
and 5301.53 and section 5301.56 of the Revised Code are hereby 10.4
repealed. 10.5

As Passed by the Senate

117th General Assembly

Regular Session Sub. S. B. No. 223

1987-1988

MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE-MR. BURCH

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
~~1917~~ 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 same page, beginning at the bottom, in like manner, all the mortgages, liens, notices as provided for in sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code, or other encumbrances affecting such real estate.

The compensation for the services rendered under this section shall be paid from the general revenue fund of the county, and no additional levy shall be made in consequence of such services. In the event that the board decides to have such sectional index made it shall advertise for three consecutive weeks in one newspaper of general circulation in the county for sealed proposals to do such work as provided in this section, and shall let the work to the lowest and best bidder, and shall require him to give bond for the faithful performance of the contract, in such sum as the board fixes, and such work shall be done to the acceptance of the bureau of supervision and inspection of public offices upon allowance by such board. The board may reject any and all bids for the work, provided that no more than five cents shall be paid for each entry of each tract or lot of land.

When brought up and completed, the county recorder shall keep up the indexes described in this section.

Sec. 317.201. The county recorder shall maintain a book to be known as the "Notice Index." Separate pages of the book shall be headed by the original survey sections or surveys, or parts of a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots. In this book there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code. In designated columns there shall be entered on the left-hand page:

(A) The name of each claimant;

(B) Next to the right, the name of each owner of title;

(C) The deed book number and page where the instrument containing the claim has been recorded;

(D) The type of claim asserted; and on the opposite page on the corresponding line a pertinent description of the property affected as appears in such notice.

Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING:

(A) ~~To bar any~~ ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;

(B) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose;

(C) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;

(D) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;

(E) ~~To bar or extinguish any~~ ANY right, title, estate, or interest in coal, and any mining or other rights pertinent thereto or exercisable in connection therewith;

(F) ~~To bar or extinguish any~~ ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;

(G) ~~To bar or extinguish any~~ ANY right, title, or interest of the United States, or of ~~the state of Ohio~~ THIS STATE, or any political subdivision, body politic, or agency thereof.

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 MINERAL INTEREST HAS BEEN THE SUBJECT OF A TITLE 7.30
TRANSACTION WHICH HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE 7.32
COUNTY RECORDER OF THE COUNTY IN WHICH THE LAND IS LOCATED;

(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, PROVIDED THAT THE 8.4
INSTRUMENT CREATING OR PROVIDING FOR THE POOLING OR UNITIZATION 8.5
OF OIL OR GAS INTERESTS HAS BEEN FILED OR RECORDED IN THE OFFICE 8.6
OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS THAT ARE 8.7
SUBJECT TO THE POOLING OR UNITIZATION ARE LOCATED; 8.8

(c) THE INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE 8.11
OPERATIONS BY THE HOLDER;

(d) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE 8.13
HOLDER, PROVIDED THAT AN AFFIDAVIT STATING THE NAME OF THE PERMIT 8.15

HOLDER, THE PERMIT NUMBER, THE TYPE OF PERMIT, AND A LEGAL 8.16
DESCRIPTION OF THE LAND AFFECTED BY THE PERMIT HAS BEEN FILED OR 8.17
RECORDED, IN ACCORDANCE WITH SECTION 5301.252 OF THE REVISED 8.18
CODE, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH 8.19
THE LAND IS LOCATED;

(E) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED UNDER 8.22
DIVISION (C) OF THIS SECTION;

(F) IN THE CASE OF A SEPARATED MINERAL INTEREST, A 8.24
SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CREATED FOR THE 8.25
MINERAL INTEREST IN THE AUDITOR'S TAX LIST AND THE TREASURER'S 8.26
DUPLICATE TAX LIST IN THE COUNTY IN WHICH THE LAND IS LOCATED. 8.27

NO MINERAL INTEREST SHALL BE DEEMED ABANDONED UPON THE 8.29
BASIS OF FAILURE OF COMPLIANCE WITH DIVISION (B) OF THIS SECTION 8.31
PRIOR TO THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION. 8.32

(C) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 8.34
DEEMED ABANDONED UNDER DIVISION (B) OF THIS SECTION MAY BE FILED 8.36
FOR RECORD BY THE HOLDER WITH THE COUNTY RECORDER OF THE COUNTY 9.1
IN WHICH THE LAND IS LOCATED. THE CLAIM SHALL COMPLY WITH ALL OF 9.2
THE FOLLOWING:

(1) BE FILED IN ACCORDANCE WITH SECTION 5301.52 OF THE 9.4
REVISED CODE; 9.5

(2) STATE THE RECORDING INFORMATION, IF ANY, UPON WHICH 9.7
THE CLAIM IS BASED; 9.8

(3) STATE THAT THE CLAIMANT DOES NOT INTEND TO ABANDON BUT 9.10
TO PRESERVE HIS RIGHTS IN THE MINERAL INTEREST DESCRIBED. 9.11

SUCH CLAIM PRESERVES THE RIGHTS OF ALL HOLDERS OF A MINERAL 9.14
INTEREST IN THE SAME LAND. ANY HOLDER OF AN INTEREST FOR USE IN 9.15
UNDERGROUND GAS STORAGE OPERATIONS MAY PRESERVE HIS INTEREST, AND 9.16
THOSE OF ANY LESSOR THEREOF, BY A SINGLE CLAIM, DEFINING THE 9.17
BOUNDARIES OF THE STORAGE FIELD OR POOL AND ITS FORMATIONS, 9.18
WITHOUT DESCRIBING EACH SEPARATE INTEREST CLAIMED. SUCH A CLAIM 9.19
ALSO ESTABLISHES PRIMA-FACIE EVIDENCE OF THE USE OF SUCH INTEREST 9.20
IN UNDERGROUND GAS STORAGE OPERATIONS. 9.21

(D) A CLAIM FILED UNDER DIVISION (C) OF THIS SECTION SHALL 9.24
BE RECORDED AS PROVIDED IN SECTIONS 317.18 TO 317.201 AND 5301.52 9.25
OF THE REVISED CODE.

(E) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY FROM 9.28
THE PRESUMPTION OF ABANDONMENT UNDER THIS SECTION BY OCCURRENCE 9.29
OF ANY OF THE EVENTS DESCRIBED IN DIVISION (B)(2) OF THIS 9.30
SECTION, INCLUDING SUCCESSIVE FILINGS OF CLAIMS UNDER DIVISION 9.31
(C) OF THIS SECTION. THE FILING OF A CLAIM UNDER DIVISION (C) OF 9.32
THIS SECTION DOES NOT AFFECT THE RIGHT OF A LESSOR OF AN OIL OR 9.33
GAS LEASE TO OBTAIN ITS FORFEITURE UNDER SECTION 5301.332 OF THE 9.34
REVISED CODE.

(F) THIS SECTION DOES NOT APPLY TO ANY MINERAL INTEREST 9.36
HELD BY ANY GOVERNMENTAL ENTITY. 10.1

Section 2. That existing sections 317.18, 317.20, 317.201, 10.3
and 5301.53 and section 5301.56 of the Revised Code are hereby 10.4
repealed. 10.5

As Reported by the House Civil and Commercial Law Committee 1.4

117th General Assembly 1.6

Regular Session Sub. S. B. No. 223 1.7

1987-1988 1.8

MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE-MR. BURCH 1.10

1.11

A B I L L 1.12

To amend sections 317.08, 317.18, 317.20, 317.201, 1.14
and 5301.53, to enact new section 5301.56, and to 1.16
repeal section 5301.56 of the Revised Code to 1.17
provide a method for the termination of dormant 1.18
mineral interests and the vesting of their title 1.19
in surface owners, in the absence of certain 1.20
occurrences within the preceding 20 years, 1.21
including the filing by the holder of a mineral 1.22
interest of a preserving claim. 1.23

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: 1.26

Section 1. That sections 317.08, 317.18, 317.20, 317.201, 1.28
and 5301.53 be amended and new section 5301.56 of the Revised 1.30
Code be enacted to read as follows: 1.31

Sec. 317.08. Except as provided in division (F) of this 1.34
section, the county recorder shall keep five separate sets of 1.36
records as follows:

(A) A record of deeds, in which shall be recorded all 2.1
deeds and other instruments of writing for the absolute and 2.2
unconditional sale or conveyance of lands, tenements, and 2.4
hereditaments; all notices, as provided for in sections 5301.47 2.5
to 5301.56 of the Revised Code; all judgments or decrees in 2.7
actions brought under section 5303.01 of the Revised Code; all 2.9
declarations and bylaws as provided for in ~~sections 5311.01 to~~ 2.10
~~5311.22~~ CHAPTER 5311. of the Revised Code; affidavits as provided 2.12
for in section 5301.252 of the Revised Code; all certificates as 2.13
provided for in section 5311.17 of the Revised Code; all articles 2.14
dedicating archaeological preserves accepted by the director of 2.15
the Ohio historical society under section 149.52 of the Revised 2.16

Code; all articles dedicating nature preserves accepted by the 2.17
director of natural resources under section 1517.05 of the 2.18
Revised Code; all agreements for the registration of lands as 2.19
archaeological or historic landmarks under section 149.51 or 2.20
149.55 of the Revised Code; and all conveyances of conservation 2.21
easements under section 5301.68 of the Revised Code; AND ALL 2.23
INSTRUMENTS OR ORDERS DESCRIBED IN DIVISION (B)(1)(c)(ii) OF 2.25
SECTION 5301.56 OF THE REVISED CODE; 2.26

(B) A record of mortgages, in which shall be recorded: 2.28

(1) All mortgages, including amendments, supplements, 2.30
modifications, and extensions ~~thereof~~ OF MORTGAGES, or other 2.32
instruments of writing by which lands, tenements, or 2.33
hereditaments are or may be mortgaged or otherwise conditionally 2.35
sold, conveyed, affected, or encumbered; 3.1

(2) All executory installment contracts for the sale of 3.2
land executed after September 29, 1961, which by ~~the~~ THEIR terms 3.4
~~thereof~~ are not required to be fully performed by one or more of 3.5
the parties ~~thereto~~ TO THEM within one year of the date of the 3.6
contracts; 3.7

(3) All options to purchase real estate, including 3.8
supplements, modifications, and amendments ~~thereof~~ OF THE 3.10
OPTIONS, but no such instrument shall be recorded if it does not 3.12
state a specific day and year of expiration of its validity. 3.13

(C) A record of powers of attorney; 3.14

(D) A record of plats, in which shall be recorded all 3.16
plats and maps of town lots, of the subdivision thereof, and of 3.17
other divisions or surveys of lands, and any center line survey 3.18
of a highway located within the county, the plat of which shall 3.19
be furnished by the director of transportation or county 3.20
engineer, and all drawings as provided for in ~~sections 5311.01 to~~ 3.22
~~5311.22~~ CHAPTER 5311. of the Revised Code; 3.23

(E) A record of leases, in which shall be recorded all 3.24
leases, memoranda of leases, and supplements, modifications, and 3.25
amendments ~~thereof~~ OF LEASES AND MEMORANDA OF LEASES. 3.26

All instruments or memoranda of instruments entitled to 3.27
record shall be recorded in the proper record in the order in 3.28
which they are presented for record. The recorder may index, 3.29
keep, and record in one volume unemployment compensation liens, 3.30
federal tax liens, personal tax liens, ~~mechanics~~ MECHANIC'S 3.32
liens, notices of liens, certificates of satisfaction or partial 3.34
release of estate tax liens, discharges of recognizances, excise 3.36
and franchise tax liens on corporations, and liens provided for 4.1
in sections 1513.33, 1513.37, 5111.021, and 5311.18 of the 4.2
Revised Code. 4.3

The recording of an option to purchase real estate, 4.4
including any supplement, modification, and amendment ~~thereof~~ OF 4.6
THE OPTION, under this section shall serve as notice to any 4.7
purchaser of an interest in the real estate covered by the option 4.8
only during the period of the validity of the option as stated in 4.9
the instrument. 4.10

(F) In lieu of keeping the five separate sets of records 4.11
required in divisions (A) to (E) of this section and the records 4.12
required in division (G) of this section, a county recorder may 4.14
record all the instruments required to be recorded by this 4.15
section in two separate sets of record books. One set shall be 4.16
called the "official records" and shall contain the instruments 4.17
listed in divisions (A), (B), (C), (E), and (G) of this section. 4.19
The second set of records shall contain the instruments listed in 4.21
division (D) of this section.

(G) Except as provided in division (F) of this section, 4.22
the county recorder shall keep a separate set of records 4.23
containing all corrupt activity lien notices filed with the 4.24
recorder pursuant to section 2923.36 of the Revised Code. 4.25

Sec. 317.18. At the beginning of each day's business, the 4.27
county recorder shall make and keep up general alphabetical 4.28
indexes, direct and reverse, of all the names of both parties to 4.30
all instruments ~~theretofore~~ PREVIOUSLY received for record by 4.32
him. The volume and page where EACH such instrument is recorded 4.33
may be omitted until it is actually recorded if the file number 4.35

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~~ ITS 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~~ ITS 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~~ ITS 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~~ CHAPTER 5311. 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 property, and the name of the condominium property shall be entered in the reverse index under the appropriate letter followed on the same line by the name of the owner of the property, or, if the instrument contains the names of more than one owner, there shall be entered the name of the first owner followed by "and others" or its equivalent.

Any general alphabetical index ~~commenced after June 7, 1911,~~ shall be COMMENCED in conformity to this section, and whenever, in the opinion of the board of county commissioners, it becomes necessary to transcribe, on account of its worn out or incomplete condition, any volume of ~~such~~ AN index now in use, such volume shall be revised and transcribed to conform with this section; except that in counties having a sectional index in conformity with section 317.20 of the Revised Code, such transcript shall be only a copy of the original.

Sec. 317.20. When, in the opinion of the board of county commissioners sectional indexes are needed, and it so directs, in addition to the alphabetical indexes provided for in section 317.18 of the Revised Code, the board may provide for making, in books prepared for that purpose, sectional indexes to the records of all real estate in the county, beginning with some designated year and continuing through such period of years as it specified, by placing under the heads of the original surveyed sections or surveys, or parts of a section or survey, squares, subdivisions,

or the permanent parcel numbers provided for under section 319.28 7.20
of the Revised Code, of lots, on the left-hand page, or on the 7.22
upper portion of such page of the index book, the following: 7.23

(A) The name of the grantor; 7.24

(B) Next to the right, the name of the grantee; 7.26

(C) The number and page of the record where the instrument 7.28
is found recorded; 7.29

(D) The character of the instrument, to be followed by a 7.31
pertinent description of the property conveyed by the deed, 7.32
lease, or assignment of lease;

(E) On the opposite page, or on the lower portion of the 7.33
same page, beginning at the bottom, in like manner, all the 7.34
mortgages, liens, notices as provided for in sections 5301.51 7.35
and, 5301.52, AND 5301.56 of the Revised Code, or other 8.1
encumbrances affecting such real estate. 8.3

The compensation for the services rendered under this 8.4
section shall be paid from the general revenue fund of the 8.5
county, and no additional levy shall be made in consequence of 8.6
such services. ~~In the event that~~ IF the board decides to have 8.8
such sectional index made, it shall advertise for three 8.9
consecutive weeks in one newspaper of general circulation in the 8.10
county for sealed proposals to do such work as provided in this 8.11
section, and shall let the work to the lowest and best bidder, 8.13
and shall require him to give bond for the faithful performance 8.14
of the contract, in such sum as the board fixes, and such work 8.15
shall be done to the acceptance of the ~~bureau of supervision and~~ 8.16
~~inspection of public offices~~ AUDITOR OF STATE upon allowance by 8.18
such board. The board may reject any and all bids for the work, 8.19
provided that no more than five cents shall be paid for each 8.20
entry of each tract or lot of land. 8.21

When brought up and completed, the county recorder shall 8.22
keep up the indexes described in this section. 8.23

Sec. 317.201. The county recorder shall maintain a book to 8.24
be known as the "Notice Index." Separate pages of the book shall 8.25
be headed by the original survey sections or surveys, or parts of 8.27

a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots. In this book, there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51 ~~and~~, 5301.52, AND 5301.56 of the Revised Code. In designated columns, there shall be entered on the left-hand page:

(A) The name of each claimant;

(B) Next to the right, the name of each owner of title;

(C) The deed book number and page where the instrument containing the claim has been recorded;

(D) The type of claim asserted~~, and on~~.

ON the opposite page on the corresponding line, a pertinent description of the property affected as appears in such notice SHALL BE ENTERED.

Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING:

(A) ~~To bar any~~ ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease, or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;

(B) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose;

(C) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;

(D) ~~To bar or extinguish any~~ ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track,

pole, tower, or other physical facility and whether or not the existence of such facility is observable;

(E) ~~To bar or extinguish any~~ ANY right, title, estate, or interest in coal, and any mining or other rights pertinent ~~thereto~~ TO or exercisable in connection ~~therewith~~ WITH ANY RIGHT, TITLE, ESTATE, OR INTEREST IN COAL;

(F) ~~To bar or extinguish any~~ ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;

(G) ~~To bar or extinguish any~~ ANY right, title, or interest of the United States, or of ~~the state of Ohio~~ THIS STATE, or OF any political subdivision, body politic, or agency ~~thereof~~ OF THE UNITED STATES OR THIS STATE.

Sec. 5301.56. (A) AS USED IN THIS SECTION:

(1) "HOLDER" MEANS THE RECORD HOLDER OF A MINERAL INTEREST, AND ANY PERSON WHO DERIVES HIS 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.

(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 11.26
TRANSACTION THAT HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE 11.28
COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS ARE LOCATED; 11.29

(ii) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF 11.31
MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A 11.32
LEASE TO WHICH THE MINERAL INTEREST IS SUBJECT, OR, IN THE CASE 11.33
OF OIL OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT 11.35
OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED 11.36
CODE, IN WHICH THE MINERAL INTEREST IS PARTICIPATING, PROVIDED 12.1
THAT THE INSTRUMENT OR ORDER CREATING OR PROVIDING FOR THE 12.3
POOLING OR UNITIZATION OF OIL OR GAS INTERESTS HAS BEEN FILED OR 12.4
RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN 12.5
WHICH THE LANDS THAT ARE SUBJECT TO THE POOLING OR UNITIZATION 12.6
ARE LOCATED; 12.7

(iii) THE MINERAL INTEREST HAS BEEN USED IN UNDERGROUND 12.10
GAS STORAGE OPERATIONS BY THE HOLDER; 12.11

(iv) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE 12.13
HOLDER, PROVIDED THAT AN AFFIDAVIT THAT STATES THE NAME OF THE 12.14
PERMIT HOLDER, THE PERMIT NUMBER, THE TYPE OF PERMIT, AND A LEGAL 12.16
DESCRIPTION OF THE LANDS AFFECTED BY THE PERMIT HAS BEEN FILED OR 12.17
RECORDED, IN ACCORDANCE WITH SECTION 5301.252 OF THE REVISED 12.18
CODE, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH 12.19
THE LANDS ARE LOCATED;

(v) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED IN 12.22
ACCORDANCE WITH DIVISION (C) OF THIS SECTION;

(vi) IN THE CASE OF A SEPARATED MINERAL INTEREST, A 12.24
SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CREATED FOR THE 12.25
MINERAL INTEREST IN THE COUNTY AUDITOR'S TAX LIST AND THE COUNTY 12.26
TREASURER'S DUPLICATE TAX LIST IN THE COUNTY IN WHICH THE LANDS 12.28
ARE LOCATED.

(2) A MINERAL INTEREST SHALL NOT BE DEEMED ABANDONED UNDER 12.30
DIVISION (B)(1) OF THIS SECTION BECAUSE NONE OF THE CIRCUMSTANCES 12.32
DESCRIBED IN THAT DIVISION APPLY, UNTIL THREE YEARS FROM THE 12.33
EFFECTIVE DATE OF THIS SECTION. 12.35

(C)(1) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 13.1
DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION MAY BE 13.2
FILED FOR RECORD BY ITS HOLDER. SUBJECT TO DIVISION (C)(3) OF 13.3
THIS SECTION, THE CLAIM SHALL BE FILED AND RECORDED IN ACCORDANCE 13.5
WITH SECTIONS 317.18 TO 317.201 AND 5301.52 OF THE REVISED CODE, 13.6
AND SHALL CONSIST OF A NOTICE THAT DOES ALL OF THE FOLLOWING: 13.7

(a) STATES THE NATURE OF THE MINERAL INTEREST CLAIMED AND 13.10
ANY RECORDING INFORMATION UPON WHICH THE CLAIM IS BASED;

(b) OTHERWISE COMPLIES WITH SECTION 5301.52 OF THE REVISED 13.13
CODE;

(c) STATES THAT THE HOLDER DOES NOT INTEND TO ABANDON, BUT 13.16
INSTEAD TO PRESERVE, HIS RIGHTS IN THE MINERAL INTEREST.

(2) A CLAIM THAT COMPLIES WITH DIVISION (C)(1) OF THIS 13.18
SECTION OR, IF APPLICABLE, DIVISIONS (C)(1) AND (3) OF THIS 13.19
SECTION PRESERVES THE RIGHTS OF ALL HOLDERS OF A MINERAL INTEREST 13.21
IN THE SAME LANDS.

(3) ANY HOLDER OF AN INTEREST FOR USE IN UNDERGROUND GAS 13.24
STORAGE OPERATIONS MAY PRESERVE HIS INTEREST, AND THOSE OF ANY 13.25
LESSOR OF THE INTEREST, BY A SINGLE CLAIM, THAT DEFINES THE 13.27
BOUNDARIES OF THE STORAGE FIELD OR POOL AND ITS FORMATIONS, 13.29
WITHOUT DESCRIBING EACH SEPARATE INTEREST CLAIMED. THE CLAIM IS 13.30
PRIMA-FACIE EVIDENCE OF THE USE OF EACH SEPARATE INTEREST IN 13.31
UNDERGROUND GAS STORAGE OPERATIONS. 13.33

(D)(1) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY 13.35
FROM BEING DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION 14.1
BY THE OCCURRENCE OF ANY OF THE CIRCUMSTANCES DESCRIBED IN 14.2
DIVISION (B)(1)(c) OF THIS SECTION, INCLUDING, BUT NOT LIMITED 14.4
TO, SUCCESSIVE FILINGS OF CLAIMS TO PRESERVE MINERAL INTERESTS 14.5
UNDER DIVISION (C) OF THIS SECTION. 14.6

(2) THE FILING OF A CLAIM TO PRESERVE A MINERAL INTEREST 14.8
UNDER DIVISION (C) OF THIS SECTION DOES NOT AFFECT THE RIGHT OF A 14.10
LESSOR OF AN OIL OR GAS LEASE TO OBTAIN ITS FORFEITURE UNDER 14.11
SECTION 5301.332 OF THE REVISED CODE. 14.12

Section 2. That existing sections 317.08, 317.18, 317.20, 14.14
317.201, and 5301.53 and section 5301.56 of the Revised Code are 14.16
hereby repealed. 14.17

As Passed by the House 1.4

117th General Assembly 1.6

Regular Session Sub. S. B. No. 223 1.7

1987-1988 1.8

MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE-MR. BURCH 1.10

A B I L L 1.12

To amend sections 317.08, 317.18, 317.20, 317.201, 1.14
and 5301.53, to enact new section 5301.56, and to 1.16
repeal section 5301.56 of the Revised Code to 1.17
provide a method for the termination of dormant 1.18
mineral interests and the vesting of their title 1.19
in surface owners, in the absence of certain 1.20
occurrences within the preceding 20 years, 1.21
including the filing by the holder of a mineral 1.22
interest of a preserving claim. 1.23

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: 1.26

Section 1. That sections 317.08, 317.18, 317.20, 317.201, 1.28
and 5301.53 be amended and new section 5301.56 of the Revised 1.30
Code be enacted to read as follows: 1.31

Sec. 317.08. Except as provided in division (F) of this 1.34
section, the county recorder shall keep five separate sets of 1.36
records as follows:

(A) A record of deeds, in which shall be recorded all 2.1
deeds and other instruments of writing for the absolute and 2.2
unconditional sale or conveyance of lands, tenements, and 2.4
hereditaments; all notices, as provided for in sections 5301.47 2.5
to 5301.56 of the Revised Code; all judgments or decrees in 2.7
actions brought under section 5303.01 of the Revised Code; all 2.9
declarations and bylaws as provided for in ~~sections 5311.01 to~~ 2.10
~~5311.22~~ CHAPTER 5311. of the Revised Code; affidavits as provided 2.12
for in section 5301.252 of the Revised Code; all certificates as 2.13
provided for in section 5311.17 of the Revised Code; all articles 2.14
dedicating archaeological preserves accepted by the director of 2.15
the Ohio historical society under section 149.52 of the Revised 2.16

Code; all articles dedicating nature preserves accepted by the 2.17
director of natural resources under section 1517.05 of the 2.18
Revised Code; all agreements for the registration of lands as 2.19
archaeological or historic landmarks under section 149.51 or 2.20
149.55 of the Revised Code; and all conveyances of conservation 2.21
easements under section 5301.68 of the Revised Code; AND ALL 2.23
INSTRUMENTS OR ORDERS DESCRIBED IN DIVISION (B)(1)(c)(ii) OF 2.25
SECTION 5301.56 OF THE REVISED CODE. 2.26

(B) A record of mortgages, in which shall be recorded: 2.28

(1) All mortgages, including amendments, supplements, 2.30
modifications, and extensions thereof OF MORTGAGES, or other 2.32
instruments of writing by which lands, tenements, or 2.33
hereditaments are or may be mortgaged or otherwise conditionally 2.35
sold, conveyed, affected, or encumbered; 3.1

(2) All executory installment contracts for the sale of 3.2
land executed after September 29, 1961, which by the THEIR terms 3.4
thereof are not required to be fully performed by one or more of 3.5
the parties thereto TO THEM within one year of the date of the 3.6
contracts; 3.7

(3) All options to purchase real estate, including 3.8
supplements, modifications, and amendments thereof OF THE 3.10
OPTIONS, but no such instrument shall be recorded if it does not 3.12
state a specific day and year of expiration of its validity. 3.13

(C) A record of powers of attorney; 3.14

(D) A record of plats, in which shall be recorded all 3.16
plats and maps of town lots, of the subdivision thereof, and of 3.17
other divisions or surveys of lands, and any center line survey 3.18
of a highway located within the county, the plat of which shall 3.19
be furnished by the director of transportation or county 3.20
engineer, and all drawings as provided for in ~~sections 5311.01 to~~ 3.22
~~5311.22~~ CHAPTER 5311. of the Revised Code; 3.23

(E) A record of leases, in which shall be recorded all 3.24
leases, memoranda of leases, and supplements, modifications, and 3.25
amendments ~~thereof~~ OF LEASES AND MEMORANDA OF LEASES. 3.26

All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record in one volume unemployment compensation liens, federal tax liens, personal tax liens, "mechanics MECHANIC'S liens, notices of liens, certificates of satisfaction or partial release of estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, and liens provided for in sections 1513.33, 1513.37, 5111.021, and 5311.18 of the Revised Code.

The recording of an option to purchase real estate, including any supplement, modification, and amendment ~~thereof~~ OF THE OPTION, under this section shall serve as notice to any purchaser of an interest in the real estate covered by the option only during the period of the validity of the option as stated in the instrument.

(F) In lieu of keeping the five separate sets of records required in divisions (A) to (E) of this section and the records required in division (G) of this section, a county recorder may record all the instruments required to be recorded by this section in two separate sets of record books. One set shall be called the "official records" and shall contain the instruments listed in divisions (A), (B), (C), (E), and (G) of this section. The second set of records shall contain the instruments listed in division (D) of this section.

(G) Except as provided in division (F) of this section, the county recorder ~~shall~~ keep a separate set of records containing all corrupt activity lien notices filed with the recorder pursuant to section 2923.36 of the Revised Code.

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~~ PREVIOUSLY received for record by him. The volume and page where EACH 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~~ ITS 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~~ ITS 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~~ ITS 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 6.10
as owners of the lands, tenements, or hereditaments described in 6.12
any such instruments;

(B) The official designation of the officer by whom such 6.13
instrument ~~of writing~~ was made; 6.14

(C) The individual names of the officers by whom such 6.15
instrument ~~of writing~~ was made. 6.16

In all cases of instruments filed in accordance with 6.17
~~sections 5311.01 to 5311.22~~ CHAPTER 5311. of the Revised Code, 6.20
the name of each owner shall be entered in the direct index, 6.21
under the appropriate letter, followed on the same line by the 6.22
name of the condominium property, and the name of the condominium 6.23
property shall be entered in the reverse index under the 6.24
appropriate letter followed on the same line by the name of the 6.26
owner of the property, or, if the instrument contains the names 6.28
of more than one owner, there shall be entered the name of the 6.30
first owner followed by "and others" or its equivalent. 6.31

Any general alphabetical index ~~commenced after June 7, 1911,~~ 6.32
shall be COMMENCED in conformity to this section, and 6.33
whenever, in the opinion of the board of county commissioners, it 6.35
becomes necessary to transcribe, on account of its worn out or 6.36
incomplete condition, any volume of ~~such~~ AN index now in use, 7.3
such volume shall be revised and transcribed to conform with this 7.4
section, except that in counties having a sectional index in 7.5
conformity with section 317.20 of the Revised Code, such 7.7
transcript shall be only a copy of the original. 7.8

Sec. 317.20. When, in the opinion of the board of county 7.10
commissioners sectional indexes are needed, and it so directs, in 7.11
addition to the alphabetical indexes provided for in section 7.12
317.18 of the Revised Code, the board may provide for making, in 7.13
books prepared for that purpose, sectional indexes to the records 7.14
of all real estate in the county, beginning with some designated 7.15
year and continuing through such period of years as it specified, 7.16
by placing under the heads of the original surveyed sections or 7.17
surveys, or parts of a section or survey, squares, subdivisions, 7.18

or the permanent parcel numbers provided for under section 319.28 7.20
of the Revised Code, or lots, on the left-hand page, or on the 7.22
upper portion of such page of the index book, the following: 7.23

(A) The name of the grantor; 7.24

(B) Next to the right, the name of the grantee; 7.26

(C) The number and page of the record where the instrument 7.28
is found recorded; 7.29

(D) The character of the instrument, to be followed by a 7.31
pertinent description of the property conveyed by the deed, 7.32
lease, or assignment of lease; 7.33

(E) On the opposite page, or on the lower portion of the 7.33
same page, beginning at the bottom, in like manner, all the 7.34
mortgages, liens, notices as provided for in sections 5301.51 7.35
~~and~~, 5301.52, AND 5301.56 of the Revised Code, or other 8.1
encumbrances affecting such real estate. 8.3

The compensation for the services rendered under this 8.4
section shall be paid from the general revenue fund of the 8.5
county, and no additional levy shall be made in consequence of 8.6
such services. ~~In the event that~~ IF the board decides to have 8.8
such sectional index made, it shall advertise for three 8.9
consecutive weeks in one newspaper of general circulation in the 8.10
county for sealed proposals to do such work as provided in this 8.11
section, and shall let the work to the lowest and best bidder, 8.13
and shall require him to give bond for the faithful performance 8.14
of the contract, in such sum as the board fixes, and such work 8.15
shall be done to the acceptance of the ~~bureau of supervision and~~ 8.16
~~inspection of public offices~~ AUDITOR OF STATE upon allowance by 8.18
such board. The board may reject any and all bids for the work, 8.19
provided that no more than five cents shall be paid for each 8.20
entry of each tract or lot of land. 8.21

When brought up and completed, the county recorder shall 8.22
keep up the indexes described in this section. 8.23

Sec. 317.201. The county recorder shall maintain a book, to 8.24
be known as the "Notice Index." Separate pages of the book shall 8.25
be headed by the original survey sections or surveys, or parts of 8.27

a section or survey, squares, subdivisions, or the permanent 8.28
parcel numbers provided for under section 319.28 of the Revised 8.29
Code, or lots. In this book, there shall be entered the notices 8.31
for preservation of claims presented for recording in conformity 8.32
with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised 8.34
Code. In designated columns, there shall be entered on the left- 8.35
hand page:

(A) The name of each claimant; 9.1

(B) Next to the right, the name of each owner of title; 9.3

(C) The deed book number and page where the instrument 9.5
containing the claim has been recorded; 9.6

(D) The type of claim asserted~~; and on~~. 9.8

ON the opposite page on the corresponding line, a pertinent 9.11
description of the property affected as appears in such notice 9.13
SHALL BE ENTERED.

Sec. 5301.53. The provisions of sections 5301.47 to 9.16
5301.56 of the Revised Code~~,~~ shall not be applied TO BAR OR 9.18
EXTINGUISH ANY ~~OF THE~~ FOLLOWING: 9.19

(A) ~~To bar any~~ ANY lessor or his successor as reversioner 9.21
of his right to possession on the expiration of any lease, or any 9.22
lessee or his successor of his rights in and to any lease, EXCEPT 9.24
AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE; 9.25

(B) ~~To bar or extinguish any~~ ANY easement or interest in 9.27
the nature of an easement created or held for any railroad or 9.28
public utility purpose; 9.29

(C) ~~To bar or extinguish any~~ ANY easement or interest in 9.31
the nature of an easement, the existence of which is clearly 9.32
observable by physical evidence of its use; 9.34

(D) ~~To bar or extinguish any~~ ANY easement or interest in 9.36
the nature of an easement, or any rights granted, excepted, or 10.1
reserved by the instrument creating such easement or interest, 10.2
including any rights for future use, if the existence of such 10.3
easement or interest is evidenced by the location beneath, upon, 10.4
or above any part of the land described in such instrument of any 10.7
pipe, valve, road, wire, cable, conduit, duct, sewer, track,

pole, tower, or other physical facility and whether or not the existence of such facility is observable;

(E) ~~To bar or extinguish any~~ ANY right, title, estate, or interest in coal, and any mining or other rights pertinent ~~thereto~~ TO or exercisable in ~~connection therewith~~ WITH ANY RIGHT, TITLE, ESTATE, OR INTEREST IN COAL;

(F) ~~To bar or extinguish any~~ ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;

(G) ~~To bar or extinguish any~~ ANY right, title, or interest of the United States, or of ~~the state of Ohio~~ THIS STATE, or OF any political subdivision, body politic, or agency ~~thereof~~ OF THE UNITED STATES OR THIS STATE.

Sec. 5301.56. (A) AS USED IN THIS SECTION:

(1) "HOLDER" MEANS THE RECORD HOLDER OF A MINERAL INTEREST, AND ANY PERSON WHO DERIVES HIS 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.

(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 11.26
TRANSACTION THAT HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE 11.28
COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS ARE LOCATED; 11.29

(ii) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF 11.31
MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A 11.32
LEASE TO WHICH THE MINERAL INTEREST IS SUBJECT, OR, IN THE CASE 11.33
OF OIL OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT 11.35
OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED 11.36
CODE, IN WHICH THE MINERAL INTEREST IS PARTICIPATING, PROVIDED 12.1
THAT THE INSTRUMENT OR ORDER CREATING OR PROVIDING FOR THE 12.3
POOLING OR UNITIZATION OF OIL OR GAS INTERESTS HAS BEEN FILED OR 12.4
RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN 12.5
WHICH THE LANDS THAT ARE SUBJECT TO THE POOLING OR UNITIZATION 12.6
ARE LOCATED; 12.7

(iii) THE MINERAL INTEREST HAS BEEN USED IN UNDERGROUND 12.10
GAS STORAGE OPERATIONS BY THE HOLDER; 12.11

(iv) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE 12.13
HOLDER, PROVIDED THAT AN AFFIDAVIT THAT STATES THE NAME OF THE 12.14
PERMIT HOLDER, THE PERMIT NUMBER, THE TYPE OF PERMIT, AND A LEGAL 12.16
DESCRIPTION OF THE LANDS AFFECTED BY THE PERMIT HAS BEEN FILED OR 12.17
RECORDED, IN ACCORDANCE WITH SECTION 5301.252 OF THE REVISED 12.18
CODE, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH 12.19
THE LANDS ARE LOCATED;

(v) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED IN 12.22
ACCORDANCE WITH DIVISION (C) OF THIS SECTION;

(vi) IN THE CASE OF A SEPARATED MINERAL INTEREST, A 12.24
SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CREATED FOR THE 12.25
MINERAL INTEREST IN THE COUNTY AUDITOR'S TAX LIST AND THE COUNTY 12.26
TREASURER'S DUPLICATE TAX LIST IN THE COUNTY IN WHICH THE LANDS 12.28
ARE LOCATED.

(2) A MINERAL INTEREST SHALL NOT BE DEEMED ABANDONED UNDER 12.30
DIVISION (B)(1) OF THIS SECTION BECAUSE NONE OF THE CIRCUMSTANCES 12.32
DESCRIBED IN THAT DIVISION APPLY, UNTIL THREE YEARS FROM THE 12.33
EFFECTIVE DATE OF THIS SECTION. 12.35

(C)(1) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 13.1
DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION MAY BE 13.2
FILED FOR RECORD BY ITS HOLDER. SUBJECT TO DIVISION (C)(3) OF 13.3
THIS SECTION, THE CLAIM SHALL BE FILED AND RECORDED IN ACCORDANCE 13.5
WITH SECTIONS 317.18 TO 317.201 AND 5301.52 OF THE REVISED CODE, 13.6
AND SHALL CONSIST OF A NOTICE THAT DOES ALL OF THE FOLLOWING: 13.7

(a) STATES THE NATURE OF THE MINERAL INTEREST CLAIMED AND 13.10
ANY RECORDING INFORMATION UPON WHICH THE CLAIM IS BASED;

(b) OTHERWISE COMPLIES WITH SECTION 5301.52 OF THE REVISED 13.13
CODE;

(c) STATES THAT THE HOLDER DOES NOT INTEND TO ABANDON, BUT 13.16
INSTEAD TO PRESERVE, HIS RIGHTS IN THE MINERAL INTEREST.

(2) A CLAIM THAT COMPLIES WITH DIVISION (C)(1) OF THIS 13.18
SECTION OR, IF APPLICABLE, DIVISIONS (C)(1) AND (3) OF THIS 13.19
SECTION PRESERVES THE RIGHTS OF ALL HOLDERS OF A MINERAL INTEREST 13.21
IN THE SAME LANDS.

(3) ANY HOLDER OF AN INTEREST FOR USE IN UNDERGROUND GAS 13.24
STORAGE OPERATIONS MAY PRESERVE HIS INTEREST, AND THOSE OF ANY 13.25
LESSOR OF THE INTEREST, BY A SINGLE CLAIM, THAT DEFINES THE 13.27
BOUNDARIES OF THE STORAGE FIELD OR POOL AND ITS FORMATIONS, 13.29
WITHOUT DESCRIBING EACH SEPARATE INTEREST CLAIMED. THE CLAIM IS 13.30
PRIMA-FACIE EVIDENCE OF THE USE OF EACH SEPARATE INTEREST IN 13.31
UNDERGROUND GAS STORAGE OPERATIONS. 13.33

(D)(1) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY 13.35
FROM BEING DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION 14.1
BY THE OCCURRENCE OF ANY OF THE CIRCUMSTANCES DESCRIBED IN 14.2
DIVISION (B)(1)(c) OF THIS SECTION, INCLUDING, BUT NOT LIMITED 14.4
TO, SUCCESSIVE FILINGS OF CLAIMS TO PRESERVE MINERAL INTERESTS 14.5
UNDER DIVISION (C) OF THIS SECTION. 14.6

(2) THE FILING OF A CLAIM TO PRESERVE A MINERAL INTEREST 14.8
UNDER DIVISION (C) OF THIS SECTION DOES NOT AFFECT THE RIGHT OF A 14.10
LESSOR OF AN OIL OR GAS LEASE TO OBTAIN ITS FORFEITURE UNDER 14.11
SECTION 5301.332 OF THE REVISED CODE. 14.12

Section 2. That existing sections 317.08, 317.18, 317.20, 14.14
317.201, and 5301.53 and section 5301.56 of the Revised Code are 14.16
hereby repealed. 14.17

EXHIBIT

II

Caution
As of: June 3, 2014 5:11 PM EDT

Harris v. Ohio Oil Co.

Supreme Court of Ohio
November 23, 1897, Decided
No Number in Original

Reporter: 57 Ohio St. 118; 48 N.E. 502; 1897 Ohio LEXIS 127

HARRIS v. THE OHIO OIL CO.

Prior History: **[***1]** ERROR to the Circuit Court of Wood county.

The written instrument of which the following is a copy, was duly executed by the parties thereto and properly recorded:

"Memorandum of agreement, made and entered into this 16th of December, 1887, by and between William Snyder and Cordelia Snyder, of Hancock county, Ohio, of the first part, and Carey C. Harris, of the second part, witnesseth:

"That the party of the first part for the consideration of one dollar and other considerations in hand paid, and the covenants and agreements hereinafter contained, have granted, demised and let unto 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 situated in the township of Henry, Wood county, Ohio, known and described as follows: The east half of the northeast quarter of section 14, and the west half of the northwest quarter of section 13, in township three north, range ten east, containing 159 acres, more or less.

"The said party of second part to have and to hold the said premises for the said purpose only for and during the term of five years from the date hereof, and as much longer **[***2]** as oil and gas are found in paying quantities.

"The said party of the second part, in consideration of said grant and demise, agrees to give to the party of the first part the full equal one-sixth part of all petroleum oil obtained or produced on the premises herein leased, and to deliver the same to the pipe line to the credit of the party of the first part.

"It is further agreed if gas is found in sufficient quantities to utilize, the consideration in full to the party of first part shall be one hundred dollars per annum for each and every gas well drilled upon the premises herein described and so used, and the privilege of using sufficient gas to heat the house on said premises.

"The party of the first part grants the privilege to the party of the second part of using sufficient water from the premises herein leased, except from wells now on the premises, necessary to the operations thereon, and the right of way over and across said premises to the place of operation.

"The right to lay pipes, to convey oil and gas, and the right to move any machinery and fixtures placed on said premises by them.

"Provided that no well shall be bored nearer than three hundred feet of house or **[***3]** barn or in the orchard, except by consent of the first party.

"Provided in case no well be completed within six months from date of this lease, unavoidable delays excepted, then this lease shall be null and void unless second party shall pay one hundred dollars to first party for each three months it is delayed.

"Second party agrees to commence and complete one well within six months.

"It is further agreed by party of first part with party of second part, that the failure on the part of the party of the second part to comply with the conditions or to pay the cash considerations herein mentioned at the time and in the manner agreed, then and in that event this lease shall be null and void, and not binding on either party.

"It is understood between the parties hereto that all conditions between the parties hereto shall extend to their heirs, executors and assigns.

"In witness whereof the parties hereto set their hands, the day and year first above mentioned.

(Signed) "WILLIAM SNYDER.
"CORDELIA SNYDER.
"CAREY C. HARRIS."

Said Carey C. Harris having taken possession of said premises under said instrument, and drilled and operated nine oil wells thereon, assigned [***4] all his interest in said lease to the Ohio Oil Company on the 22d day of February, 1889, and delivered possession to said company, and it has been in possession ever since, and has drilled and operated three additional oil wells, and all the wells have at all times produced oil in paying quantities, but have produced no gas.

On the 5th day of January, 1892, said Carey C. Harris purchased said lands from said William Snyder and wife, and he has continued to own the same ever since, so that in legal effect he is the lessor, and the Ohio Oil Company the lessee.

The plaintiff in error, Mr. Harris, claimed that at least ten additional oil wells should be drilled upon said lands in order to reasonably and properly develop the same, protect lines, and prevent the wells on the surrounding lands from draining the oil from under his said lands to his injury, and he notified the company to drill more wells, and notified it that unless such additional wells should be drilled within a reasonable time, sixty days, that he should regard the lease forfeited as to the undrilled parts of said lands, and should proceed to drill wells on said parts of the lands himself.

The company refused to comply [***5] with his notice, and claimed that it had the exclusive right to drill wells on said lands by virtue of said lease.

After repeated notices on his part, and refusals on part of the company, he made preparations to drill a well on the undrilled part of said lands, and the company thereupon filed its petition and obtained a temporary injunction against the defendant below, and he filed his answer, averring that at the time the lease was made, there existed a well known custom throughout said county of Wood to the effect following:

"I. That the grantee or lessee should protect the lines of lands so leased or granted for said purpose from wells on adjoining lands -- in all cases where on adjoining lands, wells were, or should be operated so near the same as to draw oil or gas from lands so leased or granted -- by drilling and operating wells near the same immediately on lands so leased.

II. That upon the completion of the first paying well at the time stipulated in the lease or grant, without delay others must be completed and operated so as to develop and operate the lands so leased or granted, and particularly so, where adjoining lands are being operated.

III. That to operate such [***6] lands for said purpose, one well at least should be drilled and operated on each five acres of the lands so leased or granted for said purpose."

The following averment was also contained in the answer:

"That plaintiff owns and operates the lands adjoining said lands in the petition described on every side, and has operated the same ever since the said 22d day of February, 1889; that on the 160 acres on west of said lands, plaintiff owns and operates twenty oil wells; that on the 80 acres on east, it owns and operates ten oil wells; that on each of the quarter sections on north, northwest and southwest, it owns and operates nineteen oil wells, and within a distance of about one-half a mile from said lands of defendant, plaintiff owns and operates over 120 oil wells. That many of said wells are near the lines of defendant's said lands, and draw the oil from under and in his said lands, and do him irreparable injury."

Also the following:

"Defendant says the said wells now on said land, are located as follows: Six are located along the east line of said farm at a distance of from thirty to two hundred feet of said line; four are located along west line of said lands, at a distance [***7] of from 200 to 300 feet of said line, of which the north one being 520 feet from the north line of said lands.

"One of said wells is 200 feet from south line, and 700 feet from said east line.

"One of said wells is about 200 feet west of center of said farm.

"With the exception of said last well, no drilling has been done on the middle of said farm -- more than eighty acres."

There was an averment in the answer that an oil well could be drilled and completed in thirty days, and there were also other averments in the answer which are not material here, as the court found them not to be true.

The reply of plaintiff was as follows:

"For reply to the answer filed in this cause, the plaintiff admits that oil wells in the Wood county field, should be drilled 1,200 to

1,300 feet deep; that a well can be completed, barring accidents, in thirty days; the exclusive right of plaintiff to mine on the lands for oil and gas, so long as the same may be found in paying quantities; the number, location and dates of drilling the wells thereon; that plaintiff owns and operates wells on adjoining lands, but not to the extent nor in the manner alleged in the answer; that some of the wells on adjoining [***8] lands are near the line of defendant's lands; that defendant has requested plaintiff to drill other wells; its refusal to drill the number requested by defendant; that it has prevented, and intends to prevent defendant from drilling on said lands during the continuance of the lease set forth in the petition.

"It denies every other allegation in the answer."

The cause was tried in the circuit court on appeal, and the following decree rendered, to-wit:

"This day came the said parties with their attorneys and submitted this cause to the court upon the pleadings and the evidence, and the same was argued by counsel.

"Upon consideration whereof, and being fully advised in the premises, the court find that all and singular the matters and things alleged in the petition are true; that the matters and things set up by way of defense in the answer and cross-petition of the defendant are not true; and that the equities of this cause are with the said plaintiff.

"It is, therefore, adjudged, decreed, and ordered, that the said plaintiff be, and it hereby is quieted in its exclusive right to drill for and produce oil and gas, in and upon the lands described in the petition under the lease mentioned [***9] and referred to in the pleadings in this cause, and that the defendant be, and hereby is perpetually enjoined from drilling for, or producing oil or gas, upon, or in said lands, or any part thereof, during the continuance of the said lease and under the terms thereof, and from in any manner interrupting or interfering with the plaintiff in the exercise of its exclusive right to drill for and produce oil and gas upon said lands, and that the cross-petition of the said defendant be, and it is dismissed."

A motion for a new trial was filed and overruled and exceptions taken, and a bill of exceptions containing all the evidence was allowed, and made part of the record.

Thereupon Mr. Harris filed his petition in error in this court, seeking to reverse the judgment of the circuit court.

Disposition: *Judgment affirmed.*

Core Terms

lease, oil, drill, implied covenant, written instrument, forfeiture, lessee, paying quantities, silent, oil and gas, oil company, expiration, covenant, forfeit

Case Summary

Procedural Posture

Plaintiff lessor appealed the judgment of the Circuit Court of Wood County (Ohio), which found in favor of defendant lessee in the lessor's action to cause the lease between the parties to be forfeited based on the lessee's failure to drill the number of oil wells necessary to properly develop the lands and protect the lines as to prevent the draining of oil from under the lessor's lands.

Overview

The lessor leased his lands to a lessee for the drilling of oil wells. The lessor brought an action against the lessee for the lessee's failure to drill the number of wells necessary to properly develop the lands and so protect the lines as to prevent wells on adjoining lands from draining the oil from under his lands. The lessor sought to forfeit the lease as to so much of the land that was not sufficiently drilled. The lower court found in favor of the lessee. On appeal, the court affirmed. The court held that under the oil lease, which was silent as to the number of wells to be drilled, there was an implied covenant that the lessee would reasonably develop the lands and reasonably protect the lines. The court assumed that the lessee breached the implied covenant. However, the court found that such breach did not work a forfeiture of the lease in whole or in part. The court determined that there was no implied or express covenant to get off the premises and forfeit the lease for a breach of the covenant to reasonably develop the land. The lease provided for a forfeiture only for the failure to comply with the conditions or to pay the cash consideration in the lease.

Outcome

The court affirmed the judgment that was in favor of the lessee.

LexisNexis® Headnotes

Contracts Law > Contract Interpretation > General Overview

Contracts Law > Contract Interpretation > Parol Evidence > General Overview

HN1 While the written instrument must be construed in the light of the surrounding circumstances, no new terms or conditions can be injected into such instrument, and no existing terms or conditions can be taken therefrom by averment in a pleading. No averments can give to an agreement character it had not, and no admission can take from it the character it had.

Contracts Law > Contract Interpretation > General Overview

HN2 When no time is fixed for the performance of a contract, a reasonable time is implied.

Contracts Law > Types of Contracts > Covenants

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Energy & Utilities Law > Oil, Gas & Mineral Interests > Implied Covenants > General Overview

Energy & Utilities Law > Oil, Gas & Mineral Interests > Implied Covenants > Drilling Agreements

Energy & Utilities Law > Oil, Gas & Mineral Interests > Implied Covenants > Reasonable Development

Energy & Utilities Law > Leases & Licenses > General Overview

Energy & Utilities Law > Leases & Licenses > Implied Duties

Energy & Utilities Law > Oil & Petroleum Products > General Overview

HN3 Under an oil lease that is silent as to the number of wells to be drilled, there is an implied covenant that the lessee shall reasonably develop the lands, and reasonably protect the lines. The development and protection of lines that is thus implied when the lease is silent, is such as is usually found in the same business of an ordinarily prudent man, neither the highest nor lowest, but about medium or average.

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Energy & Utilities Law > Leases & Licenses > General Overview

Energy & Utilities Law > Oil & Petroleum Products > General Overview

HN4 Even though a lease is in terms a sale of all the oil contained in the lands, whatever oil remains in the undeveloped parts of the land at the expiration of the time in which drilling can be done by the terms of the lease, inheres in the land and lapses into the fee, and remains the property of the land owner, the same as standing trees that are sold to be removed within a given time, remain the property of the owner of the land after the expiration of such time.

Contracts Law > Contract Conditions & Provisions > General Overview

Contracts Law > ... > Exculpatory Clauses > Express Conditions > General Overview

HN5 A condition must defeat or determine the whole estate or contract, to which it is annexed, and not only a part of it, unless otherwise expressed.

Contracts Law > Remedies > Rescission & Redhibition > General Overview

HN6 A rescission of a contract must be in toto, or not at all. The same rule of law applies as to forfeitures of contracts.

Contracts Law > Contract Interpretation > General Overview

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Energy & Utilities Law > Leases & Licenses > General Overview

HN7 The rights and remedies of the parties to an oil or gas lease, must be determined by the terms of the written instrument, and the law applicable to one form of lease may not be, and generally is not, applicable to another and different form. Such leases are contracts, and the terms of the contract with the law applicable to such terms, must govern the rights and remedies of the parties.

Energy & Utilities Law > Natural Gas Industry > General Overview

Energy & Utilities Law > Natural Gas Industry > Marketing & Transportation > General Overview

Energy & Utilities Law > Leases & Licenses > General Overview

Energy & Utilities Law > Oil & Petroleum Products > General Overview

Energy & Utilities Law > Pipelines & Transportation > Natural Gas Transportation

HN8 The duty imposed by implication upon a lessee in a leasehold operated for gas, can not be measured by the same rule applied in the same manner, as in the case of a leasehold operated for oil; the peculiar characteristics of the business of producing and transporting natural gas being such as to distinguish it for some purposes from operations for oil.

Headnotes/Syllabus

Headnotes

Lease of land -- For obtaining oil and gas -- Portion of product delivered to lessor -- Implied covenants of lessee -- Effect of breach of covenant -- Contract law.

Syllabus

1. Where lands are granted, demised and let for the purpose, and with the exclusive right of drilling and operating for oil and gas, in consideration that a certain part of the oil produced should be **[***10]** delivered to the lessor, the lease providing that one well should be completed within six months, and in default the lease to be null and void, the lease being silent as to the drilling of other wells, or the protection of lines: *Held*, that in such a lease there is an implied covenant on the part of the lessee, that he will drill and operate such number of oil wells on the lands as would be ordinarily required for the production of oil contained in such lands, and afford ordinary protection to the lines.

2. Where the forfeiture clause in such a lease is to the effect that a failure on part of the lessee to comply with the conditions, or pay the cash consideration in the lease mentioned, at the time and in the manner agreed, then the lease to be null and void, and not binding on either party; and oil being produced in paying quantities through wells drilled on the lands by the lessee under the lease: *Held*, that the lessee has a vested interest in the lands; that to work a forfeiture of the lease, there must be a breach of a condition or covenant which is mentioned in the lease; that a breach of an implied covenant does not work a forfeiture of the lease; and that certain causes **[***11]** of forfeiture being specified in the lease, others cannot be implied.

3. Under such a lease, the remedy for a breach of an implied covenant, is not by way of forfeiture of the lease, in whole or in part, but by an action for damages caused by such breach.

Counsel: *A. & F. P. & R. A. Blackford*, for plaintiff in error.

M. F. Elliott and *Troup & Dunn*, for defendant in error.

Judges: BURKET, C. J.

Opinion by: BURKET

Opinion

[*125] **[**504]** The matters and things set up in the answer and cross-petition, and expressly admitted to be true by the reply, must be regarded as conceded by the parties, and therefore true, notwithstanding the finding of the circuit court to the effect "that the matters and things set up by way of defense in the answer and cross-petition are not true."

The case therefore stands the same as if the facts expressly admitted by the reply to be true, **[**505]** had been found by the court in addition to the finding as made; and the rights and remedies of the parties must be determined by the terms and conditions of the written instrument and the facts, both as found by the court, and as expressly admitted in the reply.

HN1 While the written instrument must be **[***12]** construed in the light of the surrounding circumstances, no new terms or conditions can be injected into such instrument, and no existing terms or conditions can be taken therefrom by averment in a pleading. In *Kellogg* v. *Larkin*, 3 Pinney **[*126]** (Wis.,) 123, 56 Am. Dec., 164; it is said: "No averments can give to an agreement character it had not, and no

admission can take from it the character it had." The effort to bend and change the construction of the written instrument in question, by averments in the pleadings, as to its true construction and meaning, must therefore fail, and the instrument must be construed, and its legal effect declared from the language used when read in the light of the surrounding circumstances. The facts found, and those admitted by the reply, are not such as to bend or vary in any respect, the construction or legal effect of the language used in the written instrument, and therefore a consideration of the terms and conditions, and legal effect of the written instrument itself, is all that is required.

It is not claimed by the plaintiff in error, that the oil company is in default as to the one-sixth of the royalty, nor as to the payment **[***13]** for gas, nor as to completing one well within six months, nor as to cash payments for delay. His only complaint is, that the company has failed to drill the number of wells necessary to properly develop the lands and so protect the lines as to prevent wells on adjoining lands from draining the oil from under his lands; and for this alleged default he seeks to forfeit the lease as to so much of the land as has not been sufficiently drilled. What are his rights in this regard under the lease? Is he entitled to the remedy he seeks? These questions are fairly made in the record, and are of great interest to the oil producing, and oil land interests of the state.

There is no express covenant, condition, or agreement, in the lease as to the extent to which **[*127]** the lands should be developed, nor as to the number of wells that should be drilled after completion of the first well. Is there an implied covenant, condition, or agreement, as to such development, or as to the drilling of a reasonable number of wells?

On principle, it would seem that there is such implied covenant in the written instrument. ***HN2*** When no time is fixed for the performance of a contract, a reasonable time **[***14]** is implied. When a contract for the erection of a house or other structure, is silent as to the quality of the materials or workmanship, it is implied that the same should be of a reasonable quality. In a lease of a farm for tillage on the shares, it is implied that the tenant shall cultivate the farm in the manner usually done by reasonably good farmers. So ***HN3*** under an oil lease which is silent as to the number of wells to be drilled, there is an implied covenant that the lessee shall reasonably develop the lands, and reasonably protect the lines. The development and protection of lines which is thus implied when the lease is silent, is such as is usually found in the same business of an ordinarily prudent man, neither the highest nor lowest, but about medium or average.

We therefore hold, both on principle and authority, that there is an implied covenant in this lease to reasonably develop the lands by drilling and operating such number of wells as would be ordinarily required for the production of the oil contained in such lands, and afford ordinary protection to the lines. *Glasgow* v. *Chartiers Oil Co.*, 152 Pa. St., 48; Koch's and Balliet's Appeal, 93 Pa. St., 434; **[***15]** *McKnight* v. *Manuf. N. Gas Co.*, 146 Pa. St., 185.

[*128] The extent of the development, and number of wells to be drilled, and as to the protection of the lines, is often, if not usually, expressed in the lease, and that is certainly the better practice. When the extent of the development and protection of lines is provided for in the lease, there can be no implied covenant for further development and protection of lines. The implied covenant arises only when the lease is silent on the subject.

There being such implied covenant in this lease, and conceding, but not deciding, that a breach of that covenant is shown by the record, the question arises as to whether such breach works a forfeiture of the lease in whole or in part? And as to whether the plaintiff in error could, by notice to the oil company, secure to himself the right to drill oil wells on the undrilled part of said lands?

This lease is in its terms, an entire contract without any words of severance; and there is no implication of severance, as is sometimes the case when all wells are to be drilled within a shorter time than the period of the lease. In such cases, ***HN4*** even though the lease is in terms a sale **[***16]** of all the oil contained in the lands, whatever oil remains in the undeveloped parts of the land at the expiration of the time in which drilling can be done by the terms of the lease, inheres in the land and lapses into the fee, and remains the property of the land owner, the same as standing trees which are sold to be removed within a given time, remain the property of the owner of the land after the expiration of such time. *Clark* v. *Guest*, 54 Ohio St., 298.

In such cases the lease is severable by implication, at the end of the period in which drilling is allowed; but there is nothing in this lease to **[*129]** indicate a severable character, and therefore the rule of law applicable to the breach of conditions of entire contracts, would seem to be applicable here. That rule is, that ***HN5*** a condition must defeat or determine the whole estate or contract, to which it is annexed, and not only a part of it, unless otherwise expressed. 2 Cruise on Real Property, 5.

The case of *Masson* v. *Bovet*, 1 Denio, 69; 43 Am. Dec., 651, is authority **[**506]** to the effect that ***HN6*** a rescission of a contract must be *in toto*, or not at all. See also, *Trimble* v. *Doty*, 16 **[***17]** Ohio St., 129. The same rule of law applies as to forfeitures of contracts.

HN7 The rights and remedies of the parties to an oil or gas lease, must be determined by the terms of the written instrument, and the law applicable to one form of lease may not be, and generally is not, applicable to another and different form. Such leases are contracts, and the terms of the contract with the law applicable to such terms, must govern the rights and remedies of the parties.

By the terms of the lease in this case, the lessor for a valuable consideration 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. In this case, as in the case of *Crawford* v. *Woodland Oil Company*, 55 Ohio St., 161, it is the land that is granted demised, and let for the limited purpose and period named in the lease. 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 **[*130]** has a vested right to the possession of the land to the extent **[***18]** reasonably necessary to perform the terms of the instrument on his part.

In this case, possession was delivered to the lessee and operations commenced, wells drilled, and oil produced in paying quantities, and in such cases it cannot be doubted that the lessee has a vested, though limited, estate in the lands for the purposes named in the lease. *Venture Oil Company* v. *Fritts*, 152 Pa. St., 451.

What the exact rights of the parties were after the execution of the lease, and before oil was found in paying quantities, is now immaterial, because oil was found, and is still being produced in paying quantities; and for the additional reason that ***HN8*** the duty imposed by implication upon a lessee in a leasehold operated for gas, can not be measured by the same rule applied in the same manner, as in the case of a leasehold operated for oil; the peculiar characteristics of the business of producing and transporting natural gas being such as to distinguish it for some purposes from operations for oil. *McKnight* v. *Manufacturers N. Gas Co.*, 146 Pa. St., 185.

While the period of five years that the lease was to run has expired, the lease is still in full force, because it provides **[***19]** that it shall continue as much longer as oil and gas are found in paying quantities. This provision extends and limits the period of the lease to such time in the future, as oil and gas shall cease to be produced in paying quantities on said lands. When that

period shall arrive, whether caused by exhausting the oil and gas, or by the permanent abandonment of production, the lease will cease, and the whole estate in the premises will become the property of **[*131]** the owner of the fee, not by forfeiture, but by virtue of the terms of the lease.

A breach of the implied covenant to reasonably develop and protect lines, does not have the effect to forfeit the lease in whole or in part, nor is it good cause for a court to declare such forfeiture, unless the lease in express terms provides that a breach of such implied covenant shall avoid or forfeit the lease. Koch's and Balliet's Appeal, 93 Pa. St., 434; *McKnight* v. *Kreutz*, 51 Pa. St., 232; *Janes* v. *Emery Oil Co.*, 1 Pa. S. C. Reports by Pennypacker, 242; *Blair* v. *Peck, lb.*, 247; *Paschall* v. *Passmore*, 15 Pa. St., 295.

It is strongly urged, that it is inequitable for the lessee to hold on to his lease **[***20]** and still fail to so operate the premises as to produce reasonable results, and that he should either reasonably operate the premises or get off and permit his lease to be forfeited. The answer is, that while there is an implied covenant to reasonably operate the premises, there is no implied or express covenant to get off and forfeit his lease for a breach of such covenant.

The lease in question provides for a forfeiture for the failure to comply with the conditions, or to pay the cash consideration in the lease mentioned, at the time and in the manner agreed; but the implied covenant, to reasonably operate the premises, is not mentioned in the lease, and is therefore not included in the causes of forfeiture. Some causes of forfeiture being expressly mentioned, none other can be implied. *McKnight* v. *Kreutz*, 51 Pa. St., 232.

The remedy for a breach of the implied covenant to reasonably operate the premises, is therefore not by way of a forfeiture of the lease in **[*132]** whole or in part, but must be sought in a proper action for a breach of such covenant. *Blair* v. *Peck*, 1 Pennypacker, 247.

As to the rule of damages in such cases, see *Bradford Oil Company* **[***21]** v. *Blair*, 113 Pa. St., 83.

Judgment affirmed.

EXHIBIT

JJ

975 F.Supp.2d 833
Only the Westlaw citation is currently available.
United States District Court,
S.D. Ohio,
Eastern Division.

WELLINGTON RESOURCE GROUP LLC, Plaintiff,
v.
BECK ENERGY CORPORATION, Defendant.

Case No. 2:12–CV–104. | Sept. 20, 2013.

Synopsis

Background: Broker brought action against seller to recover its commission on sale of oil and gas leases, oil and gas wells, and related assets. Co-broker intervened and filed third party complaint to recover its commission. Seller moved to dismiss third party complaint.

[Holding:] The District Court, Algenon L. Marbley, J., held that co-broker was not barred from recovering its commission due to fact that it did not have real estate license.

Motion granted in part and denied in part.

West Headnotes (2)

[1] Contracts
⇐ Grounds of Action

Claim for breach of contract under Ohio law requires that claimant prove: (1) existence of contract; (2) performance by plaintiff; (3) breach by defendant; and (4) damage or loss to plaintiff.

Cases that cite this headnote

[2] Brokers
⇐ Necessity of License

Mines and Minerals
⇐ Interest in Real Estate

Under Ohio law, as predicted by the district court, oil and gas leases were not "real estate," and thus broker was not barred from recovering its commission on sale of oil and gas leases due to fact that it did not have real estate license. R.C. §§ 4735.01(A, B), 4735.02(A), 4735.21(A).

1 Cases that cite this headnote

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Opinion

OPINION & ORDER

ALGENON L. MARBLEY, District Judge.

I. INTRODUCTION

This matter is before the Court on Defendant and Third–Party Plaintiff Beck Energy Corporation's ("Beck") Renewed Motion to Dismiss (Doc. 76) against Intervenor–Plaintiff Transact Partners International, LLC's ("Transact") First Amended Complaint (Doc. 61). Pursuant to Fed.R.Civ.P. 12(b)(6), Beck moves to dismiss Transact's Second through Seventh Causes of Action. In addition, also before the Court is Plaintiff and Third–Party Defendant Wellington Resource Group's ("Wellington") Motion for Oral Argument on Beck's above-mentioned Motion to Dismiss (Doc. 98), as well as Transact's Motion for Leave to File Notice of Supplemental

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Authority Instanter (Doc. 139) regarding this same Motion to Dismiss. For the reasons stated below, Beck's Motion to Dismiss is hereby **GRANTED IN PART AND DENIED IN PART;** Wellington's Motion for Oral Argument is hereby **DENIED** as moot; and Transact's Motion for Leave to File Notice of Supplemental Authority Instanter is hereby **DENIED** as moot.

II. PROCEDURAL POSTURE

This case originated with a suit brought in diversity jurisdiction by Wellington against Beck, alleging breach of contract and unjust enrichment / quantum meruit. Shortly after the case began, Transact sought and was granted leave to intervene, and filed claims against both Wellington and Beck. The parties have filed several rounds of amended pleadings, with the result that Beck now asserts counterclaims against Wellington, as well as third-party claims against individuals associated with Wellington, and Third–Party Defendants Michael Sahadi and Levencrest Consulting, Inc. Wellington, Levencrest, and the Third–Party Defendants have answered, while Beck has answered Wellington but moved to dismiss Transact's claims against it. In addition, Wellington sought and was granted leave to file a memorandum of law in opposition to Beck's motion to dismiss Transact's claims. Wellington also requested oral argument regarding Beck's motion, while Transact recently requested leave to add supplemental information relating to the briefing regarding the motion. Both of these motions are resolved herein, together with the underlying Motion to Dismiss. These motions have been amply briefed, and are ripe for review. [1]

III. STATEMENT OF FACTS

Given the number of parties involved, as well as the voluminous filings, multiple competing versions of the events of this case have been presented to this Court. For the purposes of this Motion to Dismiss, however, this Court accepts as true the facts as pleaded by non-movant Transact in its First Amended Complaint (Doc. 61).

This story began, from Transact's point of view, in October 2010, when it was approached by representatives of Wellington, and shown the assets owned by Wellington's client, Beck. (*Transact's Amended Cmplt.,* Doc. 61 at ¶ 7). The "Beck Assets" included oil and gas leases, oil and gas wells, and related assets, in Monroe, Belmont, and Nobel Counties in Ohio. *Id.* at ¶ 8. Transact agreed to enter into a co-brokerage agreement with Wellington, whereby Transact would utilize its expertise and knowledge of industry contacts to find interested purchasers of the Beck Assets and put them in contact with Beck, and in return receive 2% of the total transaction price in compensation, if Transact was successful in "presenting a ready, willing and able purchaser, and [if] such purchaser in fact complete[d] the purchase of [the Beck Assets]." *Id.* at ¶¶ 8–12. Before entering into the co-brokerage agreement, Transact asked Wellington to reduce its agreement with Beck to writing; Wellington represented that it had done so in late January 2011 (though Wellington and Beck in fact executed their written contract on February 28, 2011). *Id.* at ¶¶ 10–11. Under the terms of this contract, Wellington agreed to provide Beck "with prospective purchasers for oil and gas leases to which Beck possessed the oil and gas rights." *Id.* at ¶ 11 (quoting Wellington's Amended Complaint, Doc. 31, at ¶ 18). Transact and Wellington executed their co-brokerage agreement on January 31, 2011. *Id.* at ¶ 11.

In April 2011, Brian Reilly, principal of Transact, spoke with several oil and gas industry contacts regarding the Beck Assets, including representatives of XTO Energy, Inc. ("XTO"). *Id.* at ¶ 13. Mr. Reilly also marketed the Beck Assets to Eclipse Energy ("Eclipse"), which led to a meeting between Beck principal, Raymond Beck, and Eclipse. *Id.* at ¶ 14. During this time, Mr. Reilly explained his role to Mr. Beck, and made himself available to Mr. Beck via phone and email. *Id.* at ¶¶ 16–19.

Ultimately, no deal was reached between Beck and Eclipse, but in June 2011, Mr. Reilly again contacted representatives of XTO, at which time XTO expressed its interest in the Beck Assets. *Id.* at ¶ 20. A phone conference was held in July 2011 between representatives of XTO and Wellington, which led to several more meetings and telephone conferences between Mr. Beck and representatives of Wellington and XTO. *Id.* at ¶¶ 20–21.

In August and September 2011, Mr. Reilly sought information from Wellington concerning the Beck–XTO negotiations, at which time he was informed that Mr. Beck had requested that all communications run through Wellington. *Id.* at ¶ 22. Several weeks later, Wellington informed Transact that it too had been shut out of the Beck–XTO negotiations. *Id.* at ¶ 23. In November 2011, Beck and XTO executed a purchase and sale agreement for the Beck Assets, and in December Beck executed two Assignments

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and Bills of Sale, conveying the Beck oil and gas leases and related properties. The purchase price paid by XTO was $84,961,346.00. *Id.* at ¶¶ 24–26.

In January 2012, when Transact inquired as to when Beck would pay Wellington, and thus Wellington would pay Transact its 2%, Mr. Reilly was informed that Wellington would not pay. *Id.* at ¶ 28. Mr. Reilly spoke to Wellington's attorney, who informed him that Wellington did not consider Transact's claims to be "valid," and invited Transact instead to demand a "nominal sum" in payment. *Id.*

Wellington commenced this action against Beck on February 1, 2012 (Doc. 1). Transact moved to intervene on March 14 (Doc. 9), and filed its Third Party Complaint on July 23 (Doc. 46), and its Amended Complaint on September 25, 2012 (Doc. 61). One month later, Beck filed the present motion to dismiss Counts Two through Seven of Transact's Amended Complaint (Doc. 76).

IV. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) allows for a case to be dismissed for "failure to state a claim upon which relief can be granted." Such a motion "is a test of the plaintiff's cause of action as stated in the complaint, not a challenge to the plaintiff's factual allegations." *Golden v. City of Columbus,* 404 F.3d 950, 958–59 (6th Cir.2005). Thus, the Court must construe the complaint in the light most favorable to the non-moving party. *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield,* 552 F.3d 430, 434 (6th Cir.2008). The Court is not required, however, to accept as true mere legal conclusions unsupported by factual allegations. *Ashcroft v. Iqbal,* 556 U.S. 662, 664, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). Although liberal, Rule 12(b)(6) requires more than bare assertions of legal conclusions. *Allard v. Weitzman,* 991 F.2d 1236, 1240 (6th Cir.1993) (citation omitted). Rather, the complaint must " 'give the defendant fair notice of what the claim is, and the grounds upon which it rests.' " *Nader v. Blackwell,* 545 F.3d 459, 470 (6th Cir.2008) (quoting *Erickson v. Pardus,* 551 U.S. 89, 93, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007)). In short, a complaint's factual allegations "must be enough to raise a right to relief about the speculative level." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

V. ANALYSIS

Beck raises two objections to Transact's claims. First, Beck moves to dismiss Transact's causes of actions against it arising from breach of contract, on the grounds that no contract existed between Beck and Transact. (*Beck's Motion to Dismiss,* Doc. 76 at 8–10). Second, Beck asserts that, regarding all of Transact's claims, Transact cannot recover either in law or equity, because oil and gas leases fall under the meaning of "real estate" as defined in the Ohio Revised Code, compensation for the brokering of which requires a person or entity to be a licensed "real estate broker" within the meaning of O.R.C. § 4735.01(A). (Doc. 76 at 10–14). Because Transact failed to plead and prove that it is a licensed real estate broker, Beck argues, O.R.C. § 4735.21 bars recovery of unpaid fees. (Doc. 76 at 15–19).

Because federal jurisdiction in this case is premised on diversity, the Court applies Ohio substantive law. *Savedoff v. Access Grp., Inc.,* 524 F.3d 754, 762 (6th Cir.2008). In resolving issues under Ohio law, the Court "look[s] to the final decisions of [Ohio's] highest court, and, if there are no decisions directly on point," this Court must make "an *Erie* guess to determine how that court, if presented with the issue, would resolve it." *Conlin v. Mortgage Electronic Registration Systems, Inc.,* 714 F.3d 355, 358–59 (6th Cir.2013) (referencing *Erie R.R. Co. v. Tompkins,* 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938)). In this undertaking, "intermediate state appellate courts' decisions are also viewed as persuasive unless it is shown that the state's highest court would decide the issue differently." *Id.* at 359 (internal quotation omitted).

A. Breach of Contract Claims

[1] A claim for breach of contract under Ohio law requires that a claimant prove: (1) the existence of a contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) damage or loss to the plaintiff. *Savedoff,* 524 F.3d at 762. Proof of all of the essential elements of a contract is required in order to maintain a breach of contract claim. *Kostelnik v. Helper,* 96 Ohio St.3d 1, 770 N.E.2d 58, 61 (2002).

For its part, Transact insists that it never intended to assert a breach of contract claim against Beck. (*Transact's Opp. to Beck's Motion to Dismiss,* Doc. 85 at 5). If so, it is difficult to understand what Transact intended when

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it incorporated into its Complaint not only the factual allegations found in Wellington's Amended Complaint, but also all five Counts asserted by Wellington against Beck—including, presumably, Counts I, II, and V of Wellington's Amended Complaint, each for breach of contract. (*See* Doc. 61 at ¶ 47) ("Transact is entitled to assert its own rights with regard to all of the causes of action asserted against Beck in Wellington's Amended Complaint"). To the extent that Transact asserts claims against Beck under the doctrines of unjust enrichment and quantum meruit, such claims sound in equity, not contract, and are not challenged by Beck in this portion of its Motion to Dismiss. But as Beck correctly points out, Transact has offered no allegations that a contract ever existed between it and Beck. Without a contract, there can be no breach. *Shampton v. Springboro,* 98 Ohio St.3d 457, 786 N.E.2d 883, 887 (2003). As such, Counts III, IV, and VII of Transact's Amended Complaint are hereby **DISMISSED.**

B. Real Estate Claims

The bulk of Beck's argument challenges the ability of Transact to recover, either in law or equity, on the grounds that Transact is not a licensed real estate broker in Ohio. Beck's argument proceeds, at core, in four steps: (1) oil and gas leases are included within the meaning of "real estate" as defined by O.R.C. § 4735.01(B)[2]; (2) any person that sells, purchases, lists, offers, or negotiates the sale of "real estate" for a commission is a "real estate broker" under O.R.C. §§ 4735.01(A)[3] & 4725.01(H)[4]; (3) a "real estate broker" must be licensed in Ohio, pursuant to O.R.C. § 4735.02(A)[5]; and (4) no right of action can accrue to, and no compensation can be collected by, real estate brokers who are unlicensed, under O.R.C. § 4735.21(A)[6]. (Doc. 76 at 10–15). Accordingly, Beck concludes, Transact cannot recover.

[2] The Court does not agree. Oil and gas leases are not "real estate" under Ohio law. Beck's tidy argumentation, focused as it is on statutory language, ignores the fact that, in *practice,* oil and gas leases have not historically been considered interests in land in Ohio. A thorough survey of Ohio case law leaves this Court convinced that the Ohio Supreme Court, if given the occasion to rule on this issue today, would so hold.

In its previous review and analysis of these cases, this Court reasoned that, in Ohio, "oil and gas leases ... are not leases as that term is traditionally used"; instead, "Ohio courts appear to recognize that such leases create a license to enter upon the land for the purpose of exploring and drilling for oil and gas." *In re Frederick Petroleum Corp.,* 98 B.R. 762, 766 (S.D.Ohio 1989). In *Frederick,* this Court considered the application of the bankruptcy laws, specifically 11 U.S.C. § 365(a), to oil and gas leases in Ohio. Because § 365(a) deals with "leases of real property," the Court was required to determine the nature of oil and gas leases in Ohio. After conceding that "the exact nature of a lessee's interest under an oil and gas lease has not be clearly established in Ohio," 98 B.R. at 763, the Court undertook a thorough examination of Ohio case law, allowing it to conclude that "an oil and gas lease is regarded under Ohio law as being more than a mere rental of the land for a specified term such as would be involved in a traditional lease." *Id.* at 766.

Indeed, from the earliest cases on this issue, Ohio courts have treated oil and gas leases as different from an interest in real property. In *Ohio Oil Co. v. Toledo, Findley & Springfield RR Co.,* 2 Ohio C.D. 505 (C.C.Ohio 1889), for example, the Circuit Court of Ohio, applying Ohio law, held that oil and gas leases "[are] not a right in the land as such, but a right to enter upon the land." Similarly, in *Herrington v. Wood,* 3 Ohio C.D. 475 (C.C.Ohio 1892), the court explained that an oil and gas lease "is not strictly a lease, but a license coupled with a conditional grant, conveying the grantor's interest in the gas well, conditioned that gas and oil is found in paying quantities." *See also Miller v. Vandergrift,* 20 Ohio C.D. 730 (C.C.Ohio 1892) ("It is sufficient to say that we regard [oil and gas leases] as not leases in the ordinary acceptation of the term, but as a sale of the oil and gas under certain stipulations and provisions embodied under the contract."). As this Court explained, in these early cases, courts generally "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." *Frederick,* 98 B.R. at 764. Thus, in *Detlor v. Holland,* 57 Ohio St. 492, 505, 49 N.E. 690 (1898), an agreement giving the lessee "the sole right to produce [oil and gas]" from a tract of land was not a lease, but merely a grant of an exclusive right to produce during the term. While in *Harris v. Ohio Oil Co.,* 57 Ohio St. 118, 129–30, 48 N.E. 502 (1897), the Ohio Supreme Court found that a lease "grant[ing] ... for the purpose and with the exclusive right of drilling, ... all that certain track of land," was "more than a mere license"; rather, it was "a lease of the land for the purpose and period therein, and the lessee has a vested right to the possession of the land to the extent reasonably necessary."

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More recently, however, the Ohio Supreme Court again considered the status of oil and gas leases, while deciding whether such leases must be recorded under Ohio law, and found that a grant of "all the oil and gas in and under" a tract of land, as well as "the right and privilege of operating upon said premises ... for the obtaining of such oil and gas," was *not* a grant of real property. *Back v. Ohio Fuel Gas Co.,* 160 Ohio St. 81, 113 N.E.2d 865, 866–67 (1953). The court held that

> [p]ossession of oil and gas, having as they do a migratory character, can be acquired only be 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 severance. The very sale of oil and gas, separate and apart from the real estate surface, constitutes, in law, a constructive severance such as occurs in the case of sale of standing timber or growing crops.

Id. at 867.

Given this Court's conclusion in *Frederick,* and the Ohio Supreme Court's decision in *Back,* it remains only for the Court to survey more recent cases to determine whether Ohio law has changed in the years since. It is this Court's opinion that the Ohio Supreme Court would still hold that oil and gas leases are not part of the real estate in Ohio.

Three cases demand the Court's attention. First, in *Colucy v. D & H Coal Co.,* 186 N.E.2d 767 (Ohio Ct. Common Pleas 1961), the Court of Common Pleas for Tuscarawas County was asked to determine whether the plaintiff was a "real estate broker" under Ohio law. The agreement between the parties granted to the plaintiff the "sole and exclusive right to acquire ... all mineral rights, including rights to coal, oil and gas, and/or the land wherein and whereon such minerals may be situate." *Id.* at 770. Because the plaintiff was empowered to acquire interests in land, including non-liquid mineral rights and the land itself—property not at issue here—the court concluded that the plaintiff was a real estate agent. *Id.* at 771.

Relying solely on *Colucy,* the Northern District of Ohio, in a case also involving classification as a real estate broker, announced that the definition of "real estate" in Ohio "has been held to include mineral rights, specifically rights to coal, oil and gas." *Binder v. Trinity OG Land Dev. & Exploration, LLC,* No. 4:11–CV–02621, 2012 WL 1970239, at *3 (N.D.Ohio May 31, 2012) (quotation omitted). With respect to our sister court, this Court is unconvinced. The decision in *Binder* does not evince a thorough exploration of the case law, as this Court undertook in *Frederick,* as the issue in *Binder* did not require resolution of the question of whether oil and gas leases are real estate. Instead, the court based its holding on the fact that the plaintiff was acting as a "real estate broker," not a mere "finder." The court cited only in passing the Ohio trial court case, the relevance of which applies only to "brokers" empowered to acquire land as well as coal, oil, and gas rights, an issue not relevant here.

Finally, in *Maverick Oil & Gas, Inc. v. Barberton City School Dist. Bd. of Ed.,* 171 Ohio App.3d 605, 872 N.E.2d 322 (2007), the Ninth District Court of Appeals considered the status of an oil and gas lease on property owned by the Barberton City Schools. The lessee sought an injunction to prevent the school district from restricting its access to an oil well on the property, and the court found that the school district's grantor held the property subject to the oil and gas lease, and therefore the school board, as grantee, likewise took the property subject to that lease. *Id.* at 327. The court noted that an oil and gas lease, while "governed by contract law," also "creates a limited property right, such that the lessee has the right to possess the land to the extent reasonably necessary to perform the terms of the lease on his part." *Id.* (citing *Harris,* 57 Ohio St. at 129–130, 48 N.E. 502). While the Court takes this statement as persuasive authority, this Court does not believe, given the weight of authority discussed above, that the Ohio Supreme Court would agree. *See Allen v. Andersen Windows, Inc.,* 913 F.Supp.2d 490, 499 (S.D.Ohio 2012) ("A court should not disregard the decisions of intermediate appellate state courts unless it is convinced by other persuasive data that the highest court of the state would decide otherwise."). Relying solely on *Harris,* a decision from 1897, the court in *Maverick* did not attempt to reconcile the early Ohio cases in conflict with that opinion, nor did it consider the impact of *Back* on the continuing validity of *Harris.*

Moreover, this Court's conclusion here accords both with recent legislative action in Ohio, as well as the law of other jurisdictions with more substantial bodies of oil and gas law. [7]

The Ohio legislature is currently considering H.B. 493, [8] introduced in last year, which would give the Chief of the Ohio Division of Oil and Gas Resources Management (the "Division") authority to regulate "land professionals"—that

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is, persons engaged in negotiating business agreements for exploration or development of oil and gas, and negotiating the acquisition of mineral rights for oil and gas. H.B. 493 §§ 1509.31(A)(1), (2). Such land professionals would, under the proposed law, be required to register with the Division. *Id.* § 1509.31(B). While this does not end the inquiry, it does provide persuasive evidence that persons engaged in negotiating the purchase and sale of oil and gas rights do not currently fall under the ambit of the real estate laws.

In addition, this Court also finds persuasive the decisions of other states with a more extensive history of oil and gas production. In Oklahoma, for example, an oil and gas lease merely "constitutes a right to search for and capture [oil and gas]," not an interest in real property. *Halliburton Oil Producing Co. v. Grothaus,* 981 P.2d 1244, 1251 (Ok.1998). *See also Pauline Oil & Gas Co. v. Fischer,* 185 Okla. 108, 90 P.2d 411, 412 (1939) (the interest conveyed by an oil and gas lease is not real estate within the meaning of § 706, which gives a judgment creditor a lien upon the real estate belonging to the judgment debtor); *State v. Shamblin,* 185 Okla. 126, 90 P.2d 1053, 1055 (1939) (oil and gas mining leases are chattels real and therefore personal property). Many other oil-and-gas-producing states have come to a similar conclusion. *See, e.g., Bd. of County Cmr's of Johnson County v. Greenhaw,* 241 Kan. 119, 734 P.2d 1125, 1128 (1987) ("A leasehold estate, except an oil and gas lease, is real estate under Kansas law."), *Ingram v. Ingram,* 214 Kan. 415, 521 P.2d 254, 257 (1974) (under Kansas law, "an oil and gas lease leasehold interest is personal property," and "merely conveys a license to enter upon the land and explore for such minerals."); see also *Backar v. Western States Producing Co.,* 547 F.2d 876, 881–82 (5th Cir.1977) (Under New York law, but not under Texas law, oil and gas leases are personal property); *compare Salvex, Inc. v. Lewis,* 546 So.2d 1309, 1313 (La.Ct.App.1989) writ denied, 551 So.2d 1323 (La.1989) (cataloging Louisiana's long debate over the status of oil and gas leases, eventually resolved by action of the state legislature classifying oil and gas leases as an interest in real property).

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. 98 B.R. at 766. Accordingly, the Court declines to dismiss Counts II, V, and VI of Transact's Amended Complaint (Doc. 61).

VI. CONCLUSION

For the foregoing reasons, Beck's Motion to Dismiss (Doc. 76) is hereby **GRANTED IN PART AND DENIED IN PART.** As a result of this Order, Wellington's Motion for Oral Argument and Transact's Motion for Leave to File Notice of Supplemental Authority Instanter (Doc. 98, Doc. 139) are **MOOT** and, accordingly, **DISMISSED.**

IT IS SO ORDERED.

Footnotes

1 Meanwhile, Intervenor Marcellus Shale Land Acquisition Group, LLC ("MSLAG"), sought and was granted leave to intervene, and in turn filed claims against Beck. Beck moved to dismiss, in a motion also pending before this Court (but not currently *sub judice*). Beck's Motion to Dismiss is resolved in a parallel Opinion and Order. Transact then filed cross-claims against MSLAG, which MSLAG moved to dismiss; MSLAG's motion awaits resolution by this Court.

2 § 4735.01(B) provides that " '[r]eal estate' includes leaseholds as well as any and every interest or estate in land situated in this state, whether corporeal or incorporeal, whether freehold or nonfreehold, and the improvements on the land, but does not include cemetery interment rights."

3 § 4735.01(A) provides, in relevant part, that " '[r]eal estate broker' includes any person, partnership, association, limited liability company, limited liability partnership, or corporation, foreign or domestic, who for another, ..., and who for a fee, commission, or other valuable consideration, or with the intention, or in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration ... (1) Sells, exchanges, purchases, rents, or leases, or negotiates the sale, exchange, purchase, rental, or leasing of any real estate; (2) Offers, attempts, or agrees to negotiate the sale, exchange, purchase, rental, or leasing of any real estate; (3) Lists, or offers, attempts, or agrees to list, or auctions, or offers, attempts, or agrees to auction, any real estate;...."

4 § 4735.01(H) provides that "[a]ny person, partnership, association, limited liability company, limited liability partnership, or corporation, who, for another, in consideration of compensation, by fee, commission, salary, or otherwise, or with the intention, in

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the expectation, or upon the promise of receiving or collecting a fee, does, or offers, attempts, or agrees to engage in, any single act or transaction contained in the definition of a real estate broker, whether an act is an incidental part of a transaction, or the entire transaction, shall be constituted a real estate broker or real estate salesperson under this chapter."

5 § 4735.02(A) provides, in relevant part, that "Except [when an out-of-state broker partners with a broker licensed in Ohio], no person, partnership, association, limited liability company, limited liability partnership, or corporation shall act as a real estate broker or real estate salesperson, or advertise or assume to act as such, without first being licensed as provided in this chapter."

6 § 4735.21(A) provides, in relevant part, that "[n]o right of action shall accrue to any person, partnership, association, or corporation for the collection of compensation for the performance of the acts mentioned in section 4735.01 of the Revised Code, without alleging and proving that such person, partnership, association, or corporation was licensed as a real estate broker or foreign real estate dealer."

7 *See El Camino Res. Ltd. v. Huntington Nat. Bank,* 712 F.3d 917, 922 (6th Cir.2013) (a federal court sitting in diversity "must ascertain the state law from all available data, which [also] includes ... cases from other jurisdictions, and secondary sources.")

8 *See Wade v. Bethesda Hospital,* 337 F.Supp. 671, 674 (S.D.Ohio 1971) (taking judicial notice, on a motion to dismiss, of proposed bills in the Ohio legislature, for the purpose of determining the current scope of authority of an Ohio judge.)

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EXHIBIT

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IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, OHIO

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JOHN A. MORGAN
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 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 #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

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 (B) 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.

(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 Belden 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

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 Jamieson

cc:
Clinton G Bailey Esq
Brandon Cogswell Esq

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, OHIO

FILED
COMMON PLEAS COURT
2013 JUL 17 P 3:26
JOHN A. CORRIGAN
CLERK OF COURTS
JEFFERSON COUNTY, OHIO

ERNEST SHANNON 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. 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

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 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. 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

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, Chelliana 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 Chelliana 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

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

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

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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EXHIBIT

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IN THE COURT OF COMON PLEAS
HARRISON COUNTY, OHIO
GENERAL DIVISION

ROBERT E. DAVIS, ET AL.,
Plaintiff

CASE NO. CVH-2011-0061

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

EXHIBIT

MM

IN THE COURT OF COMMON PLEAS
HARRISON COUNTY, OHIO
GENERAL DIVISION

FILED
MAR 21 2014

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, 2015 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 260.3665 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
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Attorney Michael Shaheen
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Judge Linton D. Lewis Jr.

EXHIBIT

NN

2013 WL 6579057
Only the Westlaw citation is currently available.
United States District Court,
N.D. Ohio,
Eastern Division.

Nancy M. McLAUGHLIN, Plaintiff,
v.
CNX GAS COMPANY, Defendant.

No. 5:13CV1502. | Dec. 13, 2013.

Attorneys and Law Firms

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Opinion

MEMORANDUM OF OPINION AND ORDER

JOHN R. ADAMS, District Judge.

***1** 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, 127 S.Ct. 1955, 167 L.Ed.2d 929 (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, 78 S.Ct. 99, 2 L.Ed.2d 80 (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

***2** 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

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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.

*3 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, 113 N.E.2d 865 (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.

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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.

***4** 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.

End of Document

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EXHIBIT

OO

RECEIVED FOR RECORD
Patricia Oyer, Recorder
Carroll County, Ohio
JUL 15 1992 8:00
RECORDED JUL 16 1992
VOL 75 PAGE 448

104358 VOL 75 PAGE 448

7/3/92

PARTIAL RELEASE OF OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS:

THAT, KELT RESOURCES, INC., A Delaware Corporation, for and in consideration of One Dollar ($1.00), the receipt of which is hereby acknowledged, does hereby release, relinquish and surrender all of its right, title and interest in and to a portion of that Oil and Gas Lease made and entered into by and between CONSOLIDATION COAL COMPANY, Lessor, and REPUBLIC STEEL CORPORATION, Lessee, dated June 27, 1977, which lease or a memorandum of said lease is recorded in Muskingum County in Lease Volume 100, Page [illegible]; Noble County in Lease Volume 80, Page 693; Guernsey County Lease Volume 79, Page 739; Belmont County in Lease Volume 98, Page 845; Carroll County in Lease Volume 60, Page 267; Harrison County in Lease Volume [illegible], Page 130; Jefferson County in Lease Volume 57, Page [illegible] and Monroe County in Lease Volume 130, Page 440. This release pertains to the original lease, memorandum of lease and any amendments thereto.

RELEASING HEREIN all acreage located in Carroll County, Ohio. Said acreage being a total of 3253 acres, more or less, as shown on Exhibit "A" attached hereto and made a part hereof.

IN WITNESS WHEREOF, the undersigned has set its hands and seal this 9th day of July, 1992.

WITNESSES:

Rodney Perkins

Angela Howard

KELT RESOURCES, INC.

BY: [illegible]

TITLE: [illegible]

INDEXED CHANGED
COMPARED HIGH. ENTRY

ENTERED OF RECORD
DATE JUL 16 1992
BY DEPUTY [illegible]

STATE OF OHIO

COUNTY OF JEFFERSON

Before me, a Notary Public, [illegible] personally appeared [illegible] Kelt Resources, Inc., who acknowledged to me that he did [illegible] foregoing instrument individually on behalf of said Corporation and that the same is his free act and deed and the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and [illegible] this [illegible] day of [illegible], 19[illegible].

My commission expires: [illegible]

Notary Public

This instrument prepared by : [illegible]
P.O. Box [illegible]
Cambridge, Ohio [illegible]

EXHIBIT

[illegible]	[illegible]	DATE OF DEED	[illegible]		GROSS ACRES	NET OIL AND GAS ACRES	DESCRIPTION
	[illegible] (continued)						Schnucker to The Ohio Power Company, which easement is recorded in Volume 105, Page 602A, Deed Records of Carroll County, Ohio. Subject, also, to all other easements and rights of way of record, and to all legal highways. Being the same premises as were conveyed by Warranty Deed dated June 30, 1936, from Henry Schnucker and Hazel Schnucker, husband and wife, to Ray H. George and M. Ellen George, the Grantors herein, which deed is recorded in Volume 127, Page 328, Deed Records of Carroll County, Ohio.
[illegible]	John Ujcich and Della Ujcich	[illegible]	123	260	143.000	143.000	Situated in the Township of Lee, County of Carroll, and State of Ohio, and more particularly bounded as follows: Known as the Northeast Quarter of Section 18, Township 15, of Range 5, in the Steubenville Land District, containing 143 acres, be the same more or less. Subject, however, to that certain Deed of Easement dated July 27, 1944, from Harold F. Gallaher and Elsie I. Gallaher to The Ohio Power Company, which easement is recorded in Volume 105, Page 601-A, Deed Records of Carroll County, Ohio. Subject, also, to all legal highways and to all other easements and rights of way of record. Being the same premises as were conveyed by Warranty Deed dated March 17, 1951, from John E. Green and Catherine E. Green to John Ujcich and Della Ujcich, the Grantors herein, which deed is recorded in Volume 120, Page 252, Deed Records of Carroll County, Ohio.
113	[illegible]	[illegible]	128	308	120.970	120.970	Situated in the Township of Center, County of Carroll, and State of Ohio, and more particularly bounded and described as follows: The Southeast Quarter of Section 13, Township 14, of Range 5, in the Steubenville Land District, EXCEPT the following described part of said quarter section in the

EXHIBIT

PP

Cited
As of: June 3, 2014 5:13 PM EDT

Walker v. Shondrick-Nau

Court of Appeals of Ohio, Seventh Appellate District, Noble County
April 3, 2014, Decided
CASE NO. 13 NO 402

Reporter: 2014-Ohio-1499; 2014 Ohio App. LEXIS 1443

JON WALKER, JR., PLAINTIFF-APPELLEE, vs. PATRICIA J. SHONDRICK-NAU, EXECUTRIX OF THE ESTATE OF JOHN R. NOON AND SUCCESSOR TRUSTEE OF THE JOHN R. NOON TRUST, DEFENDANT-APPELLANT.

Prior History: [**1] Civil Appeal from Court of Common Pleas of Noble County, Ohio. Case No. 212-0098.

Disposition: Affirmed.

Core Terms

mineral interest, trial court, surface, abandon, deed, vest, mineral rights, retroactively, notice, current version, surface owner, mineral, summary judgment, convey, summary judgment motion, oil and gas, subject to interest, prior version, saving, hoist, dormant, vested right, plain error, revive

Case Summary

Overview

HOLDINGS: [1]-In order for the mineral interest to be the "subject of" the title transaction the grantor had to be conveying or retaining that interest, and the mere mention of the mineral interest reservation in the 1970 and 1977 deeds did not make the mineral interest "the subject of" the title transactions; [2]-"The subject of" those title transactions was the conveyance of the surface estate, and the 1970 and 1977 deeds were not savings events under either the 1989 version or the current version of R.C. 5301.56; [3]-The decedent's mineral interest was deemed abandoned and vested in the surface owner at the time, given the effective dates of the 1989 version of R.C. 5301.56, on March 22, 1992; [4]-The 2006 version of R.C. 5301.56 did not specifically provide for retroactive application and thus, the 1989 version controlled; [5]-The executrix did not show plain error.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Summary Judgment Review > Standards of Review

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN1 In reviewing a trial court's decision on a summary judgment motion, appellate courts apply a de novo standard of review. Thus, the appellate court shall apply the same test as the trial court in determining whether summary judgment was proper. Civ.R. 56(C) provides that the trial court shall render summary judgment if no genuine issue of material fact exists and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. A "material fact" depends on the substantive law of the claim being litigated.

Energy & Utilities Law > Oil, Gas & Mineral Interests > Surface Use Interests

HN2 See former R.C. 5301.56 (1989).

Energy & Utilities Law > Oil, Gas & Mineral Interests > Surface Use Interests

HN3 The current version of R.C. 5301.56 became effective on June 30, 2006. The most substantial change to the statute was the addition of the notice requirements giving the owner of the abandoned mineral interest the opportunity to reclaim his or her interest.

Energy & Utilities Law > Oil, Gas & Mineral Interests > Surface Use Interests

HN4 See R.C. 5301.56.

Real Property Law > Oil & Gas

Real Property Law > Title Quality > Marketable Title > General Overview

HN5 The definition of a "title transaction," which is defined in R.C. 5301.47, did not change between the two versions of R.C. 5301.56. A "title transaction" is 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. 5301.47(F).

Governments > Legislation > Effect & Operation > Amendments

Governments > Legislation > Effect & Operation > Prospective Operation

HN6 A statute is presumed to be prospective in its operation unless expressly made retrospective, R.C. 1.48. The amendment or repeal of a statute does not affect the prior operation of the statute or affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder, R.C. 1.58(A)(1)(2)

Energy & Utilities Law > Oil, Gas & Mineral Interests > Surface Use Interests

Governments > Legislation > Effect & Operation > Amendments

HN7 There is no language in the 2006 version of R.C. 5301.56 to suggest that it is to be applied retroactively. Thus, it is only to apply prospectively. Additionally, although R.C. 5301.56 was amended in 2006, this amendment would not have affected any validation, cure, right, privilege, obligation, or liability previously acquired.

Energy & Utilities Law > Oil, Gas & Mineral Interests > Surface Use Interests

HN8 Under the terms of the 1989 version of R.C. 5301.56, any mineral interest held by anyone other than the surface owner shall be deemed abandoned and vested in the surface owner if none of the stated circumstances applied. The stated circumstances were: (1) the mineral interest was in coal; (2) the mineral interest was held by the government; and (3) within the preceding 20 years, one or more of the stated events occurred, which included that the mineral interest has been the subject of a title transaction. Former R.C. 5301.56(B)(1). The 1989 version became effective on March 22, 1989. It further provided that a mineral interest would not be deemed abandoned under division (B)(1) because none of the circumstances described in that division applied, until three years from the effective date of this section, former R.C. 5301.56(B)(2). Thus, it provided a three-year grace period until March 22, 1992.

Real Property Law > General Overview

HN9 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. It has been described as a right which it is proper for the state to recognize and protect, and which an individual cannot be deprived of arbitrarily without injustice. A vested right is one that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent. A right also cannot be characterized as vested unless it constitutes more than a mere expectation or interest based upon an anticipated continuance of existing laws.

Governments > Legislation > Effect & Operation > Retrospective Operation

Governments > Legislation > Statutory Remedies & Rights

HN10 There must be a clear, express legislative intent to apply the statute retroactively. Then, if there is such an intent, the statute must affect only remedial, not substantive, rights or it will be found to violate *Ohio Const. art. II, § 28*.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

Civil Procedure > ... > Standards of Review > Plain Error > General Overview

HN11 Failure to raise at the trial court level the issue of the constitutionality of a statute or its application, which issue is apparent at the time of trial, constitutes a waiver of such issue. The waiver doctrine announced in Awan is discretionary. Even where waiver is clear, a reviewing court may consider constitutional challenges to the application of statutes in specific cases of plain error or where the rights and interests involved may warrant it.

Civil Procedure > ... > Standards of Review > Plain Error > Miscarriages of Justice

HN12 But recognizing plain error in a civil case occurs only in extremely rare situations involving exceptional circumstances where the error seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.

Counsel: For Plaintiff-Appellee: Attorney Kenneth Cardinal, Sebring, Ohio; Attorney James F. Mathews, North Canton, Ohio.

For Defendant-Appellant: Attorney James Hughes, III, Attorney Matthew Warnock, Attorney Daniel Gerken, Columbus, Ohio.

Judges: Hon. Gene Donofrio, Hon. Joseph J. Vukovich, Hon. Cheryl L. Waite. Vukovich, J., concurs. Waite, J., concurs.

Opinion by: Gene Donofrio

Opinion

DONOFRIO, J.

[*P1] Defendant-appellant, Patricia J. Shondrick-Nau, Executrix of the Estate of John R. Noon and Successor Trustee of the John R. Noon Trust, appeals from a Noble County Common Pleas Court judgment granting summary judgment in favor of plaintiff-appellee, Jon Walker, Jr., on appellee's claim to quiet title as to the mineral estate (specifically oil and gas interests) underlying a tract of land in Noble County.

[*P2] John Noon purchased the disputed property, located in Enoch Township, in 1964. On July 26, 1965, Noon severed the mineral rights and created a separate mineral estate by reserving the mineral rights to himself when he sold the surface rights on that date.

[*P3] In 1970, the surface rights to the property were sold twice. In both of the 1970 **[**2]** conveyances, the deeds included the mineral rights reservation and referenced the volume and page number where the mineral rights reservation was recorded. In 1977, the surface rights were sold again. And again the deed included the mineral rights reservation and referenced the volume and page number where the mineral rights reservation was recorded.

[*P4] Appellee purchased the subject property in 2009. The property is described in two deeds. The first tract of land is 37.042 acres and the second tract is 5.186 acres.

[*P5] On December 2, 2011, appellee sent a notice of abandonment of mineral interest to Noon.

[*P6] On January 10, 2012, Noon filed an affidavit and claim to preserve mineral interest.

[*P7] On April 27, 2012, appellee filed a complaint for declaratory judgment and to quiet title. He requested that the trial court rule that he is the lawful owner of the mineral rights. Appellee asserted that the mineral rights merged with the surface estate no later than March 22,

1992, by way of the prior version of R.C. 5301.56 (the Ohio Dormant Mineral Act), which was in effect from March 22, 1989, until June 30, 2006. He also claimed Noon abandoned any interest in the mineral rights when he failed to preserve [**3] them from expiring.

[*P8] Noon filed a motion for summary judgment. He alleged that the filing of a mineral preservation notice pursuant to R.C. 5301.56(H) preserved the severed mineral interest and R.C. 5301.56(D) indefinitely preserves a severed mineral interest. On these bases, Noon claimed he was entitled to summary judgment on appellee's claims.

[*P9] Appellee then filed a cross-motion for summary judgment. He asserted that because the transactions relied upon by Noon did not represent title transactions in the mineral estate, those transactions did not operate as a savings event under R.C. 5301.56.

[*P10] The trial court found that no facts were in dispute. The court framed the question before it as, "do the surface transfers in 1970 and 1977 count as 'title transactions'?" The court answered in the negative. The court found that although the transactions were within the 20-year period prior to March 22, 1989, they did not affect an interest in land as contemplated by R.C. 5301.56(F). The court further found that any discussion of the current version of R.C. 5301.56, effective June 30, 2006, was moot because as of June 30, 2006, any interest Noon had in the mineral rights had already been abandoned. [**4] Therefore, the trial court granted appellee's motion for summary judgment and denied Noon's motion for summary judgment. It went on to declare that appellee is the true and rightful owner of the oil and gas underlying the subject property and that Noon has no interest in the subject oil and gas.

[*P11] Noon filed a timely notice of appeal on April 17, 2013. Noon passed away after the filing of this appeal. His daughter, Shondrick-Nau, in her capacity as the executrix of Noon's estate and successor trustee of Noon's trust, was substituted as the appellant in this case.

[*P12] Appellant raises two assignments of error. The assignments of error share a common basis in law and fact. Appellant then raises three distinct issues for review. For ease of discussion, we will treat each issue for review separately.

[*P13] Appellant's assignments of error state:

> THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR PLAINTIFF-APPELLEE.
>
> THE TRIAL COURT ERRED IN NOT GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT-NOON.

[*P14] *HN1* In reviewing a trial court's decision on a summary judgment motion, appellate courts apply a de novo standard of review. Cole v. Am. Industries & Resources Corp., 128 Ohio App.3d 546, 552, 715 N.E.2d 1179 (7th Dist.1998). [**5] Thus, we shall apply the same test as the trial court in determining whether summary judgment was proper. Civ.R. 56(C) provides that the trial court shall render summary judgment if no genuine issue of material fact exists and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. State ex rel. Parsons v. Fleming, 68 Ohio St. 3d 509, 511, 1994 Ohio 172, 628 N.E.2d 1377 (1994). A "material fact" depends on the substantive law of the claim being litigated. Hoyt, Inc. v. Gordon & Assocs, Inc., 104 Ohio App. 3d 598, 603, 662 N.E.2d 1088 (8th Dist.1995), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248, 106 S.Ct. 2505, 91 L. Ed. 2d 202 (1986).

[*P15] This case involves the application of the current and prior versions of R.C. 5301.56, known as Ohio's Dormant Mineral Act.

[*P16] The prior version of R.C. 5301.56 was enacted on March 22, 1989. The 1989 version of R.C. 5301.56 provided, in pertinent part:

> *HN2* (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 **[**6]** 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 had been filed or recorded in the office of the county recorder of the county in which the lands are located[.]
>
> * * *
>
> (2) A mineral interest shall not be deemed abandoned under division (B)(1) of this section because none of the circumstances described in that division apply, until three years from the effective date of this section.

[*P17] *HN3* The current version of R.C. 5301.56 became effective on June 30, 2006. The most substantial change to the statute was the addition of the notice requirements giving the owner of the abandoned mineral interest the opportunity to reclaim his or her interest. R.C. 5301.56 now provides, in pertinent part:

> *HN4* (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 **[**7]** mining or other rights pertinent to or exercisable in connection with an interest in coal * * *
>
> (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
>
> (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 * * *.
>
> (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, * * *.
>
> (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 **[**8]** are located.
>
> * * *
>
> (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 [**9] information specified in division (G) of this section.

[*P18] *HN5* The definition of a "title transaction," which is defined in R.C. 5301.47, did not change between the two versions of R.C. 5301.56. A "title transaction" is "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. 5301.47(F).

[*P19] With these statutes in mind, we turn now to appellant's issues for review.

[*P20] Appellant's first issue for review asserts:

> A title transaction that transfers the ownership of the surface rights and clearly references and reserves the mineral interest preserves a mineral interest under R.C. 5301.56(C).

[*P21] Appellant contends here that the mineral rights at issue were the subject of a title transaction during the applicable 20-year look-back period. Because the mineral rights were the subject of a title transfer during the 20-year period that was recorded in the county recorder's office, appellant claims the rights were not subject to forfeiture. Appellant points out that this argument is valid **[**10]** under both the prior and the current versions of R.C. 5301.56.

[*P22] Appellant argues that in reaching its decision, the trial court effectively added the word "only" to the beginning of R.C. 5301.56(B)(3)(a) in finding the interest to be conveyed must be the mineral interest itself and nothing else. Appellant states there is no dispute that there was a clear exception of the mineral interest in both the 1970 deed and the 1977 deed. She points out that all of the deeds recite Noon's mineral interest reservation, state the volume and page numbers on which the mineral estate reservation appears in the public record, and refer to Noon by name.

[*P23] Appellant goes on to argue that the "title transaction" savings event must be analyzed in the broader context of Ohio's Marketable Title Act (R.C. 5301.47 to R.C. 5301.56). She notes that a "mineral interest" is "a fee interest in at least one mineral regardless of how the interest is created and of the form of the interest." R.C. 5301.56(A)(3). She further notes that a "mineral" includes oil and gas. R.C. 5301.56(A)(4). She then points to the definition of "title transaction," which includes "any transaction affecting title to any interest in land." R.C. 5301.47(F).

[11]** Appellant argues that when these definitions are read together, it becomes clear that the savings event occurs when the mineral interest has been the subject of *any* title transaction. She contends there is no requirement that the mineral interest is actually transferred.

[*P24] Appellant also contends that the statute's legislative history supports her interpretation. Appellant argues the Legislature's amendment to the language of the savings event from situations where the "interest has been conveyed" to situations where the "mineral interest had been the subject of a title transaction" evidences the Legislature's deliberate decision to eliminate the requirement that the mineral interest itself be conveyed or transferred in order to qualify as a savings event.

[*P25] In Dodd v. Croskey, 7th Dist. No. 12 HA 6, 2013-Ohio-4257 (discretionary appeal accepted by Ohio Supreme Court on a different issue, cross-appeal on this issue not accepted, 2013-1730), we examined whether an oil and gas interest was "the subject of" a title transaction. In 2009, when the appellants acquired the surface rights to the disputed property, the deed that conveyed the surface rights included a reservation of the oil and [**12] gas interest to the Porters, which included the date it had been filed (May 27, 1947) and the volume and page numbers where it could be found in the Recorder's Office. The trial court found that R.C. 5301.56(B)(3)(a) applied. It concluded that the mineral interest was the "subject of" the title transaction and that it had been filed within 20 years immediately preceding the publishing of notice under R.C. 5301.56(E).

[*P26] On appeal, we noted that the issue to be decided was whether the oil and gas interest was the "subject of the title transaction. Id. at ¶41. We noted that the 2009 deed conveying the surface rights was a "title transaction" as defined by R.C. 5301.47(F). Id. at ¶43. We also noted that other than a Fifth District case, which we found unhelpful, there was no case law in Ohio discussing what "subject of a title transaction" means. Id. at ¶48. And we pointed out that "subject of" is not defined in the statute. *Id.* Thus, we looked to the phrase's ordinary meaning and construed it according to common usage. *Id.* We explained:

> The common definition of the word "subject" is topic of interest, primary theme or basis for action. Webster's II New Riverside Dictionary 11553 (1984). [**13] 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 conveyed or retained by Coffelt, 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. at ¶¶48-49.

[*P27] Applying this court's reasoning, that in order for the mineral interest to be the "subject of" the title transaction the grantor must be conveying or retaining that interest, to the case at bar leads to the conclusion that the mere mention of the mineral interest reservation in the 1970 and 1977 deeds did not make the mineral interest "the subject of" the title transactions. Instead, "the subject of" those title [**14] transactions was the conveyance of the surface estate. Thus, the 1970 and 1977 deeds were not savings events under either the 1989 version or the current version of R.C. 5301.56.

[*P28] Accordingly, appellant's first issue for review is without merit.

[*P29] Appellant's second issue for review asserts:

The trial court erred in applying the 1989 version of R.C. 5301.56 and not the current version of the statute.

[*P30] In this issue for review, appellant contends the trial court incorrectly applied the 1989 version of R.C. 5301.56 instead of the 2006 version.

[*P31] Firstly, appellant points to the general rule by the United States Supreme Court that a court should apply the law in effect at the time it renders its decision, even when that law was enacted after the events that gave rise to the lawsuit. Citing, *Landgraf v. USI Film Products, 511 U.S. 244, 273, 114 S.Ct. 1483, 128 L. Ed. 2d 229 (1994)*. [**15] Appellant points out that neither appellee nor his predecessors in interest sought to quiet title to the mineral rights between 1989 and 2006, when the 1989 version of the statute was in effect. When the complaint was filed in this case, appellant points out, the 2006 version of the statute had been in effect for approximately six years.

[*P32] Secondly, appellant asserts the trial court should have applied the 2006 version of the statute because it was the law in effect during the events that gave rise to this suit. She points out that appellee did not purchase the disputed property until 2009, three years after the 2006 version of the statute took effect. Therefore, appellant notes, appellee did not own the surface rights during the time the 1989 version of the statute was in effect.

[*P33] Thirdly, appellant argues that she must prevail under the 2006 version of the statute because Noon filed a timely preservation of mineral interest. She points out that *R.C. 5301.56(E)* now requires a surface owner to serve by certified mail to each holder of the mineral rights the surface owner's intent to declare the mineral interest abandoned. She further notes the statute then provides that the owner of the [**16] mineral interest can file a claim to preserve the mineral interests within 60 days after the notice.

[*P34] Appellant asserts that appellee sent his notice of abandonment of mineral interest on November 27, 2011. Appellant states that Noon then filed a preservation of mineral interest on January 10, 2012, meeting the statutory requirements and preventing the interest from being divested.

[*P35] No Ohio appellate court or the Ohio Supreme Court has yet to address the issue of when to apply the 1989 version of *R.C. 5301.56* and when to apply the 2006 version.

[*P36] The Ohio Revised Code offers some general guidance in examining this issue.*HN6* "A statute is presumed to be prospective in its operation unless expressly made retrospective." *R.C. 1.48*. The amendment or repeal of a statute does not affect the prior operation of the statute or affect "any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder." *R.C. 1.58(A)(1)(2)*.

[*P37] *HN7* There is no language in the 2006 version of *R.C. 5301.56* to suggest that it is to be applied retroactively. Thus, it is only to apply prospectively. Additionally, although *R.C. 5301.56* was amended in 2006, this amendment [**17] would not have affected any "validation, cure, right, privilege, obligation, or liability previously acquired."

[*P38] *HN8* Under the terms of the 1989 version of *R.C. 5301.56*, any mineral interest held by anyone other than the surface owner "shall be deemed abandoned and vested" in the surface owner if none of the stated circumstances applied. Former *R.C. 5301.56(B)(1)*. The stated circumstances were: (1) the mineral interest was in coal; (2) the mineral interest was held by the government; and (3) within the preceding 20 years, one or more of the stated events occurred, which included that the mineral interest has been the subject of a title transaction. Former *R.C. 5301.56(B)(1)*. The 1989 version became effective on March 22, 1989. It further provided that a mineral interest would not be deemed

abandoned under division (B)(1) because none of the circumstances described in that division applied, until three years from the effective date of this section. Former R.C. 5301.56(B)(2). Thus, it provided a three-year grace period until March 22, 1992.

[*P39] Given the effective dates of the 1989 version of R.C. 5301.56, on March 22, 1992, Noon's mineral interest was "deemed abandoned and vested" in the surface **[**18]** owner at the time. As discussed in appellant's first issue for review, Noon's mineral interest was not the subject of any title transactions that would trigger the title transaction event. And appellant has not alleged any other savings events.

[*P40] The Ohio Supreme Court explained what it means for someone to have a "vested" interest in something in State ex rel. Jordan v. Indus. Comm., 120 Ohio St.3d 412, 2008-Ohio-6137, 900 N.E.2d 150, ¶9:

> *HN9* 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." Washington Cty. Taxpayers Assn. v. Peppel (1992), 78 Ohio App.3d 146, 155, 604 N.E.2d 181. It has been described as a right "which it is proper for the state to recognize and protect, and which an individual cannot be deprived of arbitrarily without injustice." State v. Mugdady (2000), 110 Ohio Misc.2d 51, 55, 744 N.E.2d 278. A vested right is one that " 'so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent.' " Harden v. Ohio Atty. Gen., 101 Ohio St.3d 137, 2004-Ohio-382, 802 N.E.2d 1112, ¶9, **[**19]** quoting Black's Law Dictionary (7th Ed.1999) 1324. A right also cannot be characterized as vested "unless it constitutes more than a 'mere expectation or interest based upon an anticipated continuance of existing laws.' " Roberts v. Treasurer (2001), 147 Ohio App.3d 403, 411, 2001 Ohio 8867, 770 N.E.2d 1085, quoting In re Emery (1978), 59 Ohio App.2d 7, 11, 13 O.O.3d 44, 391 N.E.2d 746.

[*P41] When the 2006 version of R.C. 5301.56 was enacted, Noon's mineral interest had already been abandoned and the mineral interest had been vested with the surface owner for 14 years. Once the mineral interest vested in the surface owner, it was reunited with the surface estate. Noon did not have any mineral interest in the subject property after March 22, 1992, because on that date the interest automatically vested in the surface owner by operation of the statute. And once the mineral interest vested in the surface owner, it "completely and definitely" belonged to the surface owner.

[*P42] Numerous trial courts in our District have likewise found that the 1989 version of R.C. 5301.56 applies to similar actions. See, *Walker v. Noon*, Noble County Common Pleas No. 2012-0098 ; *Marty v. Dennis*, Monroe County Common Pleas No. 2012-230; **[**20]** *Tribbett v. Shepherd*, Belmont County Common Pleas No. 12 CV 180.

[*P43] One trial court in our District has found to the contrary. *Dahlgren v. Brown Farm*, Carroll County 2013 CVH 274455. The trial court in *Dahlgren* found no merit to the "automatic vesting" theory. Instead, it classified the mineral rights under the 1989 version as "inchoate" rights. By definition, "inchoate" means "not completely formed or developed yet." Merriam-Webster Online Dictionary. This definition is in direct contrast to the definition of "vested" which means that something "so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent." Jordan v. Indus. Comm., 120 Ohio St.3d at ¶9, quoting Harden, 101 Ohio St.3d at ¶9. Thus, the *Dahlgren* court's

characterization of the mineral rights under the 1989 version is contrary to the statute itself, which states that the mineral rights are "vested."

[*P44] Additionally, trial courts in the Fifth District have likewise found that the 1989 version of the statute applies. See, *Wiseman v. Potts*, Morgan County Common Pleas No. 2008CV145 (where the parties agreed the 1989 version applied notwithstanding the fact it was filed after [**21] the 2006 version became effective); *Wendt v. Dickerson*, Tuscarawas County Common Pleas No. 2012 CV 02 0135 (prior version of the statute applied because the landowner's rights had vested and could not be taken away).

[*P45] Further support for this finding is found in *Cadles of Grassy Meadows, II, LLC v. Kistner, 6th Dist. No. L-09-1267, 2010-Ohio-2251*. In *Kistner*, a judgment was entered in 1987 against the Kistners. The judgment was not fully satisfied and, pursuant to statute, the judgment became dormant on March 12, 1992. At the time the judgment became dormant, the prior version of *R.C. 2325.18* (effective October 1, 1953, to June 1, 2004) was in effect and provided for a 21-year statute of limitations for revivor proceedings. In August 2009, Cadles moved the trial court to revive the judgment. The Kistners opposed the revivor arguing Cadles had abandoned its rights and because the statute of limitations barred revival. The trial court found that revival of the judgment was barred because the current version of *R.C. 2325.18(A)* provided for a 10-year statute of limitations for revival and more than 17 years had passed since the judgment became dormant. Cadles appealed.

[*P46] On appeal, Cadles [**22] argued the trial court erred in applying the current version of *R.C. 2325.18* retroactively. It claimed the right to sue became a vested, substantial right at the time the judgment became dormant.

[*P47] The Sixth District examined an 1893 Ohio Supreme Court case dealing with the same issue. It noted that in *Bartol v. Eckert, 50 Ohio St. 31, 33 N.E. 294 (1893)*, the Court held that without an expression of retroactivity, and based on the rule that amendments do not affect causes already existing, the amended statute was not applicable and the earlier statute applied. *Id. at ¶14*. It also stated that the *Bartol* Court considered the constitutionality of retroactively applying the statute and held that no vested right had been taken away or impaired by the statute. *Id.*

[*P48] The Sixth District noted that when determining whether a statute is to be applied retroactively the court must conduct a two-part inquiry. *Id. at ¶15*. First, ***HN10*** there must be a clear, express legislative intent to apply the statute retroactively. *Id.* Then, if there is such an intent, the statute must affect only remedial, not substantive, rights or it will be found to violate *Section 28, Article II of the Ohio Constitution.Id.*, citing [**23] *State ex rel. Romans v. Elder Beerman Stores Corp., 100 Ohio St.3d 165, 2003-Ohio-5363, 797 N.E.2d 82, ¶11*.

[*P49] The court went on to point out that the current version of *R.C. 2325.18* did not clearly provide for retroactive application. *Id. at ¶17*. It found, therefore, the statute was not intended to apply to dormant judgments that existed prior to the amendment of the statute. *Id.* Consequently, the court found that the prior version of the statute, which provided for a 21-year statute of limitations, controlled. *Id.*

[*P50] Although dealing with the application of a different statute, *Kistner* is helpful in that it found that the prior version of the statute applied, which was in effect at the time the judgment became dormant, as opposed to the current version of the statute, which was in effect when the revival claim was filed. And *Kistner* held that because the current version of the statute did not specifically provide for retroactive application, it did not apply to past judgments.

[*P51] Similarly, in the present case, the 2006 version of *R.C. 5301.56* does not specifically

provide for retroactive application. Thus, the 1989 version, which was in effect at the relevant time to render the mineral interest [**24] vested in the surface owner, controls here.

[*P52] Accordingly, appellant's second issue for review is without merit.

[*P53] Appellant's third issue for review asserts:

> As applied by the trial court, the 1989 version of the Dormant Minerals Act violates the Ohio Constitution's proscription on retroactive legislation.

[*P54] Appellant argues that the retroactive application of the 1989 version of the statute in this case is unconstitutional. She asserts that any reliance on *Texaco v. Short, 454 U.S. 516, 102 S.Ct. 781, 70 L. Ed. 2d 738 (1982)*, is misplaced. In *Texaco*, the United States Supreme Court upheld the constitutionality of Indiana's Dormant Mineral Interests Act. And Noon contends the application of the 1989 version of the statute violates *Article II, Section 28 of the Ohio Constitution*, which prohibits the General Assembly from passing retroactive laws.

[*P55] Noon failed to raise these constitutional arguments in his complaint or in his motion for summary judgment in the trial court. In fact, Noon even argued in his summary judgment motion that under the 1989 version of *R.C. 5301.56*, his mineral rights were preserved by three title transactions.

[*P56] The Ohio Supreme Court has held that *HN11* "[f]ailure to raise at the trial court [**25] level the issue of the constitutionality of a statute or its application, which issue is apparent at the time of trial, constitutes a waiver of such issue." *State v. Awan, 22 Ohio St.3d 120, 22 Ohio B. 199, 489 N.E.2d 277 (1986), syllabus*. However, the Ohio Supreme Court has also held that the waiver doctrine announced in *Awan* is discretionary. *In re M.D., 38 Ohio St.3d 149, 527 N.E.2d 286 (1988), syllabus*. "Even where waiver is clear, [a reviewing court may] consider constitutional challenges to the application of statutes in specific cases of plain error or where the rights and interests involved may warrant it." *Id.*

[*P57] *HN12* But recognizing plain error in a civil case occurs only in extremely rare situations "involving exceptional circumstances" where the error "seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson, 79 Ohio St.3d 116, 1997 Ohio 401, 679 N.E.2d 1099 (1997), syllabus*. In this case, we cannot conclude that the trial court committed plain error by failing to consider the constitutionality of the 1989 version of *R.C. 5301.56* when neither party raised this argument. Not [**26] only did neither party raise this argument, but both parties argued how they would prevail under the 1989 version. Thus, we need not address appellant's constitutional argument.

[*P58] Accordingly, appellant's third issue for review is without merit.

[*P59] Based on the analysis of appellant's issues for review, both of her assignments of error are without merit. The trial court properly granted summary judgment in appellee's favor and denied appellant's motion for summary judgment.

[*P60] For the reasons stated above, the trial court's judgment is hereby affirmed.

Vukovich, J., concurs.

Waite, J., concurs.

EXHIBIT

QQ

Caution
As of: June 3, 2014 5:10 PM EDT

Dodd v. Croskey

Court of Appeals of *Ohio*, Seventh Appellate District, Harrison County
September 23, 2013, Decided
CASE NO. 12 HA 6

Reporter: 2013-Ohio-4257; 2013 Ohio App. LEXIS 4475; 2013 WL 5437365

PHILLIP DODD, et al., PLAINTIFFS-APPELLANTS, vs. JOHN CROSKEY, et al., DEFENDANTS-APPELLEES.

Subsequent History: Appeal granted by *Dodd v. Croskey, 2014-PDOMOHIO-889, 2014 Ohio* LEXIS 515 (*Ohio*, Mar. 12, 2014)

Prior History: [**1] CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Case No. CVH-2011-0019.

Disposition: Affirmed.

Core Terms

mineral interest, notice, holder, abandon, trial court, porter, deed, ***mineral***, years immediately preceding, surface, summary judgment, oil and gas, certified mail, grant summary judgment, file a claim, heir, surface owner, public notice, moving party, twenty years, forfeiture, incorrect, assignee, genuine issue of material fact, immediately preceding, specific language, set forth, unambiguous, successor, convey

Case Summary

Overview

HOLDINGS: [1]-The trial court did not err in granting heirs summary judgment on the ground that ***mineral*** interests were not abandoned; [2]-The heirs preserved their ***mineral*** rights because they filed an affidavit preserving ***minerals*** within sixty days of owners' published notice of intent to claim abandonment of oil and gas interests in their property, and the affidavit complied with the ***OhioDormantMineral*** Act, *R.C. 5301.56(H)(1)(a)*; [3]-The deed that transferred the surface rights to the owners was not a title transaction within the meaning of the Act, *R.C. 5301.56(B)(3)(a)*, because the ***mineral*** interest was not being conveyed or retained by the party that sold the property to the owners; [4]-The owners did not provide any evidence to dispute the information in the heirs' affidavit that the individuals listed in the affidavit were not ***mineral*** interest holders.

Outcome

Summary judgment affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Summary Judgment Review > Standards of Review

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

HN1 In reviewing a summary judgment award an appellate court applies a de novo standard of review. Thus, it uses the same test as the trial court did, *Civ.R. 56(C)*. That rule provides that the trial court shall render summary judgment if no genuine issue of material fact exists and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law.

Energy & Utilities Law > Oil, Gas & ***Mineral*** Interests > Surface Use Interests

HN2 *R.C. 5301.56(H)(1)* provides that within 60 days of service or publication notice of the surface owner's intent to have the ***mineral***

interests be deemed abandoned, the holder of the ***mineral*** interest can claim that the ***mineral*** interest has not been abandoned by filing one of two documents, an affidavit or a claim. The affidavit is governed by R.C. 5301.56(H)(1)(b) and that statute provides that in order to preserve the ***mineral*** interest the affidavit must identify an event listed in R.C. 5301.56(B)(3) that has occurred within the twenty years immediately preceding the date on which the notice was served or published under R.C. 5301.56(E). R.C. 5301.56(H)(1)(b). The events listed in R.C. 5301.56(B)(3) automatically establish that the ***mineral*** interests have not been abandoned.

Energy & Utilities Law > Oil, Gas & ***Mineral*** Interests > Surface Use Interests

HN3 R.C. 5301.56(B)(3)(e) states that a ***mineral*** interest will not be deemed abandoned if within the 20 years immediately preceding the date on which notice was served or published, the holder has filed a claim to preserve the ***mineral*** interest in accordance with R.C. 5301.56(C). R.C. 5301.56(B)(3)(e).

Governments > Legislation > Interpretation

HN4 In determining the requirements of a statute, the court first looks to the specific language in the statute and if the language is unambiguous, it applies the clear meaning of the words used. However, if the statute is ambiguous then the court looks to the legislative intent.

Energy & Utilities Law > Oil, Gas & ***Mineral*** Interests > Surface Use Interests

HN5 See R.C. 5301.56(C)(1).

Energy & Utilities Law > Oil, Gas & ***Mineral*** Interests > Surface Use Interests

HN6 The clear language of R.C. 5301.56(H)(1)(a) does not require the claim to preserve the ***mineral*** interest to have been filed within the 20 years immediately preceding the notice. Rather it requires the claim to be filed within 60 days after the notice. The mere reference in R.C. 5301.56(C) to R.C. 5301.56(B) does not mean that a claim filed under R.C. 5301.56(H)(1)(a) has the same 20 year requirement that a claim filed under R.C. 5301.56(B) does.

Energy & Utilities Law > Oil, Gas & ***Mineral*** Interests > Surface Use Interests

HN7 See R.C. 5301.56(H)(1).

Civil Procedure > ... > Equity > Maxims > Forfeiture Principle

Energy & Utilities Law > Oil, Gas & ***Mineral*** Interests > Surface Use Interests

HN8 R.C. 5301.56(H)(1)(a) allows for a ***mineral*** interest holder to take a present action by filing a claim to preserve the ***mineral*** interest after notice, even though the claim was not filed within the 20 years immediately preceding notice. The law abhors a forfeiture. Thus, the law requires that the courts favor individual property rights when interpreting forfeiture statutes. Allowing for a present act to prevent forfeiture of the ***mineral*** interest favors individual property rights.

Energy & Utilities Law > Oil, Gas & ***Mineral*** Interests > Surface Use Interests

HN9 See R.C. 5301.56(B)(3)(a).

Governments > Legislation > Interpretation

HN10 The principles of statutory construction require courts to first look at the specific language contained in the statute, and, if the language is unambiguous, to then apply the clear meaning of the words used.

Real Property Law > Title Quality > Marketable Title > General Overview

HN11 Title transaction is defined in the Marketable Title Act 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. R.C. 5301.47(F). This is a common definition of a title transaction.

Governments > Legislation > Interpretation

HN12 The common definition of the word "subject" is topic of interest, primary theme or basis for action.

Energy & Utilities Law > Oil, Gas & *Mineral* Interests > General Overview

Energy & Utilities Law > Oil, Gas & *Mineral* Interests > Concurrent & Successive Interests > General Overview

Real Property Law > Title Quality > Marketable Title > General Overview

HN13 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.

Energy & Utilities Law > Oil, Gas & *Mineral* Interests > Surface Use Interests

HN14 When *mineral* interest do not meet one of the requirements in R.C. 5301.56(B) to be deemed not abandoned, the surface owner may then take steps to have the *mineral* interest deemed to be abandoned and to have those interests reattach to the surface. This process begins with the surface owner providing notice to the holder of the *mineral* interest as set forth in R.C. 5301.56(E). R.C. 5301.56(E)(1) requires the surface owner to serve notice to each holder or each holder's successors or assignees at the last known address of the owner's intent to declare the *mineral* interest abandoned. A "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. R.C. 5301.56 (A)(1).

Energy & Utilities Law > Oil, Gas & *Mineral* Interests > Surface Use Interests

HN15 R.C. 5301.56(E) requires the notice to be given by certified mail, return receipt requested. If service of notice cannot be completed to any holder, the owner shall publish notice of its intent to declare the *mineral* interest abandoned at least once in a newspaper of general circulation in the county where the land that is subject to the interest is located. The notice shall contain all of the information specified in R.C. 5301.56(F).

Energy & Utilities Law > Oil, Gas & *Mineral* Interests > Surface Use Interests

HN16 The language of R.C. 5301.56(F) allowing for published notice if certified mail could not be completed indicates that there must be an attempt to notify by certified mail.

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Movant Persuasion & Proof

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Nonmovant Persuasion & Proof

HN17 The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial.

Counsel: For Plaintiffs-Appellants: Attorney Paul Hervey, Attorney Jilliann Daisher, New Philadelphia, *Ohio*.

For Defendants-Appellees: Attorney Rupert Beetham, Cadiz, *Ohio*.

For Defendant-Appellee: Attorney Marquette Evans, Cincinnati, *Ohio* (For Harriet Evans).

Karen Chaney, Defendants-Appellee, Pro se, Craig, Colorado.

Patty Hausman, Defendants-Appellee, Pro se, Colorado Springs, Colorado.

Linda Boyd, Defendants-Appellee, Pro se, Littleton, Colorado.

Terri Hocker, Defendants-Appellee, Pro se, Bastrop, Texas.

Judges: Hon. Joseph J. Vukovich, Hon. Gene Donofrio, Hon. Mary DeGenaro. Donofrio, J., concurs. DeGenaro, P.J., concurs.

Opinion by: Joseph J. Vukovich

Opinion

VUKOVICH, J.

[*P1] Plaintiffs-appellants Phillip Dodd and Julie Bologna appeal the decision of the Harrison County Common Pleas Court granting summary judgment in favor of defendants-appellees John William Croskey, Mary E. Surrey, Roy Surrey, Emma Jane Croskey, Margaret Ann Turner, Mary Louise Morgan, Martha Beard, Lee Johnson, Edwin Johnson, Joann Zitko, David B. Porter, Joann C. Wesley, Cindy R. Weimer, Evart Dean Porter, Stuart Barry Porter, Brian K. Porter, Mary Elaine Porter, [**2] Kim D. Berry, Lorna C. Bower, Harriet J. Evans, Sandra J. Dodson, Karen A. Chaney, Patty Hausman, Linda B. Boyd, and Terri Hocker. This case is governed by the *OhioDormantMineral* Act, *R.C. 5301.56*. Four issues are argued in this case.

[*P2] The first issue is whether the 2009 deed that transferred the surface rights to appellants but also contained a prior ***mineral*** reservation to Samuel A. Porter and Blanche Long Porter is a title transaction within the meaning of *R.C. 5301.56*. The second issue is whether appellants satisfied the notice requirement in *R.C. 5301.56*. The third issue is whether the affidavit filed by appellee John William Croskey, which was filed after the notice of intent to claim abandonment of ***mineral*** interests was published in the local newspaper, was a savings event under *R.C. 5301.56(H)*. The fourth issue raised is whether the trial court erred when it did not require appellees to prove that they were the ***mineral*** interest holders.

[*P3] For the reasons expressed below, we make the following conclusions. The 2009 deed that transferred the surface rights to appellants is not a title transaction within the meaning of *R.C. 5301.56*. Any deficiency in the notice provided to the appellees [**3] of appellants' intent to have the ***mineral*** interests found to be abandoned is harmless because the publication notice reached at least one appellee, who filed an affidavit attempting to preserve the ***mineral*** interest. That affidavit complied with *R.C. 5301.56(H)* and accordingly preserved the ***mineral*** interests for appellees. Appellants did not provide any evidence to the trial court to dispute the information in the affidavit that the individuals listed in the affidavit are not ***mineral*** interest holders. Based upon those findings, we uphold the judgment of the trial court for appellees.

Statement of Facts

[*P4] In August 2009, appellants acquired 127.8387 acres of land in Harrison County, ***Ohio*** from James Coffelt. The deed provided that the conveyance was subject to the following reservations:

> Excepting and reserving unto Samuel A. Porter and Blanche Long Porter all of the oil and gas in Warranty Deed to Consolidated Fuel Company filed for record May 27, 1947 in Volume 121, page 381, Deed Records for the 148.105 acre. (Note: No further transfers)
>
> * * *
>
> Excepting a one-third interest in the oil and gas to Samuel A. Porter and Blanche Long Porter [1] in Warranty Deed filed for record may [sic] 27, 1947 [**4] in Volume 121, page 383, Deed Records.

August 5, 2009 Survivorship Deed.

[1] This trial court found that this exception contains an error. The reservation of a 1/3 interest in the oil and gas as noted in the instrument was retained by Emma A. Croskey, not Samuel A. Porter and Blanche Long Porter. The trial court, however, concluded that the error was without consequence in determining whether summary judgment should be granted to appellants. Neither party disputes this finding. Thus, it is not addressed by this court.

[*P5] Shortly after acquiring the surface rights, appellants were approached by an oil and gas company seeking to purchase the ***mineral*** rights to that tract of land.

[*P6] As a result of that request, on November 27, 2010, appellants published in the Harrison News Herald a notice of intent to claim abandonment of oil and gas interests underlying their property. As the above reservations show, these interests were previously reserved by the Porters. The published notice was addressed to "Samuel A. Porter and Blanche Long Porter, their unknown successor and assigns."

[*P7] Two days later, appellee John William Croskey recorded a Quit-Claim Deed for the oil and gas interests located on the property. [**5] Then, on December 23, 2010, Croskey filed a document titled "Affidavit Preserving ***Minerals***." Croskey claimed to be an heir of the Porters and thus, owns a portion of the ***mineral*** interests. In this affidavit, Croskey also named numerous other persons that are alleged to be heirs of Samuel A. Porter and Blanche Long Porter that likewise own an interest in the oil and gas reserves.

[*P8] On February 9, 2011, appellants filed an action to quiet title to the oil and gas interests. Appellants asked the Harrison County Common Pleas Court to find that the oil and gas interests were abandoned and thus, pursuant to the ***OhioDormantMineral*** Act, appellants, as the surface rights owners, were entitled to be named as owners of the oil and gas reserves. Or in other words, appellants wanted the trial court to find that the affidavit was void and did not preserve appellees' ***mineral*** interests. The complaint named all of the persons Croskey named as heirs of Samuel A. Porter and Blanche Long Porter as defendants.

[*P9] All appellees filed answers that contained denials. Thereafter, appellants moved for summary judgment claiming that pursuant to the ***OhioDormantMineral*** Act they are entitled to be named the owners [**6] of the ***mineral*** interests. Appellees filed motions in opposition to summary judgment and motions for summary judgment.

[*P10] After reviewing the parties' arguments, the trial court denied appellants' summary judgment motion and granted appellees' summary judgment motion. Thus, the court deemed that the ***mineral*** interests were not abandoned and that appellees retained the ***mineral*** interests that were acquired through testate from the Porters.

[*P11] Appellants appeal from that decision.

Standard of Review

[*P12] *HN1* In reviewing a summary judgment award we apply a de novo standard of review. *Cole v. Am. Industries & Resources Corp., 128* ***Ohio*** App.3d 546, 552, 715 N.E.2d 1179 (7th Dist.1998). Thus, we use the same test as the trial court did, *Civ.R. 56(C)*. That rule provides that the trial court shall render summary judgment if no genuine issue of material fact exists and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. *State ex rel. Parsons v. Fleming, 68* ***Ohio*** St.3d 509, 511, 1994 ***Ohio*** 172, 628 N.E.2d 1377 (1994).

OHIODORMANTMINERAL ACT

[*P13] The arguments raised by appellants address different aspects of [**7] the ***OhioDormantMineral*** Act. The ***OhioDormantMineral*** Act, as codified in *R.C. 5301.56*, establishes a process by which ***mineral*** interests may be deemed abandoned and deemed to have vested to the owner of the surface rights.

[*P14] The trial court provided three reasons for granting summary judgment. First, it concluded that the subject ***mineral*** interests met one of the provisions in *R.C. 5301.56(B)* and therefore, were not abandoned. Second, it found appellants failed to comply with the notice provisions in *R.C. 5301.56(E)* and that was

another reason supporting the grant of summary judgment. Lastly, it found that even if the interests were not abandoned and notice was properly given, the holders of the ***mineral*** interest took the appropriate steps set forth in *R.C. 5301.56(H)* to preserve their ***mineral*** interests.

[*P15] Appellants find fault with each reason and alternatively argue that even if the trial court was correct in all of its conclusions, it still erred in granting summary judgment because it failed to require appellees to provide proof of their ownership of the ***mineral*** interests.

[*P16] In reviewing appellants' arguments, we will first address the trial court's third reason for granting summary judgment, **[**8]** preservation of ***mineral*** interests, since it provides the sole and most persuasive basis for affirming the trial court's grant of summary judgment.

Act to Preserve *Mineral* Interests

[*P17] The argument addressing the trial court's decision that appellees' performed an act that preserved their ***mineral*** interests' states:

[*P18] "The trial court erred in finding that the Croskey affidavit was a 'savings event' under *Revised Code § 5301.56*."

[*P19] *HN2* *R.C. 5301.56(H)(1)* provides that within 60 days of service or publication notice of the surface owner's intent to have the ***mineral*** interests be deemed abandoned, the holder of the ***mineral*** interest can claim that the ***mineral*** interest has not been abandoned by filing one of two documents — an affidavit or a claim.

[*P20] The affidavit is governed by *R.C. 5301.56(H)(1)(b)* and that statute provides that in order to preserve the ***mineral*** interest the affidavit must identify an event listed in *R.C. 5301.56(B)(3)* 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." *R.C. 5301.56(H)(1)(b)*. The events listed in *section (B)(3)* automatically establish that the ***mineral*** interests have **[**9]** not been abandoned.

[*P21] The other document is "a claim to preserve the ***mineral*** interest." *R.C. 5301.56(H)(1)(a)* states that this claim is to be made in accordance with *R.C. 5301.56(C)*. That section states the information that must be contained in "a claim to preserve the ***mineral*** interest"; and that it must be filed within sixty days after the date of notice.

[*P22] On December 23, 2010, which was within sixty days of appellants' published notice, appellee John William Croskey filed a document titled "Affidavit Preserving ***Minerals***" in Harrison County Recorder's Office. While this document is titled as an affidavit, it does not identify an event under *division (B)(3)* which would deem the ***mineral*** interest not excluded. Thus, it does not constitute an affidavit that is described in *division (H)(1)(b)*. However, the trial court found that it does constitute "a claim to preserve the ***mineral*** interest" as described in *division (H)(1)(a)*.

[*P23] Appellants maintain that finding is incorrect because appellee John William Croskey's affidavit was not filed within the 20 years immediately preceding the notice. They contend that the 20 years immediately preceding the date of the notice requirement applies to a claim **[**10]** filed pursuant to *R.C. 5301.56(H)(1)(a)*.

[*P24] This assertion is based on *R.C. 5301.56(H)(1)(a)*'s statement that the claim to preserve the ***mineral*** interest is to be in accordance with *R.C. 5301.56(C)*. Appellants claim that *section (C)* requires a claim to preserve the ***mineral*** interest to be filed within the 20 years immediately preceding the date that notice is published under *section (E)*. Appellants reach this conclusion because the first sentence of *section (C)* states a claim to preserve a ***mineral*** interest from being deemed abandoned under *section (B)* may be filed for record by its holders. *R.C. 5301.56(C)(1)*. *Section (B)(3)(e)* specifically deals with claims to preserve a

mineral interest. ***HN3*** That section states that a ***mineral*** interest will not be deemed abandoned if within the 20 years immediately preceding the date on which notice was served or published, the holder has filed a claim to preserve the ***mineral*** interest in accordance with *R.C. 5301.56(C)*. *R.C. 5301.56(B)(3)(e)*. Thus, in short, appellants argue that the 20 year requirement applies under *R.C. 5301.56(H)(1)(a)* because *(H)(1)(a)* requires that the claim must in done in accordance with *R.C. 5301.56(C)*; and that section specifically **[**11]** refers to *R.C. 5301.56(B)*, *subsection (3)(e)* of which requires the claim to be filed within 20 years preceding the notice.

[*P25] Appellants are correct that *section (H)* refers to *section (C)* and *section (C)* refers to *section (B)*. However, their conclusion that due to those references, *R.C. 5301.56(H)(1)(a)* requires the claim to preserve ***mineral*** interest to be filed within the 20 years immediately preceding the notice in order to preserve the interest is incorrect.

[*P26] ***HN4*** In determining the requirements of a statute, we first look to the specific language in the statute and if the language is unambiguous, we apply the clear meaning of the words used. *Roxane Laboratories, Inc. v. Tracy, 75 **Ohio*** St.3d 125, 127, 1996 ***Ohio*** 257, 661 N.E.2d 1011 (1996). However, if the statute is ambiguous then we look to the legislative intent. *Bailey v. Republic Engineered Steels, Inc., 91 **Ohio*** St.3d 38, 40, 2001 ***Ohio*** 236, 741 N.E.2d 121 (2001).

[*P27] In reading *R.C. 5301.56(H)* it can be concluded that it provides two means through which a ***mineral*** interest holder can assert that the ***mineral*** interest is not abandoned. *Subsection (1)(b)* deals with the acts listed in *-R.C. 5301.56(B)(3)* that occurred within the 20 years immediately preceding the notice of **[**12]** the surface owners' intent to have the interests deemed abandoned. *R.C. 5301.56(B)(3)(e)* specifically provides for the filing of a claim to preserve the ***mineral*** interest that meets the requirements in *R.C. 5301.56(C)*. Thus, *R.C. 5301.56(H)(1)(b)* addresses past events that render the interest not abandoned.

[*P28] *R.C. 5301.56(H)(1)(a)*, on the other hand, allows for a present act by the ***mineral*** interest holder that prevents the interest from being determined to be abandoned. As stated above, that section states the ***mineral*** interest holder may file a claim to preserve the ***mineral*** interest in accordance with *R.C. 5301.56(C)* within 60 days after the date of notice.

[*P29] That said, it is acknowledged that under *R.C. 5301.56(H)(1)(a)* the claim to preserve the ***mineral*** interest must be done in accordance with *R.C. 5301.56(C)*. *R.C. 5301.56(C)* states:

> ***HN5*** (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 filed and recorded in accordance with division (H) of this section and *sections 317.18 to 317.201* and *5301.52 of the Revised Code*, and shall consist **[**13]** 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.

R.C. 5301.56(C).

[*P30] The first sentence of section (C) does refer to section (B). However, it is only stating that a claim under division (B) may be filed for record by its holder. Here, the claim was filed under division (H)(1)(a), not division (B).

[**14] *HN6* The clear language of R.C. 5301.56(H)(1)(a) does not require the claim to preserve the ***mineral*** interest to have been filed within the 20 years immediately preceding the notice. Rather it requires the claim to be filed within 60 days after the notice. The mere reference in division (C) to division (B) does not mean that a claim filed under division (H)(1)(a) has the same 20 year requirement that a claim filed under division (B) does. Therefore, appellants assertion that 20 year requirement applies to a claim filed under division (H)(1)(a) fails.

[*P31] If we were to read division (H)(1)(a) in the manner urged by appellants, it would mean that a claim to preserve a ***mineral*** interest filed under that division not only has to have been filed within the 20 years immediately preceding the surface owner's notice of intent to have the ***mineral*** interests deemed abandoned, but also within 60 day after the notice. Reading it in is this manner causes two problems in the statute.

[*P32] First, it creates a redundancy in the statute. R.C. 5301.56(H)(1)(b) already governs the situation where a claim was filed within the 20 years immediately preceding the notice. As aforementioned under R.C. 5301.56(H)(1)(b) a ***mineral*** [**15] interest holder can preserve their rights by filing an affidavit that identifies an event listed in section (B)(3). R.C. 5301.56(B)(3) states that if certain events have occurred "within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section" the ***mineral*** interests have not been abandoned. One of the events listed is the filing of a claim preserving the ***mineral*** interest in accordance with the requirements in R.C. 5301.56(C). R.C. 5301.56(B)(3)(e). Consequently, if R.C. 5301.56(H)(1)(a) is read to require the claim to have been filed within the 20 years immediately preceding the notice, there is no need for that provision because it is already covered under R.C. 5301.56(H)(1)(b). The legislature would not have intended for the statute to be redundant; rather the intent is for all provisions to have meaning.

[*P33] Second, it does not give effect to the words used and not used in the statute. The specific language of R.C. 5301.56(H)(1) is:

> *HN7* (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 [**16] 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.

R.C. 5301.56(H)(1)(a)-(b).

[*P34] R.C. 5301.56(H)(1)(b) specifically mentions the 20 year requirement, i.e. that an event has to occur within the 20 years immediately preceding notice. The legislature could have chosen to leave out the 20 year language and that requirement would still have been required because of the reference to R.C. 5301.56(B)(3). R.C. 5301.56(B)(3) specifically states that if certain events occur within the 20 years immediately preceding the notice, the ***mineral*** interests are not deemed abandoned. That said, the legislature chose to restate the 20 year requirement [**17] to ensure that that requirement was applicable. However, R.C. 5301.56(H)(1)(a) does not mention a 20 year requirement. Likewise, R.C. 5301.56(C) does not expressly state a 20 year requirement. If the legislature wanted the 20 year requirement to apply it knew the language to use, which is evidenced by the language used in R.C. 5301.56(H)(1)(b). Yet, it did not employ such language. Thus, the legislature's choice to not state the 20 year requirement in R.C. 5301.56(H)(1)(a) also lends support for the conclusion that the 20 year requirement is inapplicable to that section.

[*P35] Furthermore, the conclusion that *HN8* R.C. 5301.56(H)(1)(a) allows for a ***mineral*** interest holder to take a present action by filing a claim to preserve the ***mineral*** interest after notice, even though the claim was not filed within the 20 years immediately preceding notice, is supported by the general rule that the law abhors a forfeiture. State ex rel. Falke v. Montgomery Cnty. Residential Dev., Inc., 40 ***Ohio*** St. 3d 71, 73, 531 N.E.2d 688 (1988). Thus, the law requires that we favor individual property rights when interpreting forfeiture statutes. ***Ohio*** Dep't of Liquor Control v. Sons of Italy Lodge 0917, 65 ***Ohio*** St. 3d 532, 534, 1992 ***Ohio*** 17, 605 N.E.2d 368 (1992). [**18] Allowing for a present act to prevent forfeiture of the ***mineral*** interest favors individual property rights.

[*P36] Therefore, considering all the above, the argument that appellees did not preserve their ***mineral*** rights lacks merit. The trial court's decision to grant summary judgment is upheld for this reason.

Mineral Interests Subject of a Title Transaction

[*P37] Appellants also argue that the trial court incorrectly determined that the ***mineral*** interests were not abandoned under R.C. 5301.56, by stating:

[*P38] "The trial court erred by finding that the restatement of a prior ***mineral*** reservation in later deeds is a 'title transaction' within the meaning of ***Ohio*** Revised Code §5301.56."

[*P39] R.C. 5301.56(B) indicates that ***mineral*** interests will not be deemed abandoned if they are coal interests, if the interests are held by the United States, the State of ***Ohio*** or any political subdivisions, or if certain enumerated actions are taken within the preceding twenty years. The ***mineral*** interests at issue in this case are not owned by a political subdivision and they are not coal interests. Therefore, in order for the interest to automatically be determined to not be abandoned one of the provisions under R.C. 5301.56(B)(3) [**19] must be applicable. The trial court found that provision (B)(3)(a) was applicable. That section states:

> *HN9* (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.

R.C. 5301.56(B)(3)(a).

[*P40] In finding that this section applied, the court explained that in 2009, when appellants acquired the surface rights, the instrument that conveyed those rights to them included the reservation of the oil and gas interests to Samuel

A. Porter and Blanche Long Porter. Thus, it concluded that the ***mineral*** interests were the "subject of the title transaction and that it had been filed within 20 years immediately preceding the publishing of notice under *R.C. 5301.56(E)*.

[*P41] There is no dispute that the 2009 deed was filed within the 20 years immediately preceding appellants' 2011 notice of intent to claim abandoned ***mineral*** interests that was published in the Harrison Herald News. The issue to be decided here is whether **[**20]** the oil and gas interest was the "subject of that title transaction.

[*P42] As aforementioned, ***HN10*** "[t]he principles of statutory construction require courts to first look at the specific language contained in the statute, and, if the language is unambiguous, to then apply the clear meaning of the words used." *Roxane Laboratories, Inc., 75* ***Ohio*** St.3d 125, 127, 1996 ***Ohio*** 257, 661 N.E.2d 1011. *R.C. 5301.56(B)(3)(a)* is unambiguous. Therefore, the meaning of all the words used must be considered.

[*P43] Title transaction is not defined in the ***OhioDormantMineral*** Act. However, ***HN11*** it is defined in the Marketable Title Act 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." *R.C. 5301.47(F)*. This is a common definition of a title transaction. By this definition the 2009 deed clearly constitutes a title transaction.

[*P44] *Division (3)(a)*, however, also requires the ***mineral*** interests to be the "subject of" a title transaction. Both parties cite this court to *Riddel v. Layman, 5th Dist. No. 94CA114, 1995* ***Ohio*** App. LEXIS 6121 (July 10, 1995) **[**21]** , to support their respective positions regarding whether the ***mineral*** interests were the "subject of the 2009 title transaction.

[*P45] In *Riddel*, Austin and Eula transferred 111 acres to Hilda, but retained 49% of the ***mineral*** interests to that property. This transfer occurred in 1965, but was not recorded until June 1973. However, in May 1973, Hilda transferred the property to the Tarboxs. That deed did not contain the reservation of ***mineral*** interests. In 1990 the Tarboxs transferred the property to Riddel and that deed also did not contain the reservation of ***mineral*** interests. In 1994, Riddel filed an action to quiet title. Eula filed an answer and counterclaim alleging to hold 49% of the ***mineral*** interests to the property. The trial court granted Eula summary judgment and held that she owned 49% of the ***mineral*** interests to the property.

[*P46] The appellate court upheld that decision. Based on the ***OhioDormantMineral*** Act that was in effect at the time (which is the previous version of the ***OhioDormantMineral*** Act) the appellate court stated that in order for Eula to retain her 49% ***mineral*** interest in the property there had to be a title transaction, of which the ***mineral*** interest was **[**22]** subject of, that had been filed or recorded in the county recorder's office within the past 20 years from the enactment of the statute. *Id.* It found that the 49% ***mineral*** interest reservation was the "subject of the title transaction in 1965 when Austin and Eula transferred the 111 acres to Hilda. *Id.* That deed was recorded in 1973. The statute was enacted in 1989. Therefore, the recording of the 1965 deed in 1973 occurred within 20 years preceding the date the statute was enacted. *Id.*

[*P47] Despite each party's insistence, Riddle does not shed much light on what it means to be "subject of a title transaction." Clearly, the ***mineral*** interest in that case was the "subject of" the 1965 title transaction; in that transaction the grantor specifically retained a ***mineral*** interest.*Riddel*, however, does not address whether the ***mineral*** interest would be the "subject of" the 1973 or 1990 title transactions if the previous ***mineral*** reservations were contained in those transactions, which is the

exact issue presented to this court. Thus, this case is not instructive.

[*P48] Other than *Riddel*, there is no case law in ***Ohio*** discussing what "subject of a title transaction" means. Furthermore, "subject of is not **[**23]** defined in the statute. Therefore, the phrase must be given its plain, common, ordinary meaning and is to be construed "according to the rules of grammar and common usage." *Smith v. Landfair, 135 Ohio* St.3d 89, 2012-*Ohio*-5692, 984 N.E.2d 1016, ¶ 18. ***HN12*** 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. ***HN13*** 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 conveyed or retained by Coffelt, the party that sold the property to appellants.

[*P49] 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. Furthermore, we **[**24]** note that there is no evidence in the record that the oil and gas interests were the "subject of" a title transaction in the 20 years immediately preceding the publishing of the notice to claim the ***mineral*** interests were abandoned. Consequently, the trial court's decision to grant summary judgment to appellees on the basis of *R.C. 5301.56(B)(3)(a)* was incorrect. This argument has merit.

[*P50] Regardless, as discussed above, summary judgment was appropriately granted on the basis that appellees took affirmative steps to preserve their ***mineral*** interests after notice of appellant's intent to have the ***mineral*** interests deemed abandoned was published.

Notice

[*P51] The argument regarding notice provides:

[*P52] "The trial court erred in finding that the appellants failed to satisfy the notice requirements of ***Ohio*** Revised Code § 5301.56."

[*P53] ***HN14*** When ***mineral*** interest do not meet one of the requirements in *R.C. 5301.56(B)* to be deemed not abandoned, the surface owner may then take steps to have the ***mineral*** interest deemed to be abandoned and to have those interests reattach to the surface. This process begins with the surface owner providing notice to the holder of the ***mineral*** interest as set forth in *R.C. 5301.56(E)*.

[*P54] **[**25]** *Division (E)(1)* requires the surface owner to serve notice to each holder or each holder's successors or assignees at the last known address of the owner's intent to declare the ***mineral*** interest abandoned. A "'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." *R.C. 5301.56 (A)(1)*. Thus, holder would include any heirs or assigns of the Porters.

[*P55] ***HN15*** *R.C. 5301.56(E)* requires the notice to be given by certified mail, return receipt requested. If service of notice "cannot be completed to any holder," the owner shall publish notice of its intent to declare the ***mineral*** interest abandoned at least once in a newspaper of general circulation in the county where the land that is subject to the interest is located. The notice shall contain all of the information specified in *R.C. 5301.56(F)*.

[*P56] Here, it is undisputed that appellants did not attempt to notify any of the appellees by certified mail. It is also undisputed that Samuel A. Porter and Blanche Long Porter are deceased. Since appellants did not know the Porters' heirs they published the notice in the Harrison Herald News, a local newspaper. **[**26]** All parties agree that the published notice complied with the requirements in *R.C. 5301.56(F)*.

[*P57] Appellees assert that appellants failed to comply with the mandates of *R.C. 5301.56(F)* because certified mail was not attempted. The trial court agreed and provided this as basis for granting summary judgment to appellees.

[*P58] We agree with the trial court and appellees that ***HN16*** the language of the statute allowing for published notice if certified mail could not be completed indicates that there must be an attempt to notify by certified mail. Appellants complain that there is no guidance as to the lengths surface owners must go to determine who the holders of the interests might be to attempt certified mail. They assert that they did a title search for the transfer of ***mineral*** interests, that they searched the probate records and that they could not determine who to serve by certified mail. The evidence submitted indicates that they did a title search; however, there is no indication in the affidavits that a probate records search was performed. We understand the difficulty in determining, in instances such as these, who are the heirs and assigns. That said, we do not need to determine whether the **[**27]** actions taken by appellants would be enough to show an attempt at certified mail.

[*P59] Here, the failure to strictly comply with the statute does not provide a basis for granting summary judgment. The published notice reached one of the parties claiming to have interest. Appellee John William Croskey on December 23, 2010, filed an Affidavit Preserving ***Minerals*** that asserted his interest and his relatives' interest in the ***mineral*** interests. In that affidavit it provides when Samuel A. Porter died, that his estate was administered in Harrison County Probate Court and indicates who received the residue of his estate. The purpose of the notice requirement is to have the persons with ***mineral*** interests receive the notice of the surface owner's intent to claim the ***mineral*** interests abandoned. Therefore, since notice was received and that party could took timely action to preserve the ***mineral*** interests, failure to strictly comply with the notice requirement, in this instance, amounts to harmless error.

[*P60] Consequently, alleged inadequate notice does not provide a reason for granting summary judgment to appellees.

Ownership of Interest

[*P61] Appellants last argument is an alternative to the above arguments. **[**28]** They assert that even if the appellees met the requirements to preserve their ***mineral*** interests, the trial court erred when it did not require them to prove their ownership interests:

[*P62] "The trial court erred and abused its discretion in not requiring the ***mineral*** rights claimants to provide proof of their ownership interests."

[*P63] This argument lacks merit. Appellants were seeking to quiet title to the ***mineral*** interests in the land to which they owned the surface rights. They were doing this through the application of the ***OhioDormantMineral*** Act. Croskey filed an affidavit preserving ***mineral*** interests claiming that he and all parties listed in the affidavit are heirs of the Porters and thus are holders of the ***mineral*** interest. The affidavit explains how the parties listed are the Porters' heirs. The trial court determined that the Croskey affidavit preserved the ***mineral*** interests. This is a finding that the parties listed in that affidavit are holders of the ***mineral*** interests.

[*P64] ***HN17*** The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue **[**29]** of material fact. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall, 77 Ohio*

St.3d 421, 429, 674 N.E.2d 1164, 1997-*Ohio*-259, citing *Dresher v. Burt, 75 Ohio* St.3d 280, 293, 1996 *Ohio* 107, 662 N.E.2d 264 (1996).

[*P65] Appellants provided no evidence to dispute the Croskey affidavit; they did not offer any evidence that the appellees are not the heirs or assigns of the Porters. Since the sworn affidavit provided evidence that the appellees are the heirs or assigns, the burden shifted to appellants to provide conflicting evidence. Appellants failed to meet that burden.

[*P66] Appellants also assert that summary judgment should not have been granted because the trial court did not determine how much *mineral* interest each party owned. This issue however, was not presented to the trial court. As stated above, the trial court was asked to determine whether the *mineral* interests were abandoned; it was not asked to partition the *mineral* interests. Therefore, **[**30]** the trial court did not err when it did not determine how much interest each party owned.

[*P67] For those reasons, this assignment of error lacks merit.

Conclusion

[*P68] In conclusion, the trial court incorrectly determined that summary judgment was appropriate because the 2009 deed that transferred the surface rights to appellants was a title transaction within the meaning of *R.C. 5301.56(B)(3)(a)*. Furthermore, it incorrectly determined that the failure to comply with the notice provisions in *R.C. 5301.56(E)* also provided a basis for granting summary judgment to appellees even though at least one appellee received the notice. That said, the trial court correctly determined that the affidavit filed after receiving the notice complied with *R.C. 5301.56(H)* and accordingly preserved the *mineral* interests for appellees. Furthermore, appellants did not provide any evidence to the trial court to dispute the information in the affidavit that the individuals listed in the affidavit are not *mineral* interest holders. Therefore, the judgment of the trial court is affirmed.

Donofrio, J., concurs.

DeGenaro, P.J., concurs.

EXHIBIT

RR

442 Mich. 38
Supreme Court of Michigan.

ENERGETICS, LTD., a division of Dart Energy Corporation, Plaintiff-Appellee,
v.
Oak R. WHITMILL, Davey G. Whitmill, Ronald I. Whitmill, Alvin L. Whitmill, William D. Whitmill, Lyle E. Whitmill, Darlene I. Griffin, Ruby M. Straus, Terry L. Whitmill, Verna J. Beebe, Elva B. Austin, Arla Grace Whitmill, Defendants-Appellants.
and
Elmer R. Benchley, Virginia M. Benchley, and Northern Michigan Health Foundation, Defendants-Appellees,
and
Jennie Whitmill, Ruth Whitmill, Mamie E. Whitmill, Elaine Whitmill, Ronalda Whitmill, Claude J. Osbourne, George F. Robinson, Richard D. Stauffer, Eddie D. Terrel, Molly R. Huber, Ronald D. Kregel, Agris J. Krautmanis, Hassie Hunt Exploration Company, Hassie Hunt Production Company, Haroldson L. Hunt, Jr. Trust Estate, the Rosewood Corporation, Estate of Archie Cudney, Leonard P. Gregg and Shirley Gregg, Defendants.
ENERGETICS, LTD.,
v.
Elmer R. BENCHLEY and Virginia M. Benchley, et al., Defendants-Appellees,
and
Northern Michigan Hospital Foundation, Defendant-Appellant.

Nos. 91653, 91656. | Calendar No. 10, Oct. Term, 1992. | Argued Oct. 15, 1992. | Decided March 30, 1993.

Surface owners brought interpleader suit against holders of severed oil and gas interests in tract of land to determine proper distribution of royalties, claiming that severed oil and gas interests were abandoned, after being dormant more than 20 years, under Dormant Minerals Act. The Circuit Court, Clare County, Kurt N. Hansen, J., found in favor of holders of oil and gas interests. The Court of Appeals, 184 Mich.App. 247, 471 N.W.2d 641, reversed. Holders of minerals interests were granted leave to appeal. The Supreme Court, Robert P. Griffin, J., held that: (1) where severed oil and gas interest in land is leased by recorded instrument for primary term of less than 20 years, new 20-year dormancy period commences when reversionary interest is transferred at termination of lease, and (2) new 20-year dormancy period commenced at termination of earlier 10-year lease such that oil and gas interests could not be deemed abandoned where new leases were entered into less than 20 years thereafter.

Decision of Court of Appeals reversed; judgment of the Circuit Court reinstated.

Levin, J., filed separate opinion concurring.

West Headnotes (12)

[1] **Mines and Minerals**
Conveyance, abandonment, or other termination of rights granted or reserved

Purpose of Dormant Minerals Act, under which ownership of separate oil or gas interest may be deemed abandoned in favor of surface owner, is not to vest title to severed interests in surface owner but rather to facilitate development of those subsurface properties by reducing problems presented by fragmented and unknown ownership.

2 Cases that cite this headnote

[2] **Mines and Minerals**
Conveyance, abandonment, or other termination of rights granted or reserved

Term "lease," for purposes of Dormant Minerals Act provision that severed oil gas interest is to be deemed abandoned unless interest has been sold, leased, mortgaged or transferred by recorded instrument during 20-year period, may not be interpreted as providing that 20-year dormancy period shall not run during period when severed interest is "subject to lease"; if such construction were adopted, nothing would prevent owner of severed interest from executing lease with primary term much longer than 20 years, thus sheltering severed interest from operation of Act for indefinite period. M.C.L.A. § 554.291 et seq.

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2 Cases that cite this headnote

[3] **Mines and Minerals**
Conveyance, abandonment, or other termination of rights granted or reserved

For purposes of Dormant Minerals Act, transfer of interest in oil and gas occurs both when oil and gas lease takes effect and when leasehold interest reverts to interest owner upon termination of lease for purposes of determining whether 20-year dormancy period has run after which severed oil and gas interests shall be deemed abandoned in favor of service owner. M.C.L.A. § 554.291 et seq.

4 Cases that cite this headnote

[4] **Mines and Minerals**
Rights or interests acquired in general

Under oil and gas lease, lessor retains reversionary interest in mineral estate; at termination of such lease, oil and gas rights revert to grantor of the lease, their heirs or assigns.

2 Cases that cite this headnote

[5] **Mines and Minerals**
Conveyance, abandonment, or other termination of rights granted or reserved

Statutory language "transferred by instrument recorded" as used in describing preserving events which will preclude running of 20-year period after which oil and gas interest may be deemed abandoned under Dormant Minerals Act includes reversion that occurs at termination of recorded lease. M.C.L.A. § 554.291 et seq.

5 Cases that cite this headnote

[6] **Mines and Minerals**
Conveyance, abandonment, or other termination of rights granted or reserved

Where severed oil and gas interest in land is leased by recorded instrument for primary term of less than 20 years, new 20-year dormancy period commences when reversionary interest is transferred at termination of lease. M.C.L.A. § 554.291 et seq.

4 Cases that cite this headnote

[7] **Mines and Minerals**
Conveyance, abandonment, or other termination of rights granted or reserved

Severed oil and gas interests were not abandoned under Dormant Minerals Act, despite lack of any recording for 20-year period, where less than 20 years separated expiration of 10-year lease and next preserving event, occurring when another lease of interest was executed and recorded. M.C.L.A. § 554.291 et seq.

3 Cases that cite this headnote

[8] **Deeds**
Effect of record or delivery for record

Presumption of delivery arising from recording of deed merely shifts burden of proof to party questioning delivery.

6 Cases that cite this headnote

[9] **Deeds**
Necessity

Purpose of delivery requirement with respect to deeds is to show grantor's intent to convey property described in deed.

14 Cases that cite this headnote

[10] **Deeds**
Time of taking effect

Deeds
Retention of deed by grantor after record

Where grantor never delivered deeds and had no intent for them to be delivered until after his death, title did not pass until he died, even though he recorded the deeds at earlier date.

5 Cases that cite this headnote

[11] **Mines and Minerals**

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Conveyance, abandonment, or other termination of rights granted or reserved

Assignment of 5/80th share of severed mineral interests with reservation of right by holder of 35/80th share to receive delay rental payments did not defeat assignee's interest under Dormant Minerals Act where terms of provision reserving right to receive delay rental payments by assignor were matter of record. M.C.L.A. § 554.291 et seq.

Cases that cite this headnote

[12] **Mines and Minerals**

Conveyance, abandonment, or other termination of rights granted or reserved

Reversion that occurs at termination of recorded lease constitutes "transfer" by recorded instrument within meaning of Dormant Minerals Act. M.C.L.A. § 554.291 et seq.

Cases that cite this headnote

Attorneys and Law Firms

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Opinion

ROBERT P. GRIFFIN, Justice.

These consolidated appeals require us to decide whether certain severed oil and gas interests in a tract of land were properly "deemed abandoned" in favor of the surface owners by *40 operation of the dormant minerals act.[1] Because, as we construe the act,[2] the interests in question were not abandoned, we reverse the decision of the Court of Appeals.

I

The relevant facts bearing upon the principal issue in these appeals are not in dispute.[3] Elmer *41 Benchley and his wife, Virginia, own the surface and an undisputed $^{35}/_{80}$ interest in the oil and gas rights in an eighty-acre parcel of land in Clare County. The heirs of Edwin Whitmill claim a $^{40}/_{80}$ interest in the oil and gas rights, and Northern Michigan Hospital Foundation (NMHF) claims the remaining $^{5}/_{80}$ share of the oil and gas rights in the eighty-acre tract. However, the Whitmill and NMHF claims are challenged by the Benchleys, who contend that those severed interests were dormant for more than twenty years and therefore were abandoned by operation of the act.

With respect to each of the disputed interests, a lease was executed and recorded in 1951, giving Sun Oil Company the right to drill for oil and gas during a primary term of ten years. Each lease provided for termination after the first year or any year thereafter in which drilling or production operations were not undertaken unless "delay rental" payments were made by the lessee. The trial court determined that delay rental payments were made as required **500 and that each lease remained in effect until the expiration of its primary term in 1961.[4]

Subsequently, in 1977 in the case of the Whitmill interest, and in 1978 in the case of the NMHF interest, similar leases in favor of another development company were executed and recorded. After oil was discovered and production from the eighty-acre parcel began in 1985, an interpleader action[5] was initiated to determine the proper distribution of royalties. As surface owners, the Benchleys asserted title to the interests claimed by the Whitmills *42 and NMHF on the ground that no qualifying document had been recorded during a twenty-year period before the recording of the leases in 1977 and 1978.

The trial court ruled that the statutory twenty-year dormancy period had not run, and that the disputed interests therefore were not abandoned. The circuit judge reasoned that when each of the Sun Oil leases expired in 1961, the leased interest was "transferred" back to the interest owner in accordance with the terms of a recorded instrument, and that a new twenty-year period then commenced. On appeal, the Court of Appeals disagreed, and reversed.[6] We then granted leave to appeal.[7]

II

Enacted in 1963,[8] the dormant minerals act focuses upon a problem that frequently arises when oil and gas rights are severed from the surface estate and then remain undeveloped for long periods of time.[9] In the words of one commentator:

> "The problem results from the fact that perpetual or very long term mineral interests may be created during a period of activity in a particular ***43** industry, and these interests do not terminate when the activity ceases. Ownership of the minerals may thus be lodged in individuals who have long disappeared from the area, leaving no trace, and making it impossible to further develop the mineral estate...." Polston, *Legislation, existing and proposed, concerning marketability of mineral titles,* 7 Land & Water LR 73 (1972).

[1] The act addresses this problem by providing, in summary, that ownership of a severed oil or gas interest shall be "deemed abandoned" in favor of the surface owner unless at any time during a twenty-year period:

- The interest has been "sold, leased, mortgaged or transferred" by recorded instrument;
- The owner has recorded a "claim of interest";
- There has been "issuance of a drilling permit";
- There has been "production or withdrawal of oil or gas" from land in which the interest is held, or from lands "pooled, unitized or included in unit operations" with lands in which the interest is held; or
- The interest has been used "in underground storage operations."

However, as this Court explained in *Van Slooten v. Larsen,* 410 Mich. 21, 44, 299 N.W.2d 704 (1980), the purpose of the act is "not to vest title to the severed interests in the surface owner but rather is to facilitate the development of those subsurface ****501** ***44** properties by reducing the problems presented by fragmented and unknown ownership."[10]

III

The Benchleys maintain that the dormant minerals act clearly and unambiguously requires a new recording at least once every twenty years in order to preserve ownership of a severed oil and gas interest. Appearing to adopt that position, the Court of Appeals panel in this case stated:

> "By requiring a periodic recording of mineral interests in the register of deeds office, once every twenty years, the Legislature provided a means of insuring that a person interested in purchasing or leasing mineral rights would have information, not older than twenty years, about the identity and whereabouts of the owners of those mineral rights." 189 Mich.App. 247, 256, 471 N.W.2d 641 (1991).

We disagree with the Court of Appeals to the extent that its opinion can be read to suggest that the act is merely a "recording statute" which automatically triggers forfeiture of title whenever a twenty-year period elapses without the recording of an instrument. As already indicated, although the statute refers to five types of activity that toll the running of a dormancy period, only the first two listed above involve a recording requirement. Even though recording clearly is an important component of the act's design, the Legislature has not relied on recording as the exclusive means to further its objectives.

[2] On the other hand, the Whitmills and NMHF ***45** advance two arguments to support their claims. First, they argue for an interpretation of the word "leased" in the act that would preclude the running of a twenty-year dormancy period while a severed interest remains subject to a recorded lease, asserting that an oil and gas interest is just as leased on the last day of a lease as it is on the first day. Some support for this approach can be found in the dictionary. When used as a verb, "lease" may mean "to grant or convey to another by lease" or "to be under lease or be subject to lease." *Webster's Third New International Dictionary, Unabridged Edition* (1966), p 1286. Thus, common usage of the word suggests that two interpretations might be applicable in this situation: one that would commence a twenty-year period upon execution and recording of a lease, and a second meaning, urged on us by the Whitmills and NMHF, that would toll the running of a dormancy period while the severed interest remains subject to a lease.

They argue that the second meaning would serve the act's ultimate goal, the development of oil and gas interests.[11] However, we must recognize that the expansive interpretation of the word "leased" urged by the Whitmills and NMHF could work also to undermine the purposes of the dormant minerals act. If such a construction were adopted, there would be nothing to prevent the owner of a severed interest from

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executing a lease with a primary term much longer than twenty years. Thus, a severed interest might be sheltered from the operation of the act for an indefinite ***46** period.[12] Obviously, if the Legislature ****502** had intended that result, it easily could have provided explicitly that the twenty-year dormancy period shall not run during a period when a severed interest is "subject to a lease."[13] It did not do so, and we are convinced that such a broad interpretation of the word "leased" was not intended.

[3] As their second argument, the Whitmills and NMHF maintain that a "transfer" by recorded instrument, within the meaning of the act, occurred in 1961 at the termination of the leases to Sun Oil. The trial court adopted this approach and determined that two transfers occur when an interest in oil and gas is leased: one at the execution of the lease, and a second when the lease is terminated. Applying this reasoning, the court explained:

> "The recorded lease clearly indicated that Sun Oil acquired certain rights in the oil and gas rights in 1951. The recorded lease further indicated that these rights were transferred back to the Whitmills in 1961, when the lease terminated by its own terms. Both of these transfers of interest were evidenced in the recorded lease. A separate act of recording would not have been necessary to put the world on notice of this event. Anyone 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. This expiring of the lease is itself a transfer of the interest."

[4] ***47** We agree with this analysis. Clearly, an oil and gas lease is a transfer of an interest in oil and gas. See *Jaenicke v. Davidson,* 290 Mich. 298, 303, 287 N.W. 472 (1939); *Mar Win Development Co. v. Wilson,* 104 N.W.2d 369 (N.D.1960).[14] The typical lease grants the lessee the exclusive right to enter the land to explore, drill, and produce oil and gas. 1 Williams & Meyers, Oil & Gas, § 202.1, p 21.[15] The lessor retains a reversionary interest in the mineral estate. See 3A Summers, Oil and Gas, § 601, p 310; Lampman, *Oil and gas royalty,* 42 Mich St B J 27 (March, 1963). At termination of such a lease, the oil and gas rights revert to "the grantors of the lease, their heirs or assigns." *Jupiter Oil Co v. Snow,* 819 S.W.2d 466, 468 (Tex.1991); *Kaiser v. Love,* 163 Tex. 558, 560, 358 S.W.2d 586 (1962).[16]

It is evident that the transfer of an interest in oil and gas occurs both when a lease takes effect and when the leasehold interest reverts to the interest owner upon termination of the lease.

IV

[5] As employed by the Legislature in the dormant minerals act, the words "sold," "leased," and ***48** "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. ****503** *Auto Club Ins. Ass'n v. Hill,* 431 Mich. 449, 455, 430 N.W.2d 636 (1988). Mindful of this principle of statutory construction, we believe the purpose of the act will best be served by construing the statutory language "transferred by instrument recorded" to include the reversion that occurs at the termination of a recorded lease.

This construction will not allow the owner of a severed oil and gas interest to "shelter" that interest from the dormant minerals act by leasing it for a term in excess of twenty years. Moreover, we believe this construction serves the purposes of the act by avoiding abandonment of a severed interest under circumstances where it is being actively maintained.

We find it difficult to believe that the Legislature intended to impose the penalty of title forfeiture in the circumstances presented here.[17] If the ***49** 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.

Our construction of the act is consistent with the result reached by the Court of Appeals panel in *Mask, supra,* where the Court faced somewhat similar facts.[18] In that case, the ten-year primary term of an oil and gas lease expired in 1954. Thereafter, no preserving event occurred until 1971,

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when another lease of the interest was executed and recorded. Concluding that the severed interest had not been abandoned by operation of the act, the *Mask* panel stated:

> "Were this not so and defendants' contention accepted, termination of plaintiffs' interests by running of the 20-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 from 1944 to 1954. This cannot be so. *Herein, the property interests could not commence to become dormant after the original lease to Sun Oil Company dated May 31, 1944, until relinquishment and transfer back to the lessors of said lease rights in 1954.*" *Id.* at p. 31-32, 257 N.W.2d 256. (Emphasis added.)
> Following the *Mask* decision, one commentator ***50** suggested that the proper interpretation of the act is that "a recorded oil and gas lease should have the effect of postponing the commencement of a new 20-year period only until such time as the lease is no longer in effect, whether by failure of payment of delay rental, the recording of a discharge or otherwise." Brown, *The Michigan dormant minerals act,* 10 Mich Real Prop R 116, 126 (1983).

We are conscious of the fact that the stricter interpretation offered by the Court of Appeals, which we reject, might have simplified the work of those seeking to determine ownership of severed interests ****504** by searching the records. However, as this Court recognized in *Van Slooten,* the dormant minerals act "was not designed to remove *all possible* impediments to development. Its purpose is to *limit* the difficulties presented by unknown or unlocatable owners." *Id.* 410 Mich. at 49, 299 N.W.2d 704 (emphasis added).

Moreover, we reject the contention that our construction of the act will significantly increase the burden of those seeking to determine ownership of severed interests. 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. We are not prepared to say that such an inquiry is significantly more burdensome than determining whether, within a preceding twenty-year period, the land to which the severed interest is tied has actually produced oil or gas, was used for underground storage, or was covered by a drilling permit.

Finally, in reaching our decision, we have not overlooked the fact that the dormant minerals act stands in contravention of the common law. That was acknowledged by this Court in *Van Slooten* ***51** when we said that "the act does convert a corporeal hereditament which at common law could not be abandoned into an interest which is subject to abandonment." [19] 410 Mich. p. 42, 299 N.W.2d 704. Where there is doubt regarding the meaning of such a statute, it is to be "given the effect which makes the least rather than the most change in the common law." 3 Singer, Sutherland Statutory Construction (5th ed), § 61.01, p 171. [20]

[6] **[7]** In light of the considerations discussed above, we hold that where a severed oil and gas interest in land is leased by recorded instrument for a primary term of less than twenty years, a new twenty-year dormancy period commences when the reversionary interest is transferred at the termination of the lease. Because the interests at issue in these appeals were transferred when the recorded leases expired in 1961, and were subsequently leased less than twenty years later, the trial court properly determined that they were not abandoned.

V

While their principal argument is based upon the absence of a recording during a twenty-year period, the Benchleys also challenge the Whitmill and NMHF claims on other grounds. [21] An understanding ***52** of these issues, one in each appeal, requires the recitation of additional facts.

A

The $^{40}/_{80}$ interest now claimed by the Whitmill heirs was leased in 1951 to Sun Oil. At that time, it was owned by Edwin Whitmill and his wife, Lola. Following the death of his wife in 1952, Edwin executed four deeds purporting to convey this interest to his children in equal shares. However, the trial court determined that, except for Edwin, who died in 1974, "[n]o one became aware of these deeds until they were discovered after his death." The deeds were placed on record in 1977 and 1978.

The Benchleys argue that recording the deeds gave rise to a presumption of delivery, and that the children of Edwin Whitmill became owners of the interest in 1952. Citing *Southwestern Oil Co. v. Wolverine Gas & Oil Co.,* 181 Mich.App. 589, 450 N.W.2d 1 (1989), and ****505** *Wagner v. Dooley,* 90 Mich.App. 759, 282 N.W.2d 469 (1979), [22] for

the proposition that a preserving action must be taken by the actual owner of the interest, they maintain that because the Whitmill heirs took no such action for more than twenty-five years, the interest was abandoned.

[8] [9] Since we agree with the trial court that title to the severed interest did not pass to his children until Edwin Whitmill died intestate in 1974, we need not consider here what the effect might have *53 been if they had acquired title in 1952. Although the Benchleys correctly argue that recording a deed gives rise to a presumption of delivery, this presumption merely shifts the burden of proof onto the party questioning the delivery. *Hooker v. Tucker,* 335 Mich. 429, 434, 56 N.W.2d 246 (1953); *Havens v. Schoen,* 108 Mich.App. 758, 761, 310 N.W.2d 870 (1981). The purpose of the delivery requirement is to show the grantor's intent to convey the property described in the deed. *Schmidt v. Jennings,* 359 Mich. 376, 383, 102 N.W.2d 589 (1960); *Weber v. Fitzpatrick,* 345 Mich. 313, 317, 76 N.W.2d 68 (1956).

[10] In this case, the circuit judge specifically found that the deeds in question were never delivered by Edwin Whitmill, that he had no intent to deliver them, and that title did not pass to his heirs until he died in 1974. Since we are not persuaded that these findings should be disturbed, it is unnecessary to give further consideration to this argument.

B

[11] When the $^{5}/_{80}$ interest now claimed by NMHF was leased in 1951 to Sun Oil, it was part of a $^{40}/_{80}$ share owned by Archie Cudney and his wife, Evelyn. In 1952, the Cudneys, by recorded deed, conveyed this $^{5}/_{80}$ share to T. Chalmers Curtis and his wife, Louise, predecessors of NMHF in its chain of title. The instrument recited that the conveyance was made subject to the 1951 Sun Oil lease and expressly provided that delay rental payments were to be made to the Cudneys. As already indicated, delay rental payments were made as required and the lease continued in effect until its expiration in 1961.

Again, relying on *Southwestern Oil* and *Wagner,* *54 *supra,* the Benchleys contend that because the Curtises failed to take any action on their own behalf during the period between 1952 and 1978 when this interest was again leased, their interest was abandoned. We disagree.

It is true, as the Benchleys argue, that a twenty-year dormancy period commenced in 1952 when the $^{5}/_{80}$ interest was conveyed to the Curtises. However, in accordance with our holding today, another transfer occurred in 1961 when the Sun Oil lease terminated and the leasehold interest reverted to the Curtises.

Although the severed interest conveyed in 1952 to the Curtises did not include the right to receive delay rental payments, we do not regard that as a basis for defeat of their claim. The purposes of the dormant minerals act are not frustrated by an assignment or reservation of the right to receive delay rental payments as long as the terms of such a provision, as in this case, are a matter of record. We find the Benchley argument to be without merit.

VI

[12] Summarizing the effect of our principal holding, we find that the reversion that occurs at the termination of a recorded lease constitutes a "transfer" by recorded instrument within the meaning of the dormant minerals act. In each of these appeals, such a transfer occurred in 1961, when the leases to Sun Oil expired by their own terms. Because the span between 1961 and 1977 in one appeal, and between 1961 and 1978 in the other, was less than **506 twenty years, we conclude that the Whitmill and NMHF interests were not abandoned by operation of the act.

For the reasons set forth, we reverse the decision *55 of the Court of Appeals and reinstate the judgment of the circuit court.

MICHAEL F. CAVANAGH, C.J., and MALLETT, LEVIN, BRICKLEY and BOYLE, JJ., concur.

RILEY, J., dissents.

LEVIN, Justice (separate opinion).
I have signed the opinion of the Court. I write separately to observe that, in the instant case, the lease was for a term of ten years. Accordingly, the question whether, where the term of the lease exceeds twenty years, payment of delayed rentals is an event that commences the running of a twenty-year period under the statute, is not presented and therefore cannot be decided.

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Parallel Citations

497 N.W.2d 497, 128 Oil & Gas Rep. 245

Footnotes

1 M.C.L. § 554.291 *et seq.;* M.S.A. § 26.1163(1) *et seq.* Although the act applies only to severed oil and gas interests in land, the statute is commonly referred to as the "dormant minerals act." See *Mask v. Shell Oil Co.,* 77 Mich.App. 25, 27, n 1, 257 N.W.2d 256 (1977). A mineral interest is "severed" from the surface estate when it is "owned by a person other than the surface owner." 8 Williams & Meyers, Oil and Gas Law, p 1141.

2 Section 1 of the dormant minerals act provides:

"Any interest in oil or gas in any land owned by any person other than the owner of the surface, which has not been sold, leased, mortgaged or transferred by instrument recorded in the register of deeds office for the county where such interest is located for a period of 20 years shall, in the absence of the issuance of a drilling permit as to such interest or the actual production or withdrawal of oil or gas from said lands, or from lands covered by a lease to which such interest is subject, or from lands pooled, unitized or included in unit operations therewith, or the use of such interest in underground gas storage operations, during such period of 20 years, be deemed abandoned, unless the owner thereof shall, within 3 years after the effective date of this act or within 20 years after the last sale, lease, mortgage or transfer of record of such interest or within 20 years after the last issuance of a drilling permit as to such interest or actual production or withdrawal of oil or gas, from said lands, or from lands covered by a lease to which such interest is subject or from lands pooled, unitized, or included in unit operations therewith, or the use of such interest in underground gas storage operations, whichever is later, record a claim of interest as hereinafter provided. Any interest in oil or gas deemed abandoned as herein provided shall vest as of the date of such abandonment in the owner or owners of the surface in keeping with the character of the surface ownership.

"The phrase 'drilling permit' shall mean a permit to drill an oil or gas well issued by the conservation department or its successor." M.C.L. § 554.291; M.S.A. § 26.1163(1).

3 Although there are two appeals before us that have been consolidated, they arise out of a single case that was presented for decision on stipulated facts in the Clare Circuit Court. For a more complete statement of the facts, see the Court of Appeals opinion, *Energetics, Ltd v. Benchley,* 189 Mich.App. 247, 471 N.W.2d 641 (1991).

4 This determination by the trial court was not challenged on appeal.

5 See MCR 3.603.

6 *Energetics, Ltd v. Benchley,* n. 3 *supra.*

7 439 Mich. 1022, 486 N.W.2d 671 (1992).

8 1963 P.A. 42.

9 For a discussion of problems resulting from the severance of mineral rights, see, generally, Street, *Need for legislation to eliminate dormant royalty interests,* 42 Mich St B J 49 (March, 1963). See also Smith, *Methods for facilitating the development of oil and gas lands burdened with outstanding mineral interests,* 43 Tex L R 129 (1964); Kuntz, *Old and new solutions to the problem of the outstanding undeveloped mineral interest,* 22 Oil & Gas Inst 81 (1971); Outerbridge, *Missing and unknown mineral owners,* 25 Rocky Mtn L Inst 20-1, 20-5 (1979); Hardy, *Ancient mineral claims-An obstacle to development,* 28 Oil & Gas Inst 137 (1977).

10 The constitutionality of the act was upheld by this Court in *Van Slooten* against claims that it impaired the obligation of contract and violated due process and equal protection guarantees. In *Texaco, Inc. v. Short,* 454 U.S. 516, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982), the United States Supreme Court upheld the constitutionality of an Indiana dormant minerals act. That Court later dismissed an appeal from this Court's decision in *Van Slooten.* 455 U.S. 901, 102 S.Ct. 1242, 71 L.Ed.2d 440 (1982).

11 This is also the primary purpose of an oil and gas lease. *Kinne v. Swanson Consolidated Oil Co.,* 293 Mich. 509, 513, 292 N.W. 472 (1940). As one commentator has explained, the various clauses of the typical oil and gas lease are "inherently component parts of a general scheme to secure the testing, development, and operation of the demised land for oil and gas through the creation of an aggregate of legal relations designed to be fair to both parties to the contract." 2 Summers, Oil and Gas, § 331, pp 351-352.

12 The Benchleys argue that under this interpretation, the permissible duration of an oil and gas lease would be limited only by the Uniform Statutory Rule Against Perpetuities, M.C.L. § 554.71; M.S.A. § 26.48. It has been suggested that the duration of such a lease would be limited by the marketable record title act, M.C.L. § 565.101 *et seq.;* M.S.A. § 26.1271 *et seq.;* however, that suggestion has been questioned. See Street, n 9 *supra* at 52; Outerbridge, n 9 *supra* at 20-21; Smith, n 9 *supra* at 153; Hardy, n 9 *supra* at 153.

13 See, e.g., N.D.Cent.Code 38-18.1-03(4).

14 See also 58 CJS, Mines and Minerals, § 164, p 354.

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15 Like the leases at issue in these appeals, the typical oil and gas lease provides a primary term, often five or ten years, for the duration of the lease, but requires the commencement of drilling within a shorter time, often one year. In lieu of drilling, the lessee may pay a delay rental to maintain the lease. Leases of this type are known as "unless" leases. Elkus, *Anatomy of an oil and gas lease,* 10 Mich Real Prop R 100, 105 (1983).

16 In the absence of production of oil or gas, the termination of such a lease occurs automatically upon the expiration of the primary term, without the necessity of any action by either party to the lease. *J.J. Fagan & Co. v. Burns,* 247 Mich. 674, 680, 226 N.W. 653 (1929); *McCullough Oil, Inc. v. Rezek,* 176 W.Va. 638, 644, 346 S.E.2d 788 (1986). The failure to timely pay delay rentals, where necessary, also "results in automatic termination of the lessee's interest." *Steffes v. Allen,* 295 Mich. 510, 513-514, 295 N.W. 245 (1940); *Guerra v. Chancellor,* 103 S.W.2d 775, 778 (Tex.Civ.App.1937).

17 Other states with statutes providing for the termination of severed mineral interests afford more protection to the interest owner than is available under our statute. For example, some states require a court action before a severed interest may be deemed abandoned. See, e.g., Conn.Gen.Stat.Ann. § 47-33q(a); Cal.Civ.Code Ann. §§ 883.210, 883.240; Neb.Rev.Stat. § 57-228; see also Uniform Dormant Mineral Interests Act, 7A ULA, § 4(a), 1992 Supp. 56. Other states provide that notice to the owner be served personally or by publication after the dormancy period expires, see, e.g., N.D.Cent.Code 38-18.1-06; Or.Rev.Stat. 517.180(1), and that abandonment cannot be effective unless the owner fails within a short time thereafter to claim the interest. See, e.g., Cal.Civ.Code Ann. § 883.230(c)(2); Kan.Stat.Ann. 55-1604(b); N.D.Cent.Code 38-18.1-05; Or.Rev.Stat. 517.180(8); S.D.Cod.Laws 43-30A-5; Wash.Rev.Code Ann. 78.22.050(2)(f); Wis.Stat.Ann. 706.057(5). As this background suggests, the statutes of sister jurisdictions reflect a deep-rooted concern about the process by which the state takes such a property interest from one person and gives it to another.

18 When the *Mask* lease expired in 1954, a release and surrender of the lease was recorded. However, the rationale of the panel did not rest solely on the fact of recording.

The *Mask* panel pointed also to a drilling permit that had been issued in 1953 for "a portion of the land subject to the 1944 lease, although not on the exact description involved in this appeal." 77 Mich.App. p. 29, 257 N.W.2d 256. It has been suggested that this permit was not sufficient to interrupt the dormancy period, because it did not cover the exact interest subject to the lease. See Brown, *The Michigan dormant minerals act,* 10 Mich Real Prop R 116, 121 (1983).

19 In his dissent, Justice Levin was more succinct: "The act does not merely modify the owner's interest, it adds a term providing for its extinguishment." *Van Slooten* at 60-61, 299 N.W.2d 704.

20 See also *Rusinek v. Schultz Snyder & Steele Lumber Co.,* 411 Mich. 502, 508, 309 N.W.2d 163 (1981): "[S]tatutes in derogation of the common law must be strictly construed, and will not be extended by implication to abrogate established rules of common law. The statute, however, must be construed sensibly and in harmony with the legislative purpose." (Citations omitted.)

21 Because the Court of Appeals came to a different conclusion with respect to the principal issue, the panel did not reach these issues. However, the issues were briefed and argued in this Court, and we elect to address them.

22 We find these cases inapposite. In *Southwestern,* the plaintiffs argued that their interest was preserved by natural gas storage operations conducted by a different owner with respect to a separate severed interest. 181 Mich.App. p. 591, 450 N.W.2d 1. In *Wagner,* the plaintiff relied on the defendant's rerecordation in 1970 of a 1941 deed; however, none of the preserving actions specified by the dormant minerals act were performed during that twenty-nine-year period. 90 Mich.App. p. 766, 282 N.W.2d 469.

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EXHIBIT

SS

280 Neb. 130
Supreme Court of Nebraska.

Barbara A. RICKS, appellee,
v.
Daniel VAP, also known as Daniel S. Vap, and Joe L. Vap, appellees,
and
Blanche Vap et al., appellants.

No. S–09–991. June 25, 2010.

Synopsis

Background: Owner of surface estate sued to terminate mineral interests more than 25 years after record owners of mineral interests executed and recorded leases of the mineral interests, but just over 21 years after the 5-year leases expired. The District Court, Hitchcock County, David Urbom, J., granted surface estate owner's motion for summary judgment. Heirs of record owners of mineral interests appealed.

[Holding:] The Supreme Court, Gerrard, J., held that record owners of disputed mineral interests last leased the interests, within meaning of dormant mineral statute, at the time the leases were executed and properly recorded, and thus owner of surface estate was entitled to relief.

Affirmed.

West Headnotes (5)

[1] **Appeal and Error**
Review Dependent on Whether Questions Are of Law or of Fact

The meaning of a statute is a question of law, which an appellate court resolves independently of the trial court.

2 Cases that cite this headnote

[2] **Mines and Minerals**
Conveyance, abandonment, or other termination of rights granted or reserved

Record owners of disputed mineral interests last "leased" the interests, within the meaning of dormant mineral statute providing that a severed mineral interest shall be considered abandoned if, for a period of 23 years, its right of ownership is not publicly exercised by its record owner, at the time the leases were executed and properly recorded, which was more than 23 years before owner of surface estate sued to terminate mineral interests, rather than when the 5-year leases expired, and thus owner of surface estate was entitled to relief. West's Neb.Rev.St. §§ 57–228, 57–229(1), 57–230.

2 Cases that cite this headnote

[3] **Mines and Minerals**
Conveyance, abandonment, or other termination of rights granted or reserved

To avoid abandonment, dormant mineral statutes expressly require the record owner of a severed mineral interest to publicly exercise the right of ownership by performing one of the statutorily specified actions during the statutory dormancy period. West's Neb.Rev.St. § 57–229.

2 Cases that cite this headnote

[4] **Statutes**
Plain Language; Plain, Ordinary, or Common Meaning

Statutory language is to be given its plain and ordinary meaning.

3 Cases that cite this headnote

[5] **Statutes**
Plain Language; Plain, Ordinary, or Common Meaning

Statutes
Statute as a Whole; Relation of Parts to Whole and to One Another

A court's duty in discerning the meaning of a statute is to determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.

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2 Cases that cite this headnote

****432 *Syllabus by the Court***

***130** 1. **Statutes: Judgments: Appeal and Error.** The meaning of a statute is a question of law, which an appellate court resolves independently of the trial court.

2. **Mines and Minerals.** Nebraska's dormant mineral statutes, Neb.Rev.Stat. §§ 57–228 to 57–231 (Reissue 2004), expressly require the record owner of a severed mineral interest to publicly exercise the right of ownership by performing one of the actions specified in § 57–229 during the statutory dormancy period.

****433** 3. **Statutes: Legislature: Intent.** Statutory language is to be given its plain and ordinary meaning, and an appellate court's duty in discerning the meaning of a statute is to determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.

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HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER–LERMAN, JJ.

Opinion

GERRARD, J.

Nebraska's dormant mineral statutes [1] provide that a severed mineral interest shall be considered abandoned if, for a period of 23 years, its "right of ownership" is not publicly exercised by its record owner. Among the ways in which the record owner can exercise the right of ownership are "leasing" or "transferring" the mineral interest with a recorded instrument. [2] But if a severed mineral interest is abandoned, the owner of the surface estate can sue to terminate the mineral interest. [3]

***131** In this case, the record owners of severed mineral interests executed leases which were allowed to expire at the end of their 5–year terms. The owner of the surface estate sued to terminate the mineral interests more than 25 years after the leases were executed and recorded, but just over 21 years after the leases expired. The question presented in this appeal is whether the 23–year period prescribed by the dormant mineral statutes began to run when the leases were executed and recorded or when they expired. Because we conclude that the 23–year dormancy period began to run when the leases were executed and recorded, we affirm the judgment of the district court which had properly granted relief to the owner of the surface estate.

BACKGROUND

There are two parcels of land at issue in this appeal: the northwest and southwest quarters of a section of land in Hitchcock County, Nebraska. The record owner of the surface estate is Barbara A. Ricks, the plaintiff in this case. Ricks is also the record owner of a one-half interest in the mineral estate for both parcels. The record owner of the remaining mineral interest in the northwest quarter was Daniel Vap, and the record owner of the remaining mineral interest in the south-west quarter was Joe Vap, Daniel's father. Daniel and Joe are deceased, and this action is being defended by their various heirs, who we refer to collectively as the "Vap heirs."

The last activity regarding the mineral estate recorded in Hitchcock County are two leases of the mineral interests now claimed by the Vap heirs. The mineral estate for the northwest quarter was leased to the Gemini Corporation (Gemini) for a 5–year term by Daniel and his wife in a lease dated November 22, 1983, and recorded on January 19, 1984. The mineral estate for the southwest quarter was the subject of two 5–year leases to Gemini, both dated December 7, 1983: one executed ****434** by Joe's widow and the other by Joe's children and their spouses. One of the southwest quarter leases was recorded on January 19, 1984, and the other was recorded on March 6. Although the record does not seem to conclusively establish it, we assume for purposes of this appeal that Gemini made the ***132** payments necessary under the leases to extend them for their full 5–year terms.

Ricks filed her complaint to terminate the allegedly abandoned mineral interests on January 22, 2009. The Vap heirs answered, alleging that the right of ownership in the disputed mineral interests had been publicly exercised at

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the termination of the leases, in 1988—less than 23 years before Ricks' complaint was filed. Ricks moved for summary judgment, which the district court granted, reasoning that the statutory period had only been extended from the dates the leases were executed, more than 23 years earlier. The Vap heirs appeal.

ASSIGNMENT OF ERROR

The Vap heirs assign, consolidated and restated, that the district court erred in determining that the leases did not constitute a public exercise of the right of ownership of the severed mineral interests within 23 years before the filing of the action, so that the mineral interests could not be considered abandoned under the dormant mineral statutes.

STANDARD OF REVIEW

[1] The meaning of a statute is a question of law, which an appellate court resolves independently of the trial court. [4]

ANALYSIS

[2] This case turns on the meaning of Nebraska's dormant mineral statutes. Generally, dormant mineral statutes were enacted to address title problems that developed after mineral estates were fractured. [5] At common law, mineral interests could not be abandoned. [6] But permanent or long-term mineral interests could be created during a period of activity in a particular industry, and those interests did not terminate when the activity ***133** ceased. [7] So, the mineral estate could be held by owners who had long disappeared from the area, leaving no trace. [8] When the record owner of severed mineral interests could not be contacted, the dormant interests could cloud the titles of surface owners, and further development of the mineral estates became nearly impossible. [9] Legislatures sought to remedy some of those problems by enacting statutes to reunite dormant mineral estates with surface estates. [10]

Nebraska's dormant mineral statutes are representative of those concerns. [11] Section 57–228 provides:

> ****435** Any owner or owners of the surface of real estate from which a mineral interest has been severed, on behalf of himself and any other owners of such interest in the surface, may sue in equity in the county where such real estate, or some part thereof, is located, praying for the termination and extinguishment of such severed mineral interest and cancellation of the same of record....
> The court shall enter judgment terminating the severed mineral interest and vesting title in the surface owner if the court "shall find that the severed mineral interest has been abandoned." [12] And § 57–229 explains in part:
>
> A severed mineral interest shall be abandoned unless the record owner of such mineral interest has within the twenty-three years immediately prior to the filing of the action provided for in sections 57–228 to 57–231, exercised publicly the right of ownership by (1) acquiring, selling, leasing, pooling, utilizing, mortgaging, encumbering, or transferring such interest or any part thereof by an instrument which is properly recorded in the county ***134** where the land from which such interest was severed is located; or (2) drilling or mining for, removing, producing, or withdrawing minerals from under the lands or using the geological formations, or spaces or cavities below the surface of the lands for any purpose consistent with the rights conveyed or reserved in the deed or other instrument which creates the severed mineral interest; or (3) recording a verified claim of interest in the county where the lands from which such interest is severed are located.
> There is no evidence in this case of any drilling or mining activity or of a recorded claim of interest. Instead, the question is whether the right of ownership claimed by the Vap heirs was publicly exercised pursuant to § 57–229(1). Specifically, the Vap heirs argue that they or their predecessors in interest exercised the right of ownership by "leasing" or "transferring" the mineral interests.

The Vap heirs rely on a Michigan case, *Energetics v. Whitmill*, [13] that arose under similar circumstances, and in which the Michigan Supreme Court held that the interests at issue were not abandoned. But we find *Whitmill* to be distinguishable, because of an important difference between the Nebraska and Michigan dormant mineral statutes.

In *Whitmill*, severed oil and gas interests had been leased for a 10–year period, but the lease expired, and several years later, the surface owners claimed title pursuant to the Michigan dormant mineral statute. Whether the 20–year dormancy

period had run depended on whether the period began to run at the beginning or end of the lease term. The Michigan statute provided, in relevant part, that an oil or gas interest " 'in any land owned by any person other than the owner of the surface, which has not been sold, leased, mortgaged or transferred ... for a period of 20 years shall, in the absence of the issuance of a drilling permit ... be deemed abandoned.' "[14]

*135 The Michigan Supreme Court rejected the argument that the mineral interests had been "leased" during the lease term, explaining that if such a construction of the statute were adopted, "there would be nothing to prevent the owner of a severed **436 interest from executing a lease with a primary term much longer than twenty years. Thus, a severed interest might be sheltered from the operation of the act for an indefinite period."[15] And had the Michigan Legislature intended that result, it could have explicitly provided that the dormancy period would not run while the severed interest was *subject* to a lease.[16]

The court found, however, that when the lease expired, the oil and gas interest had been " 'transferred' " within the meaning of the Michigan statute.[17] The court explained that the lease itself was a transfer of the oil and gas interest, so when the rights conferred by the lease reverted back to the lessor, the interest was " 'transferred' " back.[18]

[3] But the Michigan court's reasoning 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.[19] 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 during the statutory period.[20] In other words, the *Whitmill* court's reasoning regarding whether the mineral interest had been "transferred" is inapplicable under Nebraska's statute, and the court's reasoning regarding when the interest had been "leased" supports the district court's conclusion, in *136 this case, that it had been leased *by the record owner* only when the lease was executed and properly recorded.

The record in this case is clear that the record owners of the disputed mineral interests last "leased" the interests within the meaning of the statute at the time the leases were executed and properly recorded, because that was when *they* publicly exercised their right of ownership. And even assuming, without deciding, that the expiration of the leases in this case resulted in a "transferring" of the disputed mineral interests, such a transfer was initiated either by the lessee or simply by operation of law—not by the record owners.

[4] [5] To conclude otherwise would be contrary to both the language and purpose of the dormant mineral statutes. Statutory language is to be given its plain and ordinary meaning,[21] and our duty in discerning the meaning of a statute is to determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.[22] It is consistent with the statutory purpose of preventing abandonment of mineral estates to require an absent owner of dormant mineral interests to actively exercise those interests. And the plain language of § 57–229 provides that a severed mineral interest is abandoned unless the record owner of the interest is the one who publicly exercises it.

In this case, that did not happen during the 23 years preceding Ricks' complaint. Had the Vap heirs wanted to preserve **437 their interests during that time, they could have recorded a verified claim of interest in Hitchcock County. Instead, they permitted the interests to remain dormant, which is precisely what the dormant mineral statutes are intended to address. Therefore, we find no merit to their assignment of error.

CONCLUSION

The last time Daniel, Joe, or the Vap heirs publicly exercised their right of ownership to the severed mineral interests disputed *137 in this case was when they leased and properly recorded the interests to Gemini, more than 25 years before Ricks filed her complaint to terminate and extinguish those interests. The district court did not err in granting Ricks the relief she requested. The district court's judgment is affirmed.

AFFIRMED.

Parallel Citations

784 N.W.2d 432, 176 Oil & Gas Rep. 93

Footnotes

1 Neb.Rev.Stat. §§ 57–228 to 57–231 (Reissue 2004).

2 § 57–229(1).

3 § 57–228.

4 See *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010).

5 See, generally, Timothy C. Dowd, *Clearing Title of Long–Lost Mineral Owners,* 54 Rocky Mtn. Min. L. Inst. 30–1 (2008); Ronald W. Polston, *Mineral Ownership Theory: Doctrine in Disarray,* 70 N.D. L.Rev. 541 (1994).

6 See Dowd, *supra* note 5.

7 See Ronald W. Polston, *Legislation, Existing and Proposed, Concerning Marketability of Mineral Titles,* 7 Land & Water L.Rev. 73 (1972).

8 See *id.*

9 See, Dowd, *supra* note 5; Polston, *supra* note 5; Polston, *supra* note 7.

10 See Dowd, *supra* note 5.

11 See, generally, Committee on Public Works Hearing, L.B. 158, 77th Leg., 1st Sess. 14 (Feb. 10, 1967); Floor Debate, 77th Leg., 1st Sess. 477–78 (Feb. 17, 1967).

12 § 57–230.

13 *Energetics, Ltd. v. Whitmill,* 442 Mich. 38, 497 N.W.2d 497 (1993).

14 See, *id.* at 40 n. 2, 497 N.W.2d at 499 n. 2; Mich. Comp. Laws Ann. § 554.291 (West 2005).

15 *Whitmill, supra* note 13, 442 Mich. at 46, 497 N.W.2d at 501.

16 See *id.*

17 *Id.* at 46, 497 N.W.2d at 502.

18 *Id.*

19 See Mich. Comp. Laws Ann. § 554.291.

20 See § 57–229.

21 *Carter v. Carter,* 276 Neb. 840, 758 N.W.2d 1 (2008).

22 *See Concrete Indus. v. Nebraska Dept. of Rev.*, 277 Neb. 897, 766 N.W.2d 103 (2009).

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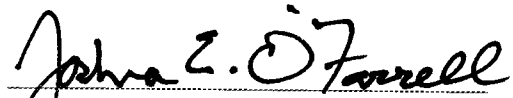

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