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In The Supreme Court of Ohio

HANS MICHAEL CORBAN, Petitioners, vs. CHESAPEAKE EXPLORATION, L.L.C., et al., Respondents.	))))))))))	Case No. 2014-0804 On Certified Questions of State Law from the United States District Court for the Southern District of Ohio Eastern Division S.D. Ohio Court Case No. 2:13-cv-00246

PRELIMINARY MEMORANDUM OF RESPONDENT NORTH AMERICAN COAL ROYALTY COMPANY ADDRESSING CERTIFIED QUESTIONS OF STATE LAW

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I. INTRODUCTION

The United States District Court for the Southern District of Ohio has asked this Court to answer two of the questions presented by the parties' pending motions for summary judgment:

> 1. Does the 2006 version or the 1989 version of the [Ohio Dormant Mineral Act ("DMA")] apply to claims asserted after 2006 alleging that the rights to oil, gas, and other minerals automatically vested in the surface land holder prior to the 2006 amendments as a result of abandonment?
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> and
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> 2. Is the payment of a delay rental during the primary term of an oil and gas lease a title transaction and "savings event" under the [DMA]?

(S.D. Ohio Case No. 2:13-CV-0246, Opinion and Order ("Dist. Ct. Op.") filed May 14, 2014, p. 20) (attached as Exhibit A). This Court has not addressed either of these issues, the second of which is directly related to certified state law questions in another case pending before this Court, *Chesapeake Exploration, L.L.C. v. Buell*, No. 2014-0067.[1] Like *Buell*, this case presents important questions about the ownership of severed oil and gas interests in Ohio on which lower courts have sharply divided, and which will continue to arise unless and until this Court provides definitive guidance. Respondents respectfully request that, pursuant to Supreme Court Practice Rule 9.07, the Court accept the certified questions and order full briefing and argument on the merits.

Under Supreme Court Practice Rule 9.01(A), this Court may answer certified questions of law from federal courts when those questions "may be determinative of the proceeding" and "there is no controlling precedent in the decisions of this Supreme Court." That test is met here. If this

[1] In *Buell*, this Court agreed to answer the following two questions: "Is the recorded lease of a severed subsurface mineral estate a title transaction under the [DMA], Ohio Revised Code 5301.56(B)(3)(a)?" and "Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the [DMA] at the time of the reversion?" (Dist Ct. Op. at 19-20.)

Court determines that the 2006 version of the DMA applies, then respondents – defendants below – will be entitled to summary judgment. And if the Court answers the second question in the affirmative, respondents will again be entitled to summary judgment. This Court's answer to both questions would thus be "determinative of the proceeding."

There is no "controlling precedent" from this Court. Lower courts have divided on the first question (*see* Dist. Ct. Op. at 10-11), and it appears that no Ohio court has yet addressed the second question (*see id.* at 17-18). This Court's guidance would be helpful to the District Court, the parties, and other parties facing the same issues in cases that are pending under the DMA, and will help conserve public and private resources in pending and future cases by settling Ohio law.

II. THE CASE IN THE DISTRICT COURT

Defendants in the District Court – respondents here – are North American Coal Royalty Company ("North American"), the record owner of the oil and gas rights beneath approximately 164 acres in Archer Township, Harrison County (the "Property"); and Chesapeake Exploration, L.L.C., CHK Utica, L.L.C., Larchmont Resources, L.L.C., Dale Pennsylvania Royalty, LP, and TOTAL E&P USA, INC., the lessees of the oil and gas rights beneath the Property by virtue of an oil and gas lease from North American to Mountaineer Natural Gas Company and subsequent assignments.

Since 1999, petitioner Hans Michael Corban has been the surface owner of four tracts comprising the Property. The deed to petitioner conveyed only the surface rights of the Property, expressly excluding the oil and gas as a result of an express mineral reservation in a 1959 deed by North American's predecessor. Petitioner nonetheless argued in the District Court that he owns the oil and gas rights because they automatically vested in him under the superseded 1989 version of the DMA. That original version of the Act provided that a severed mineral interest "shall be deemed abandoned and vested in the owner of the surface" if the interest was not the subject of a

title transaction and was not used in any one or more of specified ways – in other words, if a so-called "savings event" did not occur – for 20 years. R.C. 5301.56(B) (1989). (Savings events include title transactions, actual production, the issuance of a drilling permit, or the filing of a claim to preserve the interest. *Id.*) Petitioner claims that no savings event occurred in the 20 years before the original DMA went into effect.

In 2006, the legislature amended the Act to provide that a severed mineral interest cannot be "deemed vested" in a surface owner unless he serves a notice on the holder of record of that interest and files an affidavit with the county recorder declaring that the interest has been abandoned. Because petitioner never claimed that the oil and gas were abandoned before filing this lawsuit in 2013 – seven years after the Act was amended – and did not follow the procedures in the amended Act, respondents assert that their oil and gas rights cannot be "deemed abandoned." Respondents also contend that the oil and gas cannot be deemed abandoned under either version of the Act because there were multiple savings events, including oil and gas leases executed in 1974 and 1984, a recorded assignment of the 1984 lease in 1985, delay rental payments each year during the five-year term of the 1984 lease,[2] and the termination of the 1984 lease and reversion of the mineral interest in 1989.

It is undisputed that petitioner did not follow the requirements of the 2006 DMA. Petitioner has argued instead that the 2006 DMA cannot be applied "retroactively" to require him to follow the procedures established by the legislature. He has also argued that leases, assignments, and terminations of an oil and gas lease are not savings events, but has not addressed whether annual

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[2] 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. *See, e.g., Energetics, Ltd. v. Whitmill*, 497 N.W.2d 497, 502 fn. 15 (Mich.1993). In lieu of drilling, the lessee may be able to pay an annual "delay rental" to maintain the lease. *Id.*

delay rental payments under an oil and gas lease are savings events. The parties filed cross-motions for summary judgment.

North American remains the sole record holder of the oil and gas interests. North American's principal lessee, Chesapeake Exploration, has been actively developing oil and gas wells in Harrison County. Under its current Harrison County lease with North American, Chesapeake completed the drilling of a well in March 2011 and commenced production in June 2011.

III. THE DORMANT MINERAL ACT

A. The Purpose of the DMA

The DMA (the "Act") was enacted in 1989 as part of the Marketable Title Act. It was modeled partly on the Uniform Dormant Mineral Interests Act ("UDMIA"), which was recommended for enactment by the National Conference of Commissioners on Uniform State Laws in 1986. *See, e.g.,* S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA, p. 3 (attached as Exhibit B); *Dahlgren v. Brown Farm Properties, L.L.C.*, Carroll C.P. No. 13CVH 27445, at 8-10 (Nov. 13, 2013) (attached as Exhibit C) (quoting from and discussing the UDMIA). The basic purpose of dormant mineral legislation is "to remedy uncertainties in titles and to facilitate the exploitation of energy sources and other valuable mineral resources." *Texaco, Inc. v. Short*, 454 U.S. 516, 524 n.15 (1982).[3]

One of the main aims of the Ohio legislature in enacting and amending the DMA was thus to "encourage the development of minerals in Ohio which have been previously ignored due to defects

[3] The goal of such legislation is not simply to eliminate severed mineral interests, but to identify truly dormant mineral interests and bring them back into use. The committee drafting the UDMIA thus explained that the clearing of title "should not be an end in itself and should not be achieved at the expense of a mineral owner who wishes to retain the mineral interests." UDMIA, Prefatory Note, at 5. Rather, the "objective is to clear title of worthless mineral interests and mineral interests about which no one cares." *Id.; see also Van Slooten v. Larsen*, 299 N.W.2d 704, 710 (Mich.1980) (purpose is "not to vest title to the severed interests in the surface owner but rather is to facilitate the development of those subsurface properties by reducing the problems presented by fragmented and unknown ownership").

in title," S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA, at 3, and to promote "new production sites." H.B. 288, Sponsor Testimony, 2006 DMA, p. 1 (testimony of Representative Mark Wagoner) (attached as Exhibit D). That is consistent with the general public policy of Ohio that "it is an essential government function and public purpose of the state to . . . encourage the increased utilization of the state's indigenous energy resources . . . ." R.C. 1551.18; *see Newbury Twp. Bd. of Trustees v. Lomak Petroleum*, 62 Ohio St.3d 387, 389 (1992).

The overall purpose of the Marketable Title Act, of which the DMA is a part, is expressly set forth in the statute:

> Sections 5301.47 to 5301.56 , inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions *by allowing persons to rely on a record chain of title* . . . .

(Emphasis added.) R.C. 5301.55.

B. The Purpose of The 2006 Amendments to the DMA

The legislature amended the DMA in 2006 to correct perceived deficiencies in the 1989 version of the statute, which "did not clearly define when a mineral interest became abandoned, and exactly how the process to reunite the mineral ownership with the surface ownership was to be accomplished." H.B. 288, Sponsor Testimony, 2006 DMA at 1. The amendments specified that "for any allowable vesting to occur, the landowner must notify the holder of the mineral interest and file an affidavit of abandonment as specified in the act." Ohio Legislative Service Comm'n, Bill Analysis, Sub. H.B. 288 at 1 (attached as Exhibit E). They also clarified that the relevant twenty-year period "is the 20 years immediately preceding the date" of the notice to the mineral interest holder. *Id.* at 3. The amendments thus "remove[d] the ambiguity of the [1989] statute with a clear definition of when a mineral right is deemed abandoned" and of how several minerals can become vested in the surface owner. H.B. 288, Sponsor Testimony, 2006 DMA at 1.

IV. ANALYSIS

A. Question One

1. The Lower Courts Are Divided On the First Certified Question.

Lower courts have divided with respect to whether the 2006 or the 1989 version of the Act applies to claims brought after the Act was amended. Several courts have held that the 2006 version of the Act controls a claim of abandonment that is first made after 2006. In *Dahlgren, supra*, the Carroll County Court of Common Pleas rejected a claim by surface owners that mineral rights automatically vested in them under the 1989 DMA because no savings events occurred within the 20 years preceding the Act's effective date (plus a three year grace period), even though, like petitioner, they did not make a claim until long after the 2006 amendments were enacted. *Dahlgren* Carroll C.P. No. 13CVH 27445, at 13. The court found that the 1989 version of the DMA "impliedly required implementation before it finally settled the parties' rights, at least by a recorded abandonment claim that permitted the adverse party to challenge its validity, if not by an appropriate court proceeding to confirm that abandonment." *Id.* at 14. Thus, "[a]bsent an implementation or enforcement of claimed abandonment rights before the 2006 amendment, the [surface owner] must comply with the procedures which the 2006 amendment requires." *Id.*

The *Dahlgren* court reasoned that the surface owner's "automatic" vesting theory (petitioner's theory here) "conflicts with 'the legislative purpose of simplifying and facilitating land transactions by allowing persons to rely on a record chain of title. . . .' The county recorder's records would not reveal some disqualifying conditions that prevent statutory abandonment. . . . A title examiner might well find the recorded Dahlgren deed with its reservation of mineral rights, without any record that shows whether the Dahlgrens or their descendents preserved or abandoned those rights." (Citation omitted.) *Id.* at 14-15. The court also noted that the DMA uses not just the word "abandoned" but the phrase "*deemed* abandoned," (emphasis added) *id.* at 15; that this phrase

is "less conclusive" than the terms "null and void" or "extinguished" used elsewhere in the Marketable Title Act; and that use of this phrase "strongly suggests" that the Act "provides standards but does not resolve the issue" and does not contemplate "automatic" vesting. *Id.*[4]

The Harrison County Court of Common Pleas likewise ruled, in *M & H Partnership v. Hines*, No. CVH-2012-0059 (Jan. 14, 2014) (attached as Exhibit F), that "the application of an 'automatic' vesting clause of the 1989 [DMA] is contrary to simplifying and facilitating land title transactions by allowing persons to [rely] on a record chain of title," *id.* at 8, and that the 2006 Act applies to all claims made after 2006. The court further reasoned that "[t]he terms automatic vesting, terminated, null and void, or extinguished were not used in the [DMA]," but the terms "null and void and extinguished are used in other parts of the marketable title act," indicating a purposeful legislative choice to require that a DMA plaintiff "at the minimum must have filed a quiet title action prior to 2006 to have the 1989 law apply." *Id.*

Finally, the Seventh District Court of Appeals, in *Dodd v. Croskey*, applied the 2006 DMA to mineral rights ownership claims filed in 2011. 7th Dist. No. 12HA6, 2013-Ohio-4257, 2013 Ohio App. LEXIS 4475 (Sept. 23, 2013). The court held that a mineral interest severed in 1947 was preserved by the filing of an affidavit in 2010, under the current version of the Act.[5] *Id.* at ¶ 27.

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[4] The 1989 version did not provide that mineral interests "vest" as petitioner has contended, but that they "shall be *deemed* abandoned and vested" in the surface owner. (Emphasis added.) R.C. 5301.56(B) (emphasis added). "Deem" is a term of art. It means "[t]o treat (something) as if (1) it were really something else, or (2) it has qualities that it doesn't have." *Black's Law Dictionary* 425 (7th ed. 1999); *accord* G.C. Thornton, *Legislative Drafting* 83-84 (2d ed. 1979) ("'Deem' is a useful word when it is necessary to establish a legal fiction either positively by 'deeming' something to be something it is not or negatively by 'deeming' something not to be something which it is.").

[5] This Court has accepted a discretionary appeal in *Dodd v. Croskey*, No. 2013-1730, but the appeal does not address which version of the Act applies.

These cases follow the sound reasoning that the statute is meant to allow persons to rely on a clear chain of title. The "automatic vesting" that petitioner seeks under the 1989 version of the Act would be a transfer of ownership outside the chain of title, leaving an unclear record that could not be relied upon. That conflicts with the purposes of the statute.

Other cases have nevertheless applied the original DMA to post-2006 claims. *Walker v. Shondrick-Nau*, 7th Dist. Harrison No. 13 NO 402, 2014-Ohio-1499, 2014 Ohio App. LEXIS 1443 (Apr. 3, 2014), did so without any analysis of the legislative purpose of the DMA; the court applied the 1989 DMA on the grounds that the 2006 amendments do not specifically include instructions for "retroactive" application. *Id.* at ¶ 36-37.[6]

The Monroe County Court of Common Pleas held in *Gentile v. Ackerman*, Case No. 2012-110, that the 2006 DMA applied to a 2012 claim, but in an about-face a month later, vacated its opinion and held that the 1989 version of the Act applied. The only reasons the court provided for reversing itself were that the "Current DMA does not expressly state that property rights, vested under the Former DMA, are affected by the Current DMA," and that "[m]any courts across the State of Ohio have recognized that title to a mineral interest can be quieted in favor of the surface owner of property under the Former DMA . . . ." *Gentile v. Ackerman*, Monroe C.P. No. 2012-110, p. 9. (Feb. 27, 2014) (attached as Exhibit G).[7] The court cited *Dahlgren*, but noted that it was not bound to follow it. *Id.* at 11. The *Gentile* court did not undertake any analysis of the history or purpose of the Marketable Title Act or the DMA.

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[6] The defendant filed a notice of appeal and will ask this Court to accept her discretionary appeal in *Walker v. Shondrick-Nau*, No. 2014-0803.

[7] The court cited other common pleas court cases that have applied the 1989 version of the Act with little or no analysis. *Marty v. Dennis*, Monroe C.P. No. 2012-203 (Apr. 11, 2013); *Wendt v. Dickerson*, Tuscarawas C.P. No. 2012CV0135 (Feb. 21, 2013); *Wiseman v. Potts*, Morgan C.P., No. 08-CV-0145 (June 29, 2010); *see also Shannon v. Householder*, Jefferson C.P. No. 12CV226 (July 17, 2013).

Under petitioner's "automatic vesting" theory, mineral rights can be forfeited without any process or record whatsoever, and in direct contravention of the chain of title. Though Ohio law expressly disfavors forfeitures, *see Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St.3d 532, 534 (1992); *Dahlgren*, at 15, some courts are interpreting the DMA to mandate them, making the Court's answer to this question important not only to determining the outcome of this case, but to resolving uncertainty and confusion that will continue to affect mineral owners in Ohio.

2. The 2006 DMA Applies to DMA Claims Brought After 2006 And Is Not Impermissibly Retroactive.

It is a well-settled canon of law that "a court should 'apply the law in effect at the time it renders its decision' . . . even though that law was enacted after the events that gave rise to the suit." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 273 (1994) (quoting *Bradley v. School Bd. of Richmond*, 416 U.S. 696, 711 (1974)). Respondents asked the District Court to apply the 2006 DMA to 2013 claims. Contrary to petitioner's arguments in the District Court, "[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment . . . ." (Citations omitted.) *Id.* at 269. Rather:

> The conclusion that a particular rule operates "retroactively" comes at the end of a process of judgment concerning the nature and extent of the change in law and the degree of connection between the operation of the new rule and a relevant past event . . . . Retroactivity is a matter on which judges tend to have "sound . . . instinct[s]," and familiar considerations of fair notice, reasonable reliance, and settled expectations offer sound guidance.

(Citations omitted.) *M&F Supermarket, Inc. v. Owens*, 997 F.Supp. 908, 912-13 (S.D.Ohio 1997) (quoting *Landgraf*, 511 U.S. at 269-70). These "familiar considerations" show that there is nothing that precludes this Court from finding that the 2006 procedural amendments apply to petitioner's claims.

A legislature can condition the retention of even "vested" property rights on the performance of certain obligations, and such rights can accordingly be forfeited or extinguished:

> *Even with respect to vested property rights*, a legislature generally has the power to impose new regulatory constraints on the way in which those rights are used, or to *condition their continued retention on performance of certain affirmative duties*. As long as the constraint or duty imposed is a reasonable restriction designed to further legitimate legislative objectives, the legislature acts within its powers in imposing such new constraints or duties.

(Emphasis added.) *United States v. Locke*, 471 U.S. 84, 104 (1985).[8]

Here, the legislature amended the DMA in 2006 to include "procedural provisions" necessary for abandonment and vesting to occur. *Dahlgren* at 1. The 1989 version of the statute did not include "any express provision for its implementation." *Id.* at 11-12. The amendments clarified exactly when and how a mineral right is deemed abandoned. In short, the legislature changed the process for adjudicating a claim of abandonment, but not the substantive elements of such a claim.

"Changes in procedural rules may often be applied [even] in suits arising before their enactment without raising concerns about retroactivity." *State v. Ayala*, 10th Dist. Nos. 98AP-349 and 350, 1998 Ohio App. LEXIS 5416, at *6 (Nov. 10, 1998) (quoting *Landgraf*, 511 U.S. at 275). The question is "whether there is a change in substantive obligation as opposed to a change in the way in which the same obligation is adjudicated." *Combs v. Commr. of Social Sec.*, 459 F.3d 640, 647 (6th Cir. 2006). A change in the way rights are adjudicated is not considered a "retroactive" change, even if it "may be outcome-determinative for some claimants." *Id.*

The amended DMA sets forth a "*vesting process*" – a change in the way alleged abandonment of minerals is adjudicated. (Emphasis sic.) *See* Legislative History at 2, 3. In other words, the amendments to the DMA were procedural or remedial; they set forth the DMA's "process to reunite the mineral ownership with the surface ownership" H.B. 288, Sponsor

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[8] In *Locke*, the United States Supreme Court held that vested mining claims were forfeited because the owners failed to properly file certain forms with the Bureau of Land Management.

Testimony, 2006 DMA at 1. As officially reported by the Ohio Bar Association's Natural Resources Committee, the 2006 DMA procedures were meant as a "clarification of the existing statute":

> 1) the original statute provided for the lapse to occur if no specified activities took place within "the preceding twenty years." Questions arose as to whether that language meant 20 years preceding enactment of the statute, 20 years preceding commencement on an action to obtain the minerals or any 20-year period in the chain of title. To clarify this, the amendment provides that the effective period is the 20 years immediately preceding the filing of a notice;
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> 2) a definition of "minerals" and "mineral interest" are included in the amendment; and
>
> 3) a specific procedure for a landowner to follow to obtain the mineral interest is included in the amendment.
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> The Natural Resources Committee supports this amendment as a necessary clarification of the existing statute.

Report of the Natural Resources Committee to Council of Delegates, at https://www.ohiobar.org/NewsAndPublications/SpecialReports/Pages/StaticPage-313.aspx (accessed June 5, 2014). Such changes do not raise concerns about impermissible "retroactivity."

Moreover, there is no evidence that petitioner relied on any "automatic vesting" under the unclear provisions of the original DMA, or had any "settled expectation" of ownership before the 2006 DMA was passed. *See Landgraf*, 511 U.S. at 270. To the contrary, petitioner took no action at all with regard to the mineral rights until 2013 – seven years after the DMA was amended, 21 years after petitioner claims the mineral rights vested in 1992 under the 1989 DMA,[9] 14 years after petitioner first obtained the surface rights to the property in the 1999 deed, and 3 years after Chesapeake drilled a successful well.

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[9] The 1989 DMA provided for a three-year grace period; thus any alleged "vesting" of abandoned mineral interests would not have occurred until 1992.

Even if the mineral interest could be "deemed vested" in petitioner by a legislative act in 1989, there is no reason why that could not be changed by a subsequent legislative act in 2006. Vested property rights can be divested, assuming due process; indeed, the very purpose of Marketable Title Acts (of which the DMA is a part) is to "extinguish any claim or interest, *vested* or contingent, . . . unless the claimant preserves his claim." (Emphasis sic.) *Rocket Oil and Gas Company v. Donabar*, 127 P.3d 625, 637 (Okla. Civ. App. 2005) (quoting *Mobbs v. City of Lehigh*, 655 P.2d 547, 551 (Okla.1982). Petitioner's own claim exposes that there is no obstacle to applying the 2006 version of the Act here. His claim is that respondents' mineral rights – indisputably vested in respondents or their predecessors since 1959 (*see* Dist. Ct. Op. at 3) – can be taken away by a statute passed 30 years later (the 1989 DMA). That would be no less "retroactive" than applying the 2006 statute to mineral rights allegedly acquired in 1992. If the 1989 DMA can divest mineral owners of their rights, there is no reason why the 2006 DMA cannot do so. Indeed, in contrast to the 1989 DMA, which according to petitioner himself would "automatically" strip a mineral owner of his vested interest without any notice or opportunity to be heard, the 2006 DMA sets forth specific procedures for both surface owners and mineral owners of record[10] to follow before any vested interest can be taken away.

B. Question Two

Whether the payment of a delay rental during the primary term of an oil and gas lease is a title transaction and "savings event" under the DMA has not been addressed by this or any Ohio

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[10] The "holder" of a mineral interest is defined as the "*record holder* of a mineral interest." (Emphasis added.) R.C. 5301.56(A). The abandonment procedures in the amended Act apply to mineral interests "held by any person, other than the owner of the surface . . . ." R.C. 5301.56(B). North American is the only "record holder" of the mineral interests in this case; no other document in the record identifies any other holder of the oil and gas. Accordingly, the only way that the oil and gas "held" by North American could be "deemed abandoned" today is under the procedures in the current DMA.

court. A "title transaction" is defined as "*any* transaction affecting title to *any* interest in land . . . ." (Emphasis added.) R.C. 5301.47(F). A savings event under the DMA occurs when the mineral interest is the "subject of a title transaction that has been filed or recorded." R.C. 5301.56(B)(3).

Pending before this Court are the certified questions whether an oil and gas lease, and the termination of such a lease, are title transactions and thus savings events. *Buell*, *supra* No. 2014-0067. Having decided to answer those questions, the Court should also address the closely related question whether a delay rental payment pursuant to a recorded oil and gas lease is a title transaction and a savings event.[11]

Delay rental payments were made in this case under the 1984 oil and gas lease in 1985, 1986, 1987, and in 1988. Had those payments not been made – and nothing obligated the lessee to make them – the 1984 lease would have terminated, and fee simple determinable title to the oil and gas would have transferred back to North American's predecessor. Instead, the lease and lessee's title was perpetuated each time. Each payment thus necessarily "affect[ed] title to an interest in land" under the recorded lease. R.C. 5301.47(F). Each payment was a "title transaction" and, for purposes of the DMA, a savings event.

Although no Ohio court has addressed this issue, in a case that arose under Michigan's DMA – a model for Ohio's DMA (*see* S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA, at 2-3) – the Michigan Supreme Court provided reasoning that is instructive. *Energetics, Ltd. v. Whitmill*, 497 N.W.2d 497 (Mich.1993). The relevant facts were much like the facts here: the owner of severed oil and gas interests leased those interests for a primary term of ten years, and the lease provided that it would terminate after the first year or any year thereafter in which drilling or

[11] If the Court determines in *Buell* that a lease termination is a savings event, that would moot Question 2 in this case, since the termination postdated the delay rental payments and caused the 20-year DMA clock to run longer.

production did not occur, unless "delay rental" payments were made. The lessee made all of those payments as required, and the lease then terminated. *Energetics* at 500-501.

The question before the Michigan Supreme Court was whether the twenty-year abandonment period began to run not only when the lease was executed, but also when the lease terminated – issues that are nearly identical to the certified questions of Ohio law pending before this Court in *Buell*. The court held that "a new twenty-year dormancy period commences when the reversionary interest is transferred at the termination of the lease." *Id.* at 504. The court did not determine whether the delay rental payments under the lease also restarted the twenty-year dormancy period, but considered such payments in concluding that the purpose of the statute was best served "by avoiding abandonment of a severed interest under circumstances where it is being actively maintained." *Id.* at 503.

The 1984 lease from North American's predecessor to C.E. Beck had an essentially identical structure to the Michigan lease, one that was typical of oil and gas leases at the time. It had a primary term of five years, and provided that it would terminate unless annual delay rental payments were made. Under the terms of the lease, the lessees made delay rental payments, perpetuating or extending the lease until 1989, when ownership of the oil and gas reverted to the lessor. For five years, the lessor was thus collecting rent to maintain the lease for the oil and gas under petitioner's property. Each rental payment "actively maintained" that lease and perpetuated title in the lessee. It would make no sense, and would not in any way serve the purpose of the DMA, to hold that the lessor had begun to "abandon" its oil and gas at the same time the lessee was paying it for the oil and gas.

The *Energetics* court specifically found that it was not necessary that the termination of the lease be separately recorded:

> 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.

Id. at 502 (quoting and agreeing with the trial court); *see also id.* at 504 ("The terms of the lease indicate whether further inquiry may be required to determine if the lease continues in force."). All of this is also true for delay rental payments. Although not separately recorded, they do not have to be, because the lease itself is recorded and specifically requires these payments. Anyone searching the record is put on notice of the date and amount of each of the required payments, and of the effect of each payment.

Since each of the payments clearly "affects title" to the oil and gas by perpetuating an oil and gas lease (and the lessee's title), and each occurs pursuant to a recorded document, each qualifies as a savings event under R.C. 5301.56(B).

V. CONCLUSION

The District Court's certified questions present dispositive issues in the federal action that have not been addressed in any previous decision of this Court. The Court should accept the questions for full briefing and argument on their merits.

Respectfully submitted,

By: Jeffrey D. Ubersax by J. Todd Hemmel per authority

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CERTIFICATE OF SERVICE

I certify that on this 5th day of June 2014, a copy of the foregoing was served via regular U.S. Mail upon the following:

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EXHIBIT A

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

14-0804

Hans Michael Corban,

Plaintiff,

v.

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

Defendants.

Case No. 2:13-cv-246

Judge Michael H. Watson

OPINION AND ORDER

This diversity action requires the Court to determine which parties are entitled to the oil, gas, and mineral rights that lie below about 164.5 acres of property located in Harrison County, Ohio ("the Property"). The parties have filed cross-motions for summary judgment. ECF Nos. 35, 36. In addition, Plaintiff filed a Motion for Leave to File Supplemental Authority, which Defendants do not oppose, and Defendants also move for leave to file supplemental authority. ECF Nos. 41, 43. For the following reasons, the Court **GRANTS** the parties' respective motions for leave to file supplemental authority, **DEFERS** final 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.

RECEIVED
MAY 16 2014
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
MAY 16 2014
CLERK OF COURT
SUPREME COURT OF OHIO

I. PROCEDURAL HISTORY

On February 12, 2013, Plaintiff Hans Michael Corbin ("Plaintiff") filed a complaint against Defendants Chesapeake Exploration, LLC ("Chesapeake"), CHK Utica, LLC ("CHK"), Total E&P USA, Inc. ("Total"), and North American Coal Royalty Company ("North American") in the Common Pleas Court of Harrison County, Ohio, seeking a declaratory judgment, to quiet title to the oil and gas rights under his surface estate, a permanent injunction, and alleging conversion. Defendants removed the case to federal court on March 15, 2013 on the basis of diversity jurisdiction. Defendants answered with counterclaims against Plaintiff seeking declaratory judgment and to quiet title in their favor. Countercls., ECF Nos. 6, 7. Plaintiff filed an Amended Complaint on June 13, 2013, adding Dale Pennsylvania Royalty, LP ("Dale Pennsylvania"), and Larchmont Resources, LLC ("Larchmont") as defendants as well as a claim for unjust enrichment. Discovery ensued, and Cross motions for summary judgment have been filed.

II. FACTS

Both Plaintiff 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 oil, gas, and mineral rights beneath the Property.

In July of 1959, The North American Coal Corporation ("NACoal") conveyed the Property to Orelen H. Corban and Hans D. Corban, excepting all

oil, gas, and mineral rights (the "Mineral Rights")[1] to itself and its successors and assignees. The Property has been frequently transferred since 1962.

A. The Surface Rights

In 1962, Orelen Corban conveyed his interest in the Property to Carol Ann Corban by quit claim deed. Carol Corban and her husband then conveyed their interest in the Property to Hans D. Corban by quit claim deed in 1967. This transaction made Hans D. Corban the sole owner of the surface rights in the Property. In 1980, Hans D. Corban conveyed the Property to Gretchen A. Corban by quit claim deed. Gretchen Corban then conveyed the Property to Plaintiff Hans Michael Corban in 1999 via a quit claim deed that stated it was "subject to conditions, restrictions and easements if any, contained in prior instruments of record."

B. The Mineral Rights

As noted above, NACoal reserved its interest in the Mineral Rights in the 1959 transaction to Orelen and Hans D. Corban. In January 1974, NACoal entered into an oil and gas lease for a primary term of ten years with National Petroleum Corporation ("the 1974 lease"). The lease was recorded on February 6, 1974. American Exploration Company obtained a permit to drill for oil and gas on lands covered by the 1974 lease in April of 1974, and in May of 1975, National Petroleum Corporation assigned the lease to American Exploration

[1] The Court refers to mineral interests generally as "mineral interests" and to the specific mineral interests at issue in this case as "Mineral Rights."

Company. American Exploration Company then assigned the 1974 lease to C.E. Beck, acting for and on behalf of RSC Energy Corporation, in 1978. There was no production under the 1974 lease, and the Mineral Rights presumably reverted back to NACoal at the end of the lease in 1984.

NACoal then entered into a second oil and gas lease for a primary term of five years with C.E. Beck, and that lease was recorded in February 1984 (the 1984 lease"). RSC Energy Corp. obtained a permit to drill for oil and gas in January of 1985.[2] C.E. Beck thereafter assigned the 1984 lease to Carless Resources, Inc. which assignment was recorded in May of 1985. There was no production under the 1984 lease, but C.E. Beck or Carless Resources, Inc. paid the requisite delay rentals to NACoal throughout the primary term of the 1984 lease (i.e., in 1985, 1986, 1987, 1988). Following the expiration of the 1984 lease, the ownership of the oil and gas rights reverted back to Bellaire, formerly known as NACoal, in January 1989.

Bellaire then transferred the mineral estate to North American in 2008 by quit claim deed.

In January 2009, North American leased the oil and gas rights to Mountaineer Natural Gas Company ("Mountaineer"), which lease was recorded in 2010 ("the 2009 lease"). In May 2010, Mountaineer assigned the 2009 lease to Dale Property.

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[2] Defendants' motion for summary judgment states the date as January 1984, a year before the lease was recorded. The Court considers this likely a typographical error, but in any event, the date the permit was obtained is not material to the case.

A well was built in 2010, completed in 2011, and began production in June 2011 pursuant to the 2009 lease.

In October 2010, Dale Property assigned its interest in the 2009 lease to Ohio Buckeye Energy, L.L.C. ("Ohio Buckeye"), reserving a royalty interest. Dale Property then assigned its royalty interest to Dale Pennsylvania in 2011.

In October 2011, Ohio Buckeye transferred a portion of its interest in the 2009 lease to Larchmont, and it assigned other portions of its interest to CHK in 2012 and 2013.

In December 2011, Ohio Buckeye merged with Chesapeake, transferring its remaining interest in the 2009 lease to Chesapeake. Chesapeake transferred a portion of its interest in the 2009 lease to Total in 2011, which assignment was recorded in May 2012.

In sum, Plaintiff is the sole owner of the surface rights to the Property, and he also claims ownership of the Mineral Rights beneath the Property. Chesapeake is the record owner of the oil and gas rights beneath the Property, and CHK, Total, Dale Pennsylvania, Larchmont, and North American are lessees of those rights.

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. APPLICABLE LAW

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.*

V. ANALYSIS

The parties agree that this case is governed by the Ohio Dormant Mineral Act ("ODMA"), Ohio Revised Code § 5301.56. The ODMA, enacted in 1989, operates to return dormant, severed mineral interests to the surface land holder ("surface land holder") by placing a twenty-year limit on dormant mineral interests. In other words, when someone other than the surface land holder obtains the sub-surface mineral interests, that mineral interest holder ("mineral interest holder") is deemed to have abandoned the mineral interests if those interests lay dormant for twenty years, at which time they revert back to the surface land holder. The Ohio General Assembly amended the statute and changed the manner in which the mineral interests return to the surface land holder effective 2006.

Under either version of the ODMA, a twenty-year clock begins to run the moment that the mineral interests are acquired by someone other than the surface land holder. If twenty years run in which the interests are dormant and

there is no "savings event" under § 5301.56(B), the mineral interests 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 when the preceding twenty-year period begins for purposes of calculating the abandonment clock, nor does it specify any method for vesting of the mineral interests in the surface land holder. That statute provided a three year grace period under which a mineral interest holder could maintain his interest. The three year grace period in this case expired on March 23, 1992.

In contrast, the 2006 ODMA specifically requires that notice be given by the surface land holder to the mineral interest holders of record before the mineral interests can vest in the surface land holder and states that it is the preceding twenty years from the date the surface land holder gives notice to the mineral interest holder that is at issue for abandonment. Ohio Rev. Code § 5301.56(B), (E) (2006). Once notice is given, the mineral interest holder has sixty days to either file a claim in the office of the county recorder 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 interest holder fails to file a claim to preserve the mineral interests or identify a savings event within sixty days, the mineral interests vest in the surface land holder upon memorialization of the abandonment in the county record. Ohio Rev. Code § 5301.56(H)(2).

The parties dispute both whether the 1989 or 2006 version of the ODMA governs this case and whether a savings event has occurred at all.

A. The Supreme Court of Ohio Should Determine Whether the 1989 Version or the 2006 Version of the ODMA Applies to Actions Brought After Enactment of the 2006 Amendments but Alleging that Rights Vested Prior to Enactment of the 2006 Amendments.[3]

Not surprisingly, the parties dispute which version of the ODMA applies to the instant case. Defendants argue the 2006 version applies because it was the law in effect at the time Plaintiff brought suit in 2013, and the Court must apply the law as it exists at the time of the claim. Because Plaintiff has not complied with the procedural requirements established in the 2006 amendments by providing the requisite notice,[4] Defendants argue his claim fails.

Plaintiff contends the Mineral Rights automatically vested in him in either 1992 or 2005 but in any event under the 1989 version of the ODMA. Because the Mineral Rights automatically vested in him on one of those dates, he contends the 2006 version of ODMA is inapplicable. Moreover, he argues the 2006 amendments cannot be applied retroactively to divest him of his property rights.

Defendants respond that the 2006 amendments are not retroactive because they are remedial in nature and that the legislature is free to condition

[3] The Court notes that which version of the ODMA applies is also at issue in *Chesapeake v. Buell.*

[4] Plaintiff does not argue that he has satisfied the procedural requirements established in the 2006 amendments.

the continued retention of even vested rights on affirmative steps established in the 2006 amendments.

The Supreme Court of Ohio has not directly addressed this issue. The decisions of the common pleas courts of Ohio are split on the issue of which version of the ODMA applies to claims brought after the amendments but claiming that rights vested prior to the amendments. On the one hand, *M&H Partnership v. Hines*, Case No. CVH-2012-0059, 9 (Harrison Cnty. Common Pls. Ct. Jan. 14, 2014) and *Dahlgren v. Brown Farm Properties, L.L.C.*, Case No. 13CVH27445 (Carroll Cnty. Common Pleas Ct. Nov. 5, 2013) hold that the 2006 ODMA controls a claim of abandonment that is first made after the 2006 amendments.

M&H Partnership based its holding in part on the Seventh District opinion *Dodd v. Crosky*, 2013 WL 5437365 (Ohio Ct. App. 7th Dist. Sept. 23, 2013). As noted below, the Seventh District has since changed course on this issue.

The *Dahlgren* court noted that as late as November 2013, neither that court nor the parties had found "any appellate decision that decides whether or when to apply the 1989 version of [ODMA] for an abandonment claim filed after the 2006 amendment," but it noted that the seventh district applied the 2006 version without discussion in *Dodd*.[5] *Dahlgren*, at 13–14. The *Dahlgren* court then discussed the history and purpose of the Ohio Marketable Title Act

[5] The Supreme Court of Ohio has permitted a discretionary appeal from *Dodd v. Croskey*, 138 Ohio St. 3d 1432 (2014), but that appeal does not seem to concern the issue of which version of the ODMA applies.

("OMTA"), of which the ODMA is a part, and held that unless a surface land holder implemented or enforced a claim of abandonment prior to the effective date of the 2006 amendments, the surface land holder must comply with the 2006 procedural requirements to enforce a claim of abandonment brought after 2006. This is so even when the surface land holder claims that the abandonment occurred prior to the 2006 amendments. *Id.* at 14.

Conversely, several other common pleas court decisions applied the 1989 ODMA in cases like this one. *See, e.g.*, *Shannon v. Householder*, Case No. 12CV226, at 6–7 (Jefferson Cnty. Common Pleas Ct. July 17, 2013); *Marty v. Winkler*, Case No. 2012-203, at 10 (Monroe Cnty. Common Pleas Ct. Apr. 11, 2013) (finding abandonment under both versions of the Act); *Walker v. Noon*, Case No. 2120098, at *3 (Noble Cnty. Common Pleas Ct. Mar. 20, 2013) ("Any discussion of R.C. 5301.56, effective June 30, 2006 is moot, because as of June 30, 2006, any interest of Defendant in the oil and gas had been abandoned."); *Wendt v. Dickerson*, Case No. 2012 CV 0135, at 16–17 (Tuscarawas Cnty. Common Pleas Ct. Feb. 21, 2013) (applying 1989 version).

The only appellate court to face the issue is the Seventh District. In *Dodd*, the Seventh District applied the 2006 version of the ODMA without discussion. 2013 WL 5437365. Just last month, though, it expressly considered the issue of whether the 1989 version or the 2006 version of the ODMA applies to claims brought after 2006 but alleging that rights vested under the 1989 version of the Act. *Walker v. Shondrick-Nau*, 2014 WL 1407942, at *5–6 (Ohio Ct. App. 7th

Dist. Apr. 3, 2014) (appeal from *Walker v. Noon*). The court concluded that the 2006 ODMA applies only prospectively and cannot have affected any right that was previously acquired under the 1989 ODMA. *Id.* at *6 (citing Ohio Rev. Code §§ 1.48, 1.58(A)(1)(2)). As such, it concluded the 1989 version applied. *Id.* at *9. Thus, the only appellate court to have considered the issue in similar circumstances decided that the 1989 version applies.

In addition to citing contrasting case law on the direct issue at hand, the parties cite Ohio statutes and cases concerning retroactivity generally. These principles, however, do not point to a clear result in this case. On the one hand, Defendants argue the 2006 ODMA is applied only prospectively because Plaintiff's suit was not filed until after the statute was amended. On the other hand, Plaintiff contends the Mineral Rights vested in him sometime prior to the amendments and that even prospective application of the amended statute would implicate retroactivity because it would divest him of his property rights. Because of that, the lack of controlling precedent from the Supreme Court of Ohio, the fact that the only Ohio appellate court to consider the issue has been internally inconsistent, and the split in common pleas court decisions, this Court finds the best course of action is to certify this important question of state 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 in the decisions of the Supreme Court of Ohio. Which

version of the ODMA applies in this case may be determinative of the outcome of the proceeding, because Plaintiff does not argue he has met the procedural requirements contained in the 2006 amendments. Further, there is no controlling precedent in the decisions of the Supreme Court of Ohio on this issue.

B. It is Not Necessary to Determine Whether the Assignment of an Oil and Gas Lease is a Title Transaction that Qualifies as a Savings Event under ODMA, and the Supreme Court of Ohio Should Determine Whether a Delay Rental Constitutes a Title Transaction.

Additionally, the parties dispute whether the Mineral Rights were the subject of savings events which preclude a finding of abandonment.

The parties agree that, assuming the 1989 version of ODMA applies,[6] § 5301.56(B)(1)(c)(i) provides the only potential basis for a savings event. Section 5301.56(B)(1)(c)(i) 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.

The ODMA does not define the term "title transaction." Nonetheless, the 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

[6] Defendants argue that savings events occurred in the twenty-year period prior to 2006, but as Plaintiff concedes he has not met the procedural requirements under the 2006 amendments, it will be unnecessary to determine if a savings event occurred during that period if the Supreme Court of Ohio determines the 2006 version of ODMA applies. The Court therefore focuses its "savings event" analysis on the 1989 version of ODMA.

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* a title transaction which has been filed or recorded in order for the title transaction to qualify as a "savings event." Ohio Rev. Code § 5301.56(B)(3)(a).

The parties disagree about whether the Mineral Rights were the subject of a title transaction. Defendants argue the Mineral Rights were the subject of several title transactions that qualified as savings events and preserved Defendants' interests. Specifically, Defendants argue that the execution of an oil and gas lease, assignment of an oil and gas lease, and unrecorded expiration of an oil and gas lease are title transactions that qualify as savings events under the ODMA. Defendants also argue that the payment of delay rentals during the primary term of an oil and gas lease is a title transaction that qualifies as a savings event.

Plaintiff argues that neither the execution of an oil and gas lease, nor the unrecorded expiration of an oil and gas lease, nor the assignment of an oil and gas lease constitute a title transaction that qualifies as a savings event. Plaintiff argues that no savings event occurred in the twenty years preceding the effective date of the ODMA, and when the grace period expired on March 22, 1992, the Mineral Rights automatically vested in him. Alternatively, Plaintiff argues that even if the recorded execution and assignment of oil and gas leases constitute

savings events, the mineral interest was leased to C.E. Beck on January 16, 1984, assigned to Carless Resources, Inc. on April 11, 1985, and the assignment was recorded on May 30, 1985. There were no further recorded leases or assignments until 2010. Plaintiff argues that even if the expiration of an oil and gas lease constitutes a title transaction, it does not constitute a savings event unless it is recorded. As the expiration of the 1984 lease in 1989 was not recorded, Plaintiff argues the expiration was not a savings event. Thus, Plaintiff argues the Mineral Rights vested in him on May 30, 2005 at the latest (twenty years from May 30, 1985).

The Court need not consider the contrasting arguments with respect to whether the assignment of an oil and gas lease constitutes a title transaction at this time, because even if the assignment of an oil and gas lease constitutes a title transaction, the Mineral Rights at issue in this case were assigned via a recorded assignment on May 30, 1985. Starting the twenty-year clock from the date of the recorded assignment would yield an abandonment date of May 30, 2005, before the amendments to the ODMA were enacted and before the Mineral Rights were next conveyed.

Accordingly, even if the recorded assignment of an oil and gas lease constitutes a title transaction which qualifies as a savings event, the May 30, 1985 recorded assignment would not preclude a finding of abandonment in this case. It is not necessary, therefore, to determine in this case whether the

recorded assignment of an oil and gas lease constitutes a title transaction which qualifies as a savings event under ODMA.

Rather, at issue is whether the payment of delay rentals during the primary term of an oil and gas lease constitutes a title transaction that qualifies as a savings event under the ODMA.

After the lease was assigned on May 30, 1985, C.E. Beck or Carless Resources, Inc. paid delay rentals in 1985, 1986, 1987, and 1988 in order to avoid early termination of the lease. The effect of those payments depends both on whether they are considered savings events and whether the recorded execution and unrecorded expiration of the 1985 lease are savings events.

If the recorded execution or subsequent assignment of the lease were savings events but neither the unrecorded expiration of the lease nor the delay rentals constitute savings events, then the abandonment clock would begin on May 30, 1985 at the latest and run on May 30, 2005, before the 2006 amendments.

On the other hand, if either the recorded execution or subsequent assignment were savings events and the delay rentals are also savings events, then the clock runs not from the recorded execution or assignment on May 30, 1985 but rather from the date of the last delay rental in 1988. Thus, even if the unrecorded expiration of the 1984 lease does not constitute a savings event, then as long as the delay rentals constitute savings events, there would be no abandonment until after the 2006 amendments were effective (i.e. any

abandonment after the 1988 delay rental would be in 2008). That means Plaintiff would have to follow the procedural requirements in the 2006 ODMA before vesting could occur. To make matters even more complicated, as the mineral estate was transferred again in 2008, there could possibly be no abandonment at all if the 2008 transfer occurred within the twenty-year clock from the date of the 1988 delay rental.

Defendants' argument that delay rentals constitute title transactions, and thus savings events, reads as follows:

> Each of the annual payments from the lessee to NACoal in 1985, 1986, 1987, and 1988 operated to restart the twenty-year abandonment period by precluding reversion of the mineral estate to NACoal during the primary term of the 1984 Lease. Had those payments not been made – and nothing obligated the lessee to make them – the primary term of the 1984 Lease would have terminated early, and fee simple determinable title to the oil and gas would have transferred back to NACoal. Instead, the primary term of the Lease was maintained each year by payment of delay rentals, and each such transaction necessarily "affect[ed] title to an interest in land" under the recorded 1984 Lease. Ohio R.C. § 5301.47.

Defs.' Mot. Summ. J. 17, ECF No. 36. Defendants further argue in their response in opposition to Plaintiff's motion for partial summary judgment that during the primary term of the 1985 lease, "[f]or five years, NACoal was actively collecting rent for the oil and gas under plaintiff's property, and thus maintaining its interest. It would be nonsensical to hold that NACoal had begun to 'abandon' its interest at any time before the termination of the lease and the return to NACoal of its oil and gas rights in 1989." Defs.' Resp. 19, ECF No. 38. Defendants provide no citation to any cases that have held that the payment of

delay rentals pursuant to an oil and gas lease constitute title transactions that qualify as savings events under ODMA. Indeed, they concede that no Ohio court has addressed the issue.

As noted, Plaintiff fails to address the argument at all.

Given the dearth of Ohio authority on this novel legal argument, the best course of action is to certify this question 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 in the decisions of the Supreme Court of Ohio. As discussed above, depending on the Supreme Court of Ohio's conclusions regarding the recorded execution and unrecorded expiration of oil and gas leases, the analysis of whether delay rental payments constitute title transactions that qualify as savings events may be determinative of the proceeding. In addition, there is not only a lack of controlling precedent from the Supreme Court of Ohio but also a lack of any precedent from any Ohio court on this issue. The Court will therefore certify this question of Ohio law to the Supreme Court of Ohio.

C. The Supreme Court of Ohio Has Accepted for Review the Questions of Whether the Execution of or Expiration of an Oil and Gas Lease is a Title Transaction That Qualifies as a Savings Event Under ODMA.

As noted above, Defendants argue that both the recorded execution of an oil and gas lease and the unrecorded expiration of an oil and gas lease are title transactions that qualify as savings events under the ODMA. Plaintiff argues that

the recorded execution of an oil and gas lease is not a title transaction and that even if the expiration of such a lease is a title transaction, where the expiration is not recorded, it does not comport with the requirements of § 5301.56(B)(3)(a) to qualify as a "savings event."

The Court considered similar arguments in *Chesapeake Exploration, L.L.C. v. Buell*, Case No. 2:12–cv–916. In that case, the Court concluded that the issues could not be resolved through statutory interpretation. Moreover, the Court found that Ohio law is unsettled as to whether an oil and gas lease creates a fee simple determinable and gives the lessee ownership of the oil and gas estate or is merely a license and therefore not a title transaction because it does not convey title. The Court noted that two Supreme Court of Ohio cases have taken 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.[7] Because the context of the statute is important and no Ohio court has considered the nature of an oil and gas lease under the ODMA, the Court certified the questions to the Supreme Court of Ohio. The Supreme Court of Ohio accepted certification and thus will answer the following questions:

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

[7] See Opinion and Order 18–19, ECF No. 60, in Case No. 2:12–cv–916 (comparing *Harris v. Ohio Oil Co.*, 48 N.E. 502, 506 (Ohio 1897) *with Back v. Ohio Fuel Gas Co.*, 113 N.E.2d 865 (Ohio 1953)).

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?

Decision, *Chesapeake Exploration, L.L.C. v. Buell*, Case No. 2014-0067 (Ohio 2014).

The answers to those questions will apply with equal force to the case *sub judice*.

VI. CERTIFICATION REQUIREMENTS

A. The Certified Questions

For the reasons set forth above, the undersigned certifies the following additional 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. Does the 2006 version or the 1989 version of the ODMA apply to claims asserted after 2006 alleging that the rights to oil, gas, and other minerals automatically vested in the surface land holder prior to the 2006 amendments as a result of abandonment?

   AND

2. Is the payment of a delay rental during the primary term of an oil and gas lease a title transaction and "savings event" under the ODMA?

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: Hans Michael Corban.

   b. Defendants: 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..

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 Plaintiff as the moving party.

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.

VII. CONCLUSION

For the foregoing reasons, the parties motions for leave to file supplemental authorities are **GRANTED**. 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. The Clerk shall terminate ECF Nos. 41 & 43.

IT IS SO ORDERED.

MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT B

PROPONENT TESTIMONY ON BEHALF OF
SENATE BILL 223 AND HOUSE BILL 521,
AN OHIO DORMANT MINERAL ACT

Ohio presently has a Marketable Title Act, R.C. §5301.47 et seq., which became effective September 29, 1961. It was amended September 30, 1974 to exclude any right, title, estate or interest in coal and coal mining rights from operation of the Act. Section 5301.48 of the Act states that a person has a marketable title to an interest in land if he has an unbroken chain of record title for a period of not less than 40 years. Chain of title is then defined by two clauses, the first of which states the case where the chain of title consists of only a single instrument or transaction and the second where it consists of two or more instruments or transactions. The Act provides that the requisite chain of title is only effective if nothing appears of record purporting to divest the claimant of the marketable title.

The obvious purpose of the Marketable Title Act is to simplify land title transactions by making it possible to determine marketability through limited title searches over some reasonable period thus avoiding the necessity of examining the record back to the patent for each new transaction. This is obviously a legitimate and desirable objective but in the absence of specific statutory authority, interests created and interests appearing in titles prior to that period would not necessarily be eliminated and would continue to be an impediment to marketability. Marketable Title Acts do not cure and validate errors or irregularities in conveyancing instruments but bar or extinguish interests which have been created by or result from irregularities in instruments recorded prior to the period prescribed by the statute and thereby free present titles from the effect of those instruments. In this very general sense, the Marketable Title Act is curative in character.

The Ohio Marketable Title Act was based on the model Marketable Title Act which was drafted by Professor Lewis M. Simes and Clarence B. Taylor as part of the Michigan research project, a comprehensive study undertaken to set up standard statutory language to provide for the simplification of real estate conveyances. At the time of that study in 1959, there were ten Marketable Title Acts in effect, including Michigan's. The Michigan Act, which had been in effect for 15 years and subjected to considerable testing and experience, appeared to be the best piece of draftsmanship and embodied the most practical approach for attaining the desired objective. The Michigan Act served as the basis for drafting the model Act. The Ohio Marketable Title Act was the tenth Marketable Title Act enacted after the Michigan study and was patterned directly from the model Act.

It is apparent from the legislative history of the Ohio Marketable title Act and subsequent interpretation by courts and

practitioners since its enactment that it was the general intent of the act to apply to mineral interests except coal. Simes and Taylor, in their Model Act, pointed out that the single principal provision in the Marketable Title Act which makes it ineffective to bar dormant mineral interests is the provision that the record title is subject to such interest and defects as are inherent in the muniments of which the chain of record title is formed. This provision is included in the Model Act, as well as the Michigan and Ohio Acts. From a practical standpoint, any reference in the recorded chain of title to previously-created mineral interests may serve to keep those interests alive. This issue was the subject of Heifner v. Bradford, 4 O.S. 3d 49 (1983). In that case, the trial court upheld the validity of a severed mineral interest which was based upon transactions in a chain of title separate from the title claimed by the possessor of the surface interest. The severed mineral chain, however, contained transactions recorded during the 40-year period prescribed by the Act and the court held that transactions inherent in muniments of title during the period constituted a separate recognizable chain of title entitled to protection under the Act. The Appellate Court reversed in a decision acknowledging the fact that a precise reading of the statute upheld the trial court's decision but relied on legislative history to the effect that it was the intent of the drafters to extinguish severed mineral interests.

The Ohio Supreme Court overruled the Court of Appeals based upon a strict reading of the statute. Due to this obvious limitation in the Act, recognized by Simes and Taylor and highlighted by Heifner, it would appear that the Ohio Marketable Title Act is not generally effective as a means of eliminating severed mineral interests.

As a general principle, minerals are not deemed to be capable of being abandoned by a non-user unless they are actually possessed. Ohio is in the majority of jurisdictions which hold that a severed interest in undeveloped minerals does not constitute possession. Michigan's legislators recognized the importance of including minerals in those defects and errors which should be eliminated by operation of time and non-use. The Michigan Act and the Model Act provide an additional mechanism for the elimination of dormant mineral interests which, when used in conjunction with the Marketable Title Act, is effective in accomplishing this goal. Under the Michigan Act, owners of severed mineral interests are required to file notice of their claims of interest within 20 years after the last use of the interest. A three-year grace period was provided for initial filing under the Michigan Act. Any severed mineral interest deemed abandoned or extinguished as a result of the application of the Michigan Act vests in the owner of the surface.

The major distinction between the proposed bill for consideration by the Ohio legislature and the Michigan Act is that the Michigan Act applies only to interests in oil and gas. It is apparent from the 1974 amendment of the Ohio Marketable Title Act

that the Ohio Legislature has deemed it advisable for the Marketable Title Act to apply to all mineral interests except coal. The proposed Ohio Dormant Mineral Act has been drafted to conform to the Ohio Marketable Title Act and apply to any mineral interest except an interest in coal as defined by §5301.53(E) of the Marketable Title Act. The proposed Bill, if passed, would have lead to the desired result as stated by the Appellate Court in Heifner of terminating unused mineral interests not preserved by operations, transfers or a filing of notice of an intent to preserve interest.

The proposed bill also contains the essential elements recommended by the National Conference of Commissioners on Uniform State Laws at its annual conference in Boston in August, 1986. I have enclosed a copy of the Uniform Dormant Mineral Interests Act with prefatory notes and comments for your review.

California, Illinois, Indiana, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington and Wisconsin all have adopted Dormant Mineral Acts. All but Pennsylvania, Virginia and Tennessee have companion Marketable Title Acts.

I believe that enactment of the Dormant Mineral Act will encourage the development of minerals in Ohio which have been previously ignored due to defects in title. The development of minerals would lead to severance tax revenues and enhance the economy of areas of the state which may have no other source of revenue production.

I feel that companies engaged in the development of minerals as well as owners of property subject to title defects not cured by the Marketable Title Act would benefit from the enactment of the proposed dormant minerals statute.

This testimony was prepared and presented by William J. Taylor, attorney and partner in Kincaid, Cultice & Geyer, 50 North Fourth Street, Zanesville, Ohio 43701, (614) 454-2591. Mr. Taylor's practice involves extensive mineral title work and his firm represented the prevailing party in Heifner v. Bradford, the leading Ohio Supreme Court case dealing with the Ohio Marketable Title Act. He frequently lectures and writes articles involving mineral title topics, including "Practical Mineral Title Opinions" and "The Effects of Foreclosing on Oil and Gas Leases" published by the Eastern Mineral Law Foundation. He is a member of the Ohio State Bar Association Natural Resources Committee, the Federal Bar Association Committee on Natural Resources, and the Legal Committee of the Ohio Oil and Gas Association.

UNIFORM DORMANT MINERAL INTERESTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

Approved and Recommended for Enactment
in All the States

At its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-FIFTH YEAR
IN BOSTON, MASSACHUSETTS
AUGUST 1-8, 1986

With Prefatory Note and Comments

UNIFORM DORMANT MINERAL INTERESTS ACT

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Dormant Mineral Interests Act was as follows:

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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:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
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UNIFORM DORMANT MINERAL INTERESTS ACT

PREFATORY NOTE

Nature of Mineral Interests

Transactions involving mineral interests may take several different forms. A lease permits the lessee to enter the land and remove minerals for a specified period of time; whether a lease creates a separate title to the real estate varies from state to state. A profit is an interest in land that permits the owner of the profit to remove minerals; however, the profit does not entitle its owner to possession of the land. A fee title or other interests in minerals may be created by severance.

A severance of mineral interests occurs where all or a portion of mineral interests are owned apart from the ownership of the surface. A severance may occur in one of two ways. First, a surface owner who also owns a mineral interest may reserve all or a portion of the mineral interest upon transfer of the surface. In the deed conveying the surface of the land to the buyer, the seller reserves a mineral interest in some or all of the minerals beneath the surface. Certain types of sellers, such as railroad companies, often include a reservation of mineral interests as a matter of course in all deeds.

Second, a person who owns both the surface of the land and a mineral interest may convey all or a portion of the mineral interest to another person. This practice is common in areas where minerals have been recently discovered, because many landowners wish to capitalize immediately on the speculative value of the subsurface rights.

Severed mineral interests may be owned in the same manner as the surface of the land, that is, in fee simple. In some jurisdictions, however, an oil and gas right (as opposed to an interest in nonfugacious minerals) is a nonpossessory interest (an incorporeal hereditament).

Potential Problems Relating to Dormant Mineral Interests

Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown. Under the common law, a fee simple interest in land cannot be extinguished or abandoned by nonuse, and it is not necessary to rerecord or to maintain current property records in order to preserve an ownership interest in minerals. Thus, it is possible that the only document appearing in the public record may be the document initially creating the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned

about an apparently valueless mineral interest and may not even be aware of it; hence their interests may not appear of record.

If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.

On the other hand, the owner of a dormant mineral interest is not motivated to develop the minerals since undeveloped rights may not be taxed and may not be subject to loss through adverse possession by surface occupancy. The greatest value of a dormant mineral interest to the mineral owner may be its effectual impairment of the surface estate, which may have hold-up value when a person seeks to assemble an unencumbered fee. Even if one owner of a dormant mineral interest is willing to relinquish the interest for a reasonable price, the surface owner may find it impossible to trace the ownership of other fractional shares in the old interest.

An extensive body of legal literature demonstrates the need for an effective means of clearing land titles of dormant mineral interests. Public policy favors subjecting dormant mineral interests to termination, and legislative intervention in the continuing conflict between mineral and surface interests may be necessary in some jurisdictions. More than one-fourth of the states have now enacted special statutes to enable termination of dormant mineral interests, and some of the nearly two dozen states that now have marketable title acts apply the acts to mineral interests.

Approaches to the Dormant Mineral Problem

The jurisdictions that have attempted to deal with dormant mineral interests have adopted a wide variety of solutions, with mixed success. The basic schemes described below constitute some of the main approaches that have been used, although many states have adopted variants or have combined features of these schemes.

Abandonment. The common law concept of abandonment of mineral interests provides useful relief in some situations. As a general rule, severed mineral interests that are regarded as separate possessory estates are not subject to abandonment. But less than fee interests in the nature of a lease or profit may be subject to abandonment. In some jurisdictions the scope of

the abandonment remedy has been broadened to extend to oil and gas rights on the basis that these minerals, being fugacious, are owned in the form of an incorporeal hereditament, and hence are subject to abandonment.

The abandonment remedy is limited both in scope and by practical proof problems. Abandonment requires a difficult showing of intent to abandon; nonuse of the mineral interest alone is not sufficient evidence of intent to abandon. However, the remedy is useful in some situations and should be retained along with enactment of dormant mineral legislation.

Nonuse. A number of statutes have made nonuse of a mineral interest for a term of years, e.g., 20 years, the basis for termination of the mineral interest. Such a statute in effect makes nonuse for the prescribed period conclusive evidence of intent to abandon.

The nonuse scheme has advantages and disadvantages. Its major attraction is that it enables extinguishment of dormant interests solely on the basis of nonuse; proof of intent to abandon is unnecessary. Its major drawbacks are that it requires resort to facts outside the record and it requires a judicial proceeding to determine the fact of nonuse. It also precludes long-term holding of mineral rights for such purposes as future development, future price increases that will make development feasible, or assurance by a conservation organization or subdivider that the mineral rights will not be exploited.

The nonuse concept should be incorporated in any dormant mineral statute. Even a statute based exclusively on recording, such as the Uniform Simplification of Land Transfers Act (USLTA) discussed below, does not terminate the right of a person who has an active legitimate mineral interest but who through inadvertence fails to record.

Recording. Another approach found in several jurisdictions, as well as in USLTA, is based on passage of time without recording. Under this approach a mineral interest is extinguished a certain period of time after it is recorded, for example 30 years, unless during that period a notice of intent to preserve the interest is recorded. The virtues of this model are that it enables clearing of title on the basis of facts in the record and without resort to judicial action, and it keeps the record mineral ownership current. Its major disadvantages are that it permits an inactive owner to preserve the mineral rights on a purely speculative basis and to hold out for nuisance money indefinitely, and it creates the possibility that actively producing mineral rights will be lost through inadvertent failure to record a notice of intent to preserve the mineral rights. The recording concept is useful, however, and should be a key element in any dormant mineral legislation.

Trust for unknown mineral owners. A quite different approach to protecting the rights of mineral owners is found in a number of jurisdictions, based on the concept of a trust fund created for unknown mineral owners. The basic purpose of such statutes is to permit development of the minerals even though not all mineral owners can be located, paying into a trust the share of the proceeds allocable to the absent owners. The usefulness of this scheme is limited in one of the main situations we are concerned with, which is to enable surface development where there is no substantial mineral value. The committee has concluded that this concept is beyond the scope of the dormant mineral statute, although it could be the subject of a subsequent act.

Escheat. A few states have treated dormant minerals as abandoned property subject to escheat. This concept is similar to the treatment given personal property in the Uniform Unclaimed Property Act. This approach has the same shortcomings as the trust for unknown mineral owners.

Constitutionality. Constitutional issues have been raised concerning retroactive application of a dormant mineral statute to existing mineral interests. The leading case, Texaco v. Short, 454 U.S. 516 (1982), held the Indiana dormant mineral statute constitutional by a narrow 5-4 margin. The Indiana statute provides that a mineral right lapses if it is not used for a period of 20 years and no reservation of rights is recorded during that time. No prior notice to the mineral owner is required. The statute includes a two-year grace period after enactment during which notices of preservation of the mineral interest may be recorded.

A combination nonuse/recording scheme thus satisfies federal due process requirements. Whether such a scheme would satisfy the due process requirements of the various states is not clear. Comparable dormant mineral legislation has been voided by several state courts for failure to satisfy state due process requirements. Uniform legislation, if it is to succeed in all states where it is enacted, will need to be clearly constitutional under various state standards. This means that some sort of prior notice to the mineral owner is most likely necessary.

Draft Statute

A combination of approaches appears to be best for uniform legislation. The politics of this area of the law are quite intense in the mineral producing states, and the positions and interests of the various pressure groups differ from state to state. It should be remembered that the dormant mineral portion of USLTA was felt to be the most controversial aspect of that act.

A statute that combines a number of different protections for the mineral owner, but that still enables termination of dormant mineral rights, is likely to be the most successful. Such a combination may also help ensure the constitutionality of the act from state to state. For these reasons, the draft statute developed by the committee consists of a workable combination of the most widely accepted approaches found in jurisdictions with existing dormant mineral legislation, together with prior notice protection for the mineral owner.

Under the draft statute, the surface owner may bring an action to terminate a mineral interest that has been dormant for 20 years, provided the record also evidences no activity involving the mineral interest during that period, the owner of the mineral interest fails to record a notice of intent to preserve the mineral interest within that period, and no taxes are paid on the mineral interest within that period. To protect the rights of a dormant mineral owner who through inadvertence fails to record, the statute enables late recording upon payment of the litigation expenses incurred by the surface owner; this remedy is not available to the mineral owner, however, if the mineral interest has been dormant for more than 40 years (i.e., there has been no use, taxation, or recording of any kind affecting the minerals for that period). The statute provides a two-year grace period for owners of mineral interests to record a notice of intent to preserve interests that would be immediately or within a short period affected by enactment of the statute.

This procedure will assure that active or valuable mineral interests are protected, but will not place an undue burden on marketability. The combination of protections will help ensure the fairness, as well as the constitutionality, of the statute.

The committee believes that clearing title to real property should not be an end in itself and should not be achieved at the expense of a mineral owner who wishes to retain the mineral interest. In many cases the interest was negotiated and bargained for and represents a substantial investment. The objective is to clear title of worthless mineral interests and mineral interests about which no one cares. The draft statute embodies this philosophy.

UNIFORM DORMANT MINERAL INTERESTS ACT

SECTION 1. STATEMENT OF POLICY.

(a) The public policy of this State is to enable and encourage marketability of real property and to mitigate the adverse effect of dormant mineral interests on the full use and development of both surface estate and mineral interests in real property.

(b) This [Act] shall be construed to effectuate its purpose to provide a means for termination of dormant mineral interests that impair marketability of real property.

COMMENT

This section is a legislative finding and declaration of the substantial interest of the state in dormant mineral legislation.

SECTION 2. DEFINITIONS.

As used in this [Act]:

(1) "Mineral interest" means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, leasehold, or lien, in minerals, regardless of character.

(2) "Minerals" includes gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable, and nonfissionable ores, colloidal

and other clay, steam and other geothermal resource, and any other substance defined as a mineral by the law of this State.

COMMENT

The definitions in this section are broadly drafted to include all the various forms of minerals and mineral interests. This includes both fugacious and nonfugacious, as well as organic and inorganic, minerals. The Act does not distinguish among minerals based on their character, but treats all minerals the same.

The reference to liens in paragraph (1) includes both contractual and noncontractual, voluntary and involuntary, liens on minerals and mineral interests. It should be noted that the duration of a lien may be subject to general laws governing liens. For example, a lien that by state law has a duration of 10 years may not be given a life of 20 years simply by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice), just as a mineral lease which by its own terms has a duration of five years is not extended by recordation of a notice of intent to preserve the lease. Likewise, if state law requires specific filings, recordings, or other acts for enforceability of a lien, those acts must be complied with even though the lien is not dormant within the meaning of this Act. Conversely, an instrument that creates a security interest which, by its terms, endures more than 20 years, cannot avoid the effect of the 20-year statute. See Section 4(c) (termination of dormant mineral interest).

The definition of "minerals" in paragraph (2) is inclusive and not exclusive. "Coal" and other solid hydrocarbons within the meaning of paragraph (2) includes lignite, leonardite, and other grades of coal. This Act is not intended to affect water law but is intended to affect minerals dissolved or suspended in water. See Section 3 (exclusions).

While Section 2 defines the term "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

SECTION 3. EXCLUSIONS.

(a) This [Act] does not apply to:

(1) a mineral interest of the United States or an Indian tribe, except to the extent permitted by federal law; or

(2) a mineral interest of this State or an agency or political subdivision of this State, except to the extent permitted by state law other than this [Act].

(b) This [Act] does not affect water rights.

COMMENT

Public entities are excepted by this section because they have perpetual existence and can be located if it becomes necessary to terminate by negotiation a mineral interest held by the public entity. A jurisdiction enacting this statute should also exclude from its operation interests protected by statute, such as environmental or natural resource conservation or preservation statutes.

This Act does not affect mineral interests of Indian tribes, groups, or individuals (including corporations formed under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1600 et seq.) to the extent that the interests are protected against divestiture by superseding federal treaties or statutes.

Although this Act affects minerals dissolved or suspended in water, it is not intended to affect water law. See Comment to Section 2 (definitions).

While Section 2 (definitions) defines the terms "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

SECTION 4. TERMINATION OF DORMANT MINERAL INTEREST.

(a) The surface owner of real property subject to a mineral interest may maintain an action to terminate a dormant mineral interest. A mineral interest is dormant for the purpose of this [Act] if the interest is unused within the meaning of subsection (b) for a period of 20 or more years next preceding commencement of the action and has not been preserved pursuant to Section 5. The action must be in the nature of and requires

the same notice as is required in an action to quiet title. The action may be maintained whether or not the owner of the mineral interest or the owner's whereabouts is known or unknown. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the 20-year period.

(b) For the purpose of this section, any of the following actions taken by or under authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the entire mineral interest:

(1) Active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development, but not including injection of substances for purposes of disposal or storage. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations.

(2) Payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest.

(3) Recordation of an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, leases, or divides the interest. Recordation of an instrument constitutes use of (i) any recorded interest owned by any person in any mineral that is the subject of the instrument,

and (ii) any recorded mineral interest in the property owned by any party to the instrument.

(4) Recordation of a judgment or decree that makes specific reference to the mineral interest.

(c) This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to or the continued existence of the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

COMMENT

This section defines dormancy for the purpose of termination of a mineral interest pursuant to this Act. The dormancy period selected is 20 years -- a not uncommon period among the various jurisdictions.

Subsection (a) provides for a court proceeding in the nature of a quiet title action to terminate a dormant mineral interest. The device of a court proceeding ensures notice to the mineral owner personally or by publication as may be appropriate to the circumstances and a reliable determination of dormancy.

Subsection (b) ties the determination of dormancy to nonuse. Each paragraph of subsection (b) describes an activity that constitutes use of a mineral interest for purposes of the dormancy determination. In addition, a mineral interest is not dormant if a notice of intent to preserve the interest is recorded pursuant to Section 5 (preservation of mineral interest).

Paragraph (b)(1) provides for preservation of a mineral interest by active mineral operations. Repressuring may be considered an active mineral operation if made for the purpose of secondary recovery operations. A shut-in well is not an active mineral operation and therefore would not suffice to save the mineral interest from dormancy.

Paragraph (b)(1) is intended to preserve in its entirety a mineral interest where there are active operations directed toward any mineral that is included within the interest. Thus, if there are fractional owners of a mineral interest, activity by one owner is considered activity by all owners. Other interests owned by other persons in the minerals that are the object of

the operations are also preserved by the operations. For example, oil and gas operations by a fractional oil, gas, and coal owner would save not only the interests of other fractional oil and gas owners but also the interests of oil and gas lessees and royalty owners holding under either the oil and gas owner or any fractional owner, as well as the interests of holders of any other mineral interest in the oil and gas that is the object of the operations. The oil and gas operations suffice to save the coal interest of the oil, gas, and coal owner, as well as other minerals included in any of the affected mineral interests, not just the interest in oil and gas that is the subject of the particular operations. This is the case regardless whether the mineral interest was acquired in one instrument or by several instruments. However, oil and gas operations by a fractional oil, gas, and coal owner would not save the mineral interest of a fractional coal owner if the interest does not include oil and gas.

Under paragraph (b)(2), taxes must be actually paid within the preceding 20 years to suffice as a qualifying use of the mineral interest.

Paragraph (b)(3) is intended to cover any recorded instrument evidencing an intention to own or affect an interest in the minerals, including a recorded oil, gas, or mineral lease, regardless whether such a lease is recognized as an interest in land in the particular jurisdiction.

Under paragraph (b)(3), recordation has the effect of preserving not only the interests of the parties to the instrument in the minerals that are the subject of the instrument, but also the recorded interests of nonparties in the subject minerals, as well as other recorded interests of the parties in other minerals in the same property. Thus, recordation of an oil and gas lease between a fractional owner and lessee preserves the interest in oil and gas not only of the fractional owner but also of the co-owners; moreover, the recordation preserves the interest of the fractional owner in other minerals that are not the subject of the lease, whether the other minerals were acquired by the same instrument by which the oil and gas interest was acquired or by a separate instrument.

Recordation of a judgment or decree under paragraph (b)(4) includes entry or recordation in a judgment book in a jurisdiction where such an entry or recordation becomes part of the property records. The judgment or decree must make specific reference to the mineral interest in order to preserve it. Thus, a general judgment lien or other recordation of civil process such as an attachment or sheriff's deed of a nonspecific nature would not constitute use of the mineral interest within the meaning of paragraph (b)(4).

Subsection (c) is intended to preclude a mineral owner from evading the purpose of this Act by contracting for a very long or indefinite duration of the mineral interest. A lien on minerals having a 30-year duration, for example, would be subject to termination after 20 years under this Act if there were no further activities involving the minerals or mineral interest. A person seeking to keep the lien for its full 30-year duration could do so by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice). It should be noted that recordation of a notice of intent to preserve the lien would not extend the lien beyond the date upon which it terminates by its own terms.

SECTION 5. PRESERVATION OF MINERAL INTEREST BY NOTICE.

(a) An owner of a mineral interest may record at any time a notice of intent to preserve the mineral interest or a part thereof. The mineral interest is preserved in each county in which the notice is recorded. A mineral interest is not dormant if the notice is recorded within 20 years next preceding commencement of the action to terminate the mineral interest or pursuant to Section 6 after commencement of the action.

(b) The notice may be executed by an owner of the mineral interest or by another person acting on behalf of the owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf or whose identity cannot be established or is uncertain at the time of execution of the notice. The notice may be executed by or on behalf of a co-owner for the benefit of any or all co-owners or by or on behalf of an owner for the benefit of any or all persons claiming under the owner or persons under whom the owner claims.

(c) The notice must contain the name of the owner of the mineral interest or the co-owners or other persons for whom the

mineral interest is to be preserved or, if the identity of the owner cannot be established or is uncertain, the name of the class of which the owner is a member, and must identify the mineral interest or part thereof to be preserved by one of the following means:

(1) A reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the interest or of the judgment or decree that confirms the interest.

(2) A legal description of the mineral interest. [If the owner of a mineral interest claims the mineral interest under an instrument that is not of record or claims under a recorded instrument that does not specifically identify that owner, a legal description is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims. In such a case, the record of the notice of intent to preserve the mineral interest must be indexed under the name of the record owner as well as under the name of the owner of the mineral interest.]

(3) A reference generally and without specificity to any or all mineral interests of the owner in any real property situated in the county. The reference is not effective to preserve a particular mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the interest, (i) a previously recorded instrument that creates, reserves, or otherwise evidences that interest or (ii) a judgment or decree that confirms that interest.

COMMENT

[illegible]tion is broadly drawn to permit a mineral owner to [illegible] his or her own interest but also any or all [illegible]. For example, the mineral owner may share [illegible] one or more other persons. This section permits [illegible] the mineral owner to preserve the interests [illegible] the co-owners by specifying the interests to be [illegible]wise, the mineral interest being preserved may [illegible] overriding royalty or sublease or executive [illegible] situation, the mineral owner may elect also to [illegible] or all of the interests subject to it, by specifying [illegible] in the notice of intent to preserve. The mineral 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 8. 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 C

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CARROLL COMMON PLEAS
WILLIAM R. WOHLWEND

IN THE COURT OF COMMON PLEAS
FOR CARROLL COUNTY

RONALD EDWARD DAHLGREN, et al.	)	
	)	Case No. 13CVH27445
Plaintiffs	)	
	)	Judge Richard M. Markus
v.	)	(Serving By Assignment)
	)	
BROWN FARM PROPERTIES, L.L.C. et al.	)	NUNC PRO TUNC
	)	CORRECTED OPINION
Defendants	)	AND JUDGMENT
	)	

On November 6, 2013, this Court inadvertently filed a previous draft of its Final Opinion and Judgment for this case. Pursuant to Civ. R. 60(A), this Court now strikes that document and replaces it with the Final Opinion and Judgment that it files today.

Richard M. Markus

Judge Richard M. Markus, Retired Judge Recalled to Service pursuant to Ohio Constitution, Art. IV, §6(C) and R.C. 141.16 and assigned to the Carroll County Common Pleas Court for this matter.

THE CLERK SHALL MAIL TIME STAMPED COPIES OF THIS FINAL OPINION AND JUDGMENT TO ALL COUNSEL AND THE ASSIGNED VISITING JUDGE

FILED
2013 NOV 13 AM 9:53
CARROLL COMMON PLEAS
WILLIAM R. WOHLWEND

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BROWN FARM PROPERTIES, L.L.C. et al.	)	FINAL OPINION AND
	)	JUDGMENT
Defendants	)	

FACTUAL AND PROCEDURAL HISTORY

On February 11, 2013, eight plaintiffs filed this case to quiet title for oil and gas rights they inherited from their mother or grandmother. Three defendant landowners contend that Ohio's Dormant Mineral Act deemed that the family abandoned those rights which then merged into the landowners' surface titles. The fourth defendant is a developer that holds the plaintiffs' leases for those oil and gas rights. Each defendant filed an Answer with a Crossclaim or a Counterclaim. The defendant developer supported the plaintiffs' claims.

Ohio adopted its Dormant Mineral Act as part of its Marketable Title Act on March 22, 1989, and added significant procedural provisions by an amendment on June 30, 2006. The parties agree that either the 1989 version or the 2006 version of Ohio's Dormant Minerals Act governs their dispute. No one asserted or sought to enforce an abandonment claim while the 1989 version was in effect. This Court concludes that the 2006 version controls and denies the landowners' abandonment claim, so the plaintiffs retain those rights.

On August 5, 2013, all parties jointly filed "Stipulations of Fact" which provide:

> Certain parties have recently amended their pleadings so that the only claims remaining in this action by any party sound in declaratory relief or quiet title and involve the issue of whether the Defendants have ownership of the oil and gas minerals underlying their respective properties. The parties agree and stipulate to the following facts and request that the issue of the ownership of the subject minerals be finally decided by the Court based upon the stipulated facts without the need of any trial.

Those factual stipulations provide the basis for this Court's decision.

On September 16, 1949, Carl E. Dahlgren and Leora Perry Dahlgren (husband and wife) conveyed 225.59 acres in Carroll County to William Lewis Dunlap, with a deed that provided:

> Excepting and reserving to Leora Perry Dahlgren all the oil and gas underlying said premises together with rights of way for pipe lines and ingress and egress to any drilling operations thereon and for the removal of said minerals from said property.

By that deed, the Dahlgrens severed the subsurface title for oil and gas from the surface title for that property. See *Gill v. Fletcher* (1906), 74 Ohio St. 295, paragraphs 1-3 of the syllabus.

Leora Dahlgren did not convey her retained mineral rights to anyone before her death on March 13, 1977. Her will and resulting probate court orders vested her mineral rights in her three children. They are the lawful successors to Leora Dahlgren's reserved rights, pursuant to probate court Certificates of Transfer which her daughter mistakenly filed with the Carroll County Probate Court rather than the Carroll County Recorder's Office. The Carroll County Probate Court issued a Certificate of Transfer for those oil and gas rights to those children on May 3, 1978.

Those reserved rights were not the subject of any title transaction that anyone recorded in

the Carroll County Recorder's Office between March 22, 1969 (twenty years before the effective date for the 1989 version of the Dormant Minerals Act) and September 17, 2009 (the date when one of the plaintiffs first recorded an oil and gas lease to a developer).

There was no drilling at, production from, or storage of oil or gas on that property or any property pooled with it before July 5, 2012. The severed oil and gas title was not separated from the surface title on tax lists for the Carroll County Auditor or the Carroll County Treasurer. No one filed a claim in the Carroll County Recorder's Office for oil or gas ownership on the relevant properties before one of the plaintiffs filed that claim on April 12, 2012.

The three defendant landowners are the lawful successors to William Dunlap's rights for the relevant properties, pursuant to duly recorded chains of title. In each of their chains of title the deeds are expressly subject to the oil and gas reservation set forth in the deed recorded at Volume 121, Page 300, which is the 1949 Dahlgren deed.

Two of the three landowner defendants first acquired their interests in the relevant properties after the 2006 amendment to Ohio's Dormant Mineral Act, so they did not and could not have asserted any abandonment claim before that amendment. The remaining landowner defendant acquired his interest in relevant property by deeds in 1999 and 2002.

None of the defendant landowners nor any of their respective predecessors in interests ever asserted any abandonment for the relevant mineral rights in any court proceeding before these landowner defendants filed their pleadings in this case.

In 2009, each of the plaintiffs leased their oil and gas interests for the relevant properties to a developer who recorded those leases in the Carroll County Recorder's Office in 2009 or 2010, and who later assigned those leases to the defendant developer.

In March of 2012, one of the defendant landowners sent the plaintiffs and the leaseholder developer a "Notice of Owner's Intent to Declare the Abandonment of Mineral Interest (Ohio Revised Code 5301.56)" for part of the relevant properties. There is no evidence that before then any of the defendant landowners or any of their predecessors in interest ever asserted to any of the plaintiffs or to any public official that any owner of those mineral interests had abandoned them.

Within 60 days after the landowners sent them a "Notice of Owner's Intent to Declare the Abandonment of Mineral Interest," five of the eight plaintiffs filed claims for their relevant mineral interests in the Carroll County Recorders' Office.

On September 3, 2013, the plaintiffs filed their Brief in Support of Request for Judgment. On October 18, 2013, the three defendant landowners filed their Motion for Judgment and Supporting Brief, and the defendant developer filed its Responsive Brief in Support of Plaintiffs' Request for Judgment. On November 1, 2013, the plaintiffs filed their Responsive Brief. The case is now ripe for this Court's decision.

THE UNDERLYING MARKETABLE TITLE ACT

In 1961 Ohio joined a widespread title reform movement when it enacted its Marketable Title Act as R.C. 5301.47-5301.56. In the Prefatory Note for a later proposed Uniform Marketable Title Act, the National Conference of Commissioners on Uniform State Laws explained the general purpose for those laws:

> The basic idea of the Marketable Title Act is to codify the venerable New England tradition of conducting title searches back not to the original creation of title, but for a reasonable period only. The Model Act is designed to assure a title searcher who has found a chain of title starting with a document at least 30 years old that he need search no further back in the record. Provisions for rerecording and for protection of persons using or occupying land are designed to prevent the

> possibility of fraudulent use of the marketable record title rules to oust true owners of property.
>
> The most controversial issue with respect to marketable title legislation is whether or not an exception should be made for mineral rights. This [Uniform] Act follows the Model Act in making no such exception. Any major exception largely defeats the purpose of marketable title legislation, by forcing the title examiner to search back for an indefinite period for claims falling under the exception.

As originally enacted, Ohio's Marketable Title Act governed all interests in land including severed mineral interests. It relies on a chain of title with a "root" record no more than 40 years old. It included R.C. 5301.47 ("Definitions"), 5301.48 ("Unbroken chain of recorded title"), 5301.49 ("Record marketable title; exceptions"); 5301.50 ("Prior interests"), 5301.51 ("Preservation of interest"); 5301.52 ("Contents of notice"); 5301.53 ("Certain rights not barred"); 5301.54 ("Effect of changes in law"), 5301.55 ("Liberal construction"), and R.C. 5301.56 ("Three year extension"). Between 1963 and 1989, the legislature adopted various amendments to those sections, which are not relevant here.

Effective March 22, 1989, the legislature repealed and rewrote R.C. 5301.56 to create Ohio's Dormant Minerals Act. Effective June 30, 2006, the legislature amended R.C. 5301.56 by adding procedures for a surface landowner to claim that a mineral rights holder has abandoned those rights and for the mineral rights holder to challenge that claim.

In their context, it is clear that the legislature has always intended that the Marketable Title Act (R.C. 4301.47-5301.55) and the Dormant Minerals Act (R.C. 5301.56) are integrated title laws which should be read together whenever they were in effect.

Thus, R.C. 5301.47 provides definitions that apply to R.C. 5301.47 to 5301.56 inclusive; and R.C. 5301.54 restricts the effect of all those sections on other statutory provisions. More

significantly, R.C. 5301.55 directs:

> Sections 5301.47 to 5301.56, inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 5301.48 of the Revised Code, subject only to such limitations as appear in section 5301.49 of the Revised Code.

The purpose of the Marketable Title Act is to, "simplify and facilitate land title transactions by allowing persons to rely on a record chain of title." *Collins v. Moran*, 2004-Ohio-1381 (7th Dist.), ¶20, quoting *Semachko v. Hopko* (1973), 35 Ohio App.2d 205; see also *Pinkney v. Southwick Investments, L.L.C.*, 2005-Ohio-4167 (8th Dist.) at ¶31.

Both the Marketable Title Act and its Dormant Minerals Act component support reliance on public documents rather than private communications for title transfers. For some purposes, the Marketable title Act permits reliance on public documents outside the county recorder's office.

R.C. 5301.47 defines reliable public records that document title interests and transfers:

> As used in sections 5301.47 to 5301.56, inclusive of the Revised Code:
>
> * * * *
>
> (B) "Records" includes probate and other official public records, as well as records in the office of the recorder of the county in which all or part of the land is situate.
>
> (C) "Recording," when applied to the official public records of the probate or other court, includes filing.
>
> * * * *
>
> (F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

R.C. 5301.48 defines the holder of an "unbroken chain of title" for an interest in real property and therefore a "marketable title" for that interest to include (a) a person for whom those public records show an unbroken chain of title for that interest which extends back for at least forty years; or (b) a person for whom those public records show an unbroken chain of title for an interest that a document created within the preceding forty years. If the documents in that chain of title specifically identify a recorded document that created an interest in that property, the act preserves that interest. R.C. 5301.49(A). All interests created before an unbroken chain of title that extends back at least forty years which are not otherwise preserved by the act are "null and void" [R.C. 5301.50] and "extinguished" [R.C. 5301.49(D)].

Subject to specified exceptions, the holder of an interest with an unbroken chain of title for at least forty years need not demonstrate (a) the creation of that interest more than forty years earlier, or (b) the termination of any purported limitation on that interest more than forty years earlier. The forty years are measured back from "the time the marketability is being determined" [R.C. 5301.47(E) and R.C. 5301.51(B)]; or "is to be determined" [R.C. 5301.48]

R.C. 5301.51 and 5301.52 permit the holder to preserve an otherwise unprotected interest by recording a prescribed notice. Before the 2006 amendment that created the Dormant Minerals Act, the legislature repeatedly revised R.C. 5301.56 to provide additional three year grace periods during which the prescribed notice could preserve that interest, which it ultimately extended to December 31, 1976 [more than 15 years after the act's effective date].

TWO VERSIONS OF THE DORMANT MINERALS ACT

Following the adoption of Marketable Title Acts, many states added special rules for the termination of mineral rights, including temporary lease interests and permanent fee simple

ownership. Here again, the National Conference of Commissioners on Uniform State Laws explains that history in the Prefatory Note for its Uniform Dormant Interests Act, which the Conference approved in 1986 and the A.B.A. approved on February 16, 1987:

> Transactions involving mineral interests may take several different forms. A *lease* permits the lessee to enter the land and remove minerals for a specified period of time; . . . . A fee title or other interests in minerals may be created by *severance*.
>
> A severance of mineral interests occurs where all or a portion of mineral interests are owned apart from the ownership of the surface. A severance may occur in one of two ways. First, a surface owner who also owns a mineral interest may *reserve* all or a portion of the mineral interest upon transfer of the surface. In the deed conveying the surface of the land to the buyer, the seller reserves a mineral interest in some or all of the minerals beneath the surface. . . .
>
> Second, a person who owns both the surface of the land and a mineral interest may *convey* all or a portion of the mineral interest to another person. . . . . Severed mineral interests may be owned in the same manner as the surface of the land, that is, in fee simple.
>
> Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown. Under the common law, a fee simple interest in land cannot be extinguished or abandoned by nonuse, and it is not necessary to rerecord or to maintain current property records in order to preserve an ownership interest in minerals. Thus, it is possible that the only document appearing in the public record may be the document initially creating the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned about an apparently valueless mineral interest and may not even be aware of it; hence their interests may not appear of record. If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.
>
> * * * *

An extensive body of legal literature demonstrates the need for an effective means

of clearing land titles of dormant mineral interests. Public policy favors subjecting dormant mineral interests to termination, and legislative intervention in the continuing conflict between mineral and surface interests may be necessary in some jurisdictions. More than one-fourth of the states have now enacted special statutes to enable termination of dormant mineral interests, and some of the nearly two dozen states that now have marketable title acts apply the acts to mineral interests.

* * * *

Nonuse. A number of statutes have made *nonuse* of a mineral interest for a term of years, e.g., 20 years, the basis for termination of the mineral interest. Such a statute in effect makes nonuse for the prescribed period conclusive evidence of intent to abandon. The nonuse scheme has advantages and disadvantages. Its major attraction is that it enables extinguishment of dormant interests solely on the basis of nonuse; proof of intent to abandon is unnecessary. Its major drawbacks are that it requires resort to facts outside the record and it requires a judicial proceeding to determine the fact of nonuse. It also precludes long-term holding of mineral rights for such purposes as future development, future price increases that will make development feasible, or assurance by a conservation organization or subdivider that the mineral rights will not be exploited.

The nonuse concept should be incorporated in any dormant mineral statute. . . . .

Recording. Another approach found in several jurisdictions, as well as in USLTA [Uniform Simplification of Land Transactions Act], is based on passage of time without recording. Under this approach a mineral interest is extinguished a certain period of time after it is recorded, for example 30 years, unless during that period a notice of intent to preserve the interest is recorded. The virtues of this model are that it enables clearing of title on the basis of facts in the record and without resort to judicial action, and it keeps the record mineral ownership current. Its major disadvantages are that it permits an inactive owner to preserve the mineral rights on a purely speculative basis and to hold out for nuisance money indefinitely, and it creates the possibility that actively producing mineral rights will be lost through inadvertent failure to record a notice of intent to preserve the mineral rights. The recording concept is useful, however, and should be a key element in any dormant mineral legislation.

* * * *

Constitutionality. Constitutional issues have been raised concerning retroactive application of a dormant mineral statute to existing mineral interests. The leading case, *Texaco v. Short*, 454 U.S. 516 (1982), held the Indiana dormant mineral statute constitutional by a narrow 5-4 margin. The Indiana statute provides that a

mineral right lapses if it is not used for a period of 20 years and no reservation of rights is recorded during that time. No prior notice to the mineral owner is required. The statute includes a two-year grace period after enactment during which notices of preservation of the mineral interest may be recorded.

A combination nonuse/recording scheme thus satisfies federal due process requirements. Whether such a scheme would satisfy the due process requirements of the various states is not clear. Comparable dormant mineral legislation has been voided by several state courts for failure to satisfy state due process requirements. Uniform legislation, if it is to succeed in all states where it is enacted, will need to be clearly constitutional under various state standards. This means that some sort of prior notice to the mineral owner is most likely necessary.

For Ohio, both the 1989 version and the 2006 version of the Dormant Minerals Act create statutory conditions when the owner of subsurface minerals rights is "deemed" to have abandoned those rights. Both versions designate those conditions by excluding circumstances when the owner is not deemed to have abandoned them. In the 1989 version, R.C. 5301.56(B)(1) designated conditions that denied or disqualified a statutory claim that a mineral rights owner abandoned those rights:

(B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface, if none of the following applies:

(a) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code. However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that are not in coal may be deemed abandoned and vest in the owner of the surface of the lands subject to the interest.

(b) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(c) Within the preceding twenty years, one or more of the following has occurred:

(i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which

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, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(iii) The mineral interest has been used in underground gas storage operations by the holder.

(iv) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(v) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section.

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

The 1989 version provided a three year grace period after its effective date for any of the disqualifying conditions (including the filing of a mineral rights claim) to preclude abandonment. R.C. 5301.56(B)(2).

The 2006 version designates the same conditions that deny or disqualify a statutory claim that the owner of subsurface mineral rights abandoned those rights. The critical difference between the 1989 version and the 2006 amended version of the Dormant Minerals Act is the presence in the 2006 version and the absence in the 1989 version of any express provision for its

implementation.

For the 2006 version, the Act provides procedures for a surface owner to regain severed subsurface mineral rights in the absence of those specified circumstances. To terminate any subsurface rights the surface owner must notify each subsurface holder that he or she intends to declare that interest abandoned [R.C. 5301.56 (E)(1)] and within thirty days thereafter must file an affidavit of abandonment with the applicable county recorder [R.C. 5301.56 (E)(2)]. The notice must identify the allegedly abandoned subsurface rights and assert the statutorily defined inactivity [R.C. 5301.56 (F)]. The affidavit of abandonment must confirm the notice and allege the statutorily defined abandonment [R.C. 5301.56 (G)].

The 2006 version provides procedures for the subsurface owner to oppose the surface owner's notice by filing within sixty days thereafter a claim to preserve those rights [R.C. 5301.56 (H)(1)(a)] or an affidavit that disputes the statutorily defined abandonment. [R.C. 5301.56 (H)(1)(b)] If the subsurface holder fails to file either of those documents within that time, the recorder shall memorialize those events and thereby vest the surface owner with that subsurface holder's rights. [R.C. 5301.56 (H)(2)]

By contrast, the 1989 version of Ohio Dormant Mineral Act did not include any provision for the surface owner to notify the holder of any subsurface mineral rights about an abandonment claim before or after the alleged abandonment, or to file anything with the country recorder or anywhere else. It provided no procedure for the holder of subsurface rights to contest their alleged abandonment, and no procedure for anyone to record the abandonment anywhere.

The 2006 version for R.C. 5301.56(B)(3) permits the surface owner to send the holder of any subsurface mineral rights an abandonment notice whenever none of the statutorily defined

disqualifying events occurred within twenty years preceding that notice. The 1989 version of R.C. 5301.56(B)(1)(c) provided for its application unless: "Within the preceding twenty years one or more of the following has occurred," without specifying the event from which it measures the preceding twenty years. In lieu of the 1989 version's three year grace period after the statute's effective date for the mineral rights holder to establish h any of the disqualifying events (including a filed claim), the 2006 version permits the mineral rights holder to file that claim within 60 days after the surface owner notifies him of the claimed abandonment.

Nothing in either the 1989 version or the 2006 version denies that the Marketable Title Act (R.C. 5301.47-5301.55) remains applicable to mineral rights, at least to the extent that the Dormant Minerals Act does not expressly provide differently.

In this case, the surface landowners assert (a) that the 1989 version established the claimed abandonment automatically when none of the disqualifying events occurred within twenty years preceding its effective date or the three year grace period; and (b) that the abandonment was complete before the 2006 amendment required different procedures to assert or confirm it.

By contrast, the holders of the reserved mineral rights and the developer who holds their leases contend (a) that the 2006 version controls the abandonment procedures here because the landowners first asserted any abandonment after 2006, (b) that the landowners have not complied with the procedures required by the 2006 amendment because they never filed the required abandonment affidavit which permitted them to contest that claim, and (c) that the 2006 version precludes abandonment because disqualifying events occurred after 2006.

Counsel have not cited any appellate decision that decides whether or when to apply the

1989 version of R.C. 5301.56 for an abandonment claim filed after the 2006 amendment. But see *Dodd v. Croskey*, 7th Dist. No. 12HA6, 2013-Ohio-4257 (Sept. 23, 2013)(applying the 2006 version to events that arose before its enactment without discussion of that choice). This court has found none.

After careful consideration, this Court agrees with the holders of the subsurface mineral rights. Without any contrary statutory language, this Court concludes that the 1989 version impliedly required implementation before it finally settled the parties' rights, at least by a recorded abandonment claim that permitted the adverse party to challenge its validity, if not by an appropriate court proceeding to confirm that abandonment. Circumstances that support a claimed right do not by themselves provide a completed remedy. Absent any implementation or enforcement of claimed abandonment rights before the 2006 amendment, the landowner defendants must comply with the procedures which the 2006 amendment requires.

First, the surface owners' interpretation of the 1989 version conflicts with "the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 5301.48 of the Revised Code." R.C. 5301.55. The county recorder's records would not reveal some disqualifying conditions that prevent statutory abandonment. See R.C. 5301.56(B)(3)(c)("The mineral interest has been used in underground gas storage operations by the holder"); 5301.56(B)(3)(f)("In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located"). A title examiner might well find the recorded Dahlgren deed with its reservation of mineral rights, without any record that shows whether the Dahlgrens or their

descendents preserved or abandoned those rights.

Second, interested parties could dispute compliance with disqualifying conditions, without filing anything in the recorder's office. Hence, reliance on the recorder's records to establish or avoid abandonment requires at least a recorded document if not judicial confirmation.

Third, "[f]orfeitures are not favored by the law. The law requires that we favor individual property rights when interpreting forfeiture statutes." *Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917* (1992), 65 Ohio St.3d 532, 534, quoted at *Sogg v. Zurz*, 2009-Ohio-1526, 121 Ohio St.3d 449, ¶9; see also *State v. Lilliock* (1982), 70 Ohio St.2d 23, 25; *Dodd v. Croskey, supra,* at ¶35.

Fourth, the Dormant Minerals Act employs considerably less conclusive language than the Marketable Title Act to terminate title interests. The Marketable Title Act establishes that the unprotected rights are "null and void" or "extinguished," while the Dormant Minerals Act provides that they are "deemed abandoned." Compare R.C. 5301.50 and R.C. 5301.49(D) with R.C. 5301.56(B)(1). The less conclusive language in the Dormant Minerals Act strongly suggests that it provides standards but does not resolve the issue. Compare *Blatt v. Hamilton County Bd. of Revision*, 2009-Ohio-5260, 123 Ohio St.3d , ¶22; *In Re Washington*, 2004-Ohio-6981, 10th Dist. No. 04AP429, ¶23.

Fifth, the landowners' interpretation of these provisions creates the anomaly that mineral rights are deemed abandoned when the owner has a statutorily preserved record marketable title. In this case, for example, the plaintiffs have a record marketable record title from the probate court's Certificate of Transfer less than forty years earlier, pursuant to R.C. 5301.47(A) and R.C.

5301.48; which the defendant landowners' own deeds have preserved pursuant to R.C. 5301.49 and R.C. 5301.51. See See *Toth v. Berks Title Ins. Co.* (1983), 6 Ohio St.3d 338, syllabus; *Heifner v. Bradford* (1983), 4 Ohio St. 3d 49, syllabus.

Sixth, this Court doubts that statutory abandonment is constitutionally enforceable without giving the adverse party an opportunity to dispute the relevant claims. In *Texaco v. Short* (1982), 54 U.S. 516, the federal Supreme Court ruled that Indiana's Dormant Minerals Act satisfied federal constitutional protections when a mineral owner lost his rights in specified circumstances without giving that owner advance notice. But the same opinion stated at 533-34:

> The question then presented is whether, given that knowledge, appellants had a constitutional right to be advised -- presumably by the surface owner -- that their 20-year period of nonuse was about to expire.
>
> In answering this question, it is essential to recognize the difference between the self-executing feature of the statute and a subsequent judicial determination that a particular lapse did, in fact, occur. As noted by appellants, no specific notice need be given of an impending lapse. . . . It is undisputed that, before judgment could be entered in a quiet title action that would determine conclusively that a mineral interest has reverted to the surface owner, the full procedural protections of the Due Process Clause -- including notice reasonably calculated to reach all interested parties and a prior opportunity to be heard -- must be provided. (underlining emphasis added)

Without advance notice and an opportunity to be heard, statutory abandonment may violate Art. I, Sec. 19 of the Ohio Constitution ("Private property shall ever be held inviolate"), even if it does not violate federal constitutional provisions. However, we need not determine whether statutory abandonment without prior notice satisfies that provision of the Ohio Constitution where other considerations reach the same result without addressing that concern.

In any event, Due Process requirements in both the federal and state constitutions unquestionably mandate notice and an opportunity to respond before a dispute about those rights

can be resolved. Courts should construe statutes in the manner that best confirms their constitutionality. *Mahoning Education Association of Developmental Disabilities v. State Employment Relations Board*, 2013-Ohio-4654, ¶19; *State v. Carnes*, 2007-Ohio-604, ¶ (7th Dist.)

For the purposes of this decision, the court accepts the defendant landowners' argument that the 1989 version of Ohio's Dormant Mineral Act deemed the plaintiffs' mineral rights abandoned if none of the disqualifying conditions existed within twenty years before March 22, 1989 (the act's effective date) or before March 22, 1992 (the statutory grace period). See *Riddel v. Layman*, 5th Dist. No. 94CA114 (July 10, 1995). However, at most the absence of those conditions created an inchoate right; it could not and did not transfer ownership without judicial confirmation or at least an opportunity for the disowned party to contest their absence or the effect of their absence.

The plaintiffs and the lease holder provide legislative history for the 2006 amendment, which seemingly demonstrates that the amendment served to remove (a) an ambiguity about the date from which the law measure the twenty preceding years, and (b) constitutional concerns about abandonment of property rights without notice. These are procedural changes, not a removal of substantive rights that requires greater scrutiny. Courts can and should apply whatever current procedures govern the pending dispute. *Landgraf v. USI Film Products* (1994), 511 U.S. 244, 273; *Combs v. Comm'r of Social Security* (2006), 459 F.3d 640, 647 (6th Cir.); *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 107.

Indeed, the mineral rights owners might equally complain that both the Marketable Title Act and the Dormant Minerals Act deprived them of vested common law ownership rights on the

arbitrary and unsupportable assumption that their failure to develop those minerals meant that they deliberately abandoned them forever. Could the legislature deem that a surface property owner abandoned his title if he failed to develop an empty lot for some arbitrary interval? The federal Supreme Court's decision in *Texaco v. Short, supra*, may answer: "Yes." But the property owner must have an opportunity to dispute that result.

NO ABANDONMENT UNDER THE CURRENT LAW

Each of the plaintiffs leased his or her oil and gas interests for the relevant properties to a developer who recorded those leases in the Carroll County Recorder's Office in 2009 or 2010. Those recorded leases are "title transactions" that preclude any deemed abandonment for the plaintiffs' mineral interests pursuant to the 2006 version of R.C. 5301.56(B)(3)(a).

Within 60 days after a landowner sent them a "Notice of Owner's Intent to Declare the Abandonment of Mineral Interest," five of the eight plaintiffs filed statutorily sufficient claims for their relevant mineral interests in the Carroll County Recorders' Office. Those recorded claims preclude any deemed abandonment for their interests and the interests of all the remaining plaintiffs pursuant to the 2006 version of R.C. 5301.56(B)(3)(e) and 5301.56(C)(2).

Two of the landowner defendants never complied with R.C. 5301.56(E)(1) by sending or publishing notice to "each holder" of the allegedly abandoned mineral interests. None of the defendant landowners ever complied with R.C. 5301.56(E)(2) by filing an "affidavit of abandonment" in the Carroll County Recorder's office. Without those notices or affidavits, those landowners failed to invoke the abandonment procedures which the 2006 version requires to assert an abandonment claim.

FINAL JUDGMENT

In this case, the following plaintiffs hold mineral rights for the relevant properties: Ronald Edward Dahlgren, Elsa Anne Lyle, Helen Mary Dahlgren, Martha Perry Dahlgren, Cynthia Ann Crowder, Daniel Carl Dahlgren, Charles Stephen Dahlgren, and Diane Ellen Pullins. The parties have not asked this Court to determine which plaintiff owns any allocated interest in those rights for each relevant property, and this judgment shall not serve that purpose.

In this case, the following defendants own the relevant properties: Brown Farm Properties, LLC, Brian L. Wagner, and Thomas Beadnell.

In this case, Chesapeake Exploration, LLC is the current holder of assigned leases and the defendant developer for the plaintiffs' oil and gas ownership on the relevant properties.

This Court determines and declares that each of the eight plaintiffs retains his or her respective interest in oil and gas located on or recovered from the properties designated in the Complaint and its attachments.

This Court quiets ownership and title to those mineral rights in the plaintiffs and not in the surface landowner defendants.

This Court determines and declares that each of the landowner defendants retains his or its surface ownership for those properties.

This Court determines and declares that the defendant developer retains its rights as the holder of recorded and assigned leases to those oil and gas rights.

Within sixty days after this Court files its judgment with the Clerk of the Carroll County Common Pleas Court and any subsequent appeals from that judgment are exhausted, each of the plaintiffs or their counsel shall file a copy of this Final Opinion and Judgment in the Carroll

County Recorder's Office, together with a claim that satisfies R.C. 5301.56(C)(1).

The plaintiffs shall recover the costs of this case, not including attorney fees or litigation expenses.

Richard M. Markus

Judge Richard M. Markus, Retired Judge Recalled to Service pursuant to Ohio Constitution, Art. IV, §6(C) and R.C. 141.16 and assigned to the Carroll County Common Pleas Court for this matter.

THE CLERK SHALL MAIL TIME STAMPED COPIES OF THIS FINAL OPINION AND JUDGMENT TO ALL COUNSEL AND THE ASSIGNED VISITING JUDGE

EXHIBIT D

Ohio House of Representatives

John P. Hagan
State Representative
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Committees
Public Utilities and Energy, *Chair*

Ways and Means

Financial Institutions, Real Estate & Securities

Economic Development and Environment

Appointments
Power Siting Board

Transportation Improvement District Board of Trustees of Stark County

Ohio Steel Industry Advisory Council

COMMITTEE NOTICE
HOUSE PUBLIC UTILITIES AND ENERGY COMMITTEE
REP. JOHN P. HAGAN – CHAIRMAN

Date: **Wednesday, June 15th, 2005**
Time: **9:30 am**
Room: **Statehouse Room 017**

REVISION

BILLS SCHEDULED TO BE HEARD

Bill	Sponsor	Title	Status
HB 288	Wagoner	Abandoned Mineral Rights/ Oil and Gas Comm.	1st Hearing Sponsor
HB 251	Uecker	State Facilities-Efficient Energy Use	2nd Hearing Prop/Opp/IP
HB 85	Blessing	Do Not Aggregate	2nd Hearing Prop/Opp/IP

**** All witnesses please provide the committee with 30 copies of written testimony 24 hours prior to the committee hearing.**

CC:
Committee Members
Speaker's Office
Nate Filler – Speaker's Office
Jodi AllAlen – Clerk's Office
Sonja Herd – Clerk's Office
Laura Clemens – Clerk's Office
All Interested Parties

Legislative Information Office
Statehouse Press Room
Mary Connor - LSC
Monica Piper – LSC
Ruhaiza Ridzwan - LSC Fiscal
Ellen Aiello - Minority Caucus
Michael Culp - Minority Chief of Staff

MINUTES OF THE MEETING OF THE PUBLIC UTILITIES & ENERGY COMMITTEE
June 15, 2005

The meeting of the House Public Utilities and Energy Committee convened at 09:36 a.m. in room 017

With a quorum present, Chairman Hagan moved to dispense with the reading of the minutes of June 1, 2005. With no objection, the minutes were accepted.

The Chairman called up House Bill 288 for the first hearing and Sponsor Testimony.

Representative Wagoner gave sponsor testimony for House Bill 288 and questions were asked by Representatives Garrison and Buehrer.

The Chairman called up House Bill 251 for the second hearing and proponent and opponent testimony.

Janine Migden Ostrander testified on behalf of the Ohio Consumers Council as a proponent of HB 251 and questions were asked by Representative Buehrer.

Kevin Schmidt testified on behalf of Public Policy Sources as a proponent of HB 251 and questions were asked by Representative Buehrer.

James Nargang testified on behalf of the Board of Reagents as an interested party of HB 251 and questions were asked by Representatives Daniels, Blessing and Stewart.

The Chairman called up House Bill 85 for the second hearing and proponent and opponent testimony.

Tom Froehle testified on behalf of Industrial Energy Users Ohio as a proponent of HB 85 and questions were asked by Representative Carmichael.

With no further business this concluded the meeting of the Public Utilities and Energy Committee. Chairman Hagan adjourned the meeting at 10:26.

John P. Hagan, Chairman

Steve Driehaus, Secretary

Mark D. Wagoner, Jr.
State Representative, 46th House District

HOUSE BILL 288
REPRESENTATIVE MARK WAGONER
SPONSOR TESTIMONY
BEFORE THE OHIO HOUSE PUBLIC UTILITIES COMMITTEE

Chairman Hagan and members of the House Public Utilities Committee, I thank you for the opportunity to present sponsor testimony on House Bill 288.

House Bill 288 seeks to update Ohio's mineral rights law. House Bill 288 contains two proposed amendments to Ohio's existing statutory scheme affecting energy production. The bill is designed, first, to address technical problems with Ohio's current Dormant Mineral Statute and, second, to resolve procedural problems with The Ohio Oil and Gas Commission. The General Assembly can take these two steps to help increase the availability of domestic energy supplies without adversely affecting the environment or state tax collections.

Turning first to the Dormant Mineral Statute, Ohio has had an active energy production industry since the mid 1800's. During this period, landowners in mineral producing areas have frequently severed the mineral rights in their land from the surface rights. Through the decades, ownership of the severed minerals has been transferred and factionalized through estates and business transfers. Today, those old severed mineral rights may be the key to new production sites, as advances in current technology and the high cost of energy make reworking old oil and gas fields possible.

The problem is that it may be difficult - if not impossible - to find the owners or in some cases the multiple partial interest owners of such old severed mineral rights. Twenty years ago, Ohio joined the majority of oil and gas producing states by passing a Dormant Mineral Statute that permitted the surface owner to reunite severed mineral rights with the surface estate if the mineral rights had been abandoned. Unfortunately, Ohio's Dormant Mineral Statute has seldom been used, in large measure because the statute did not clearly define when a mineral interest became abandoned and exactly how the process to reunite the mineral ownership with the surface ownership was to be accomplished.

House Bill 288 removes the ambiguity of the existing statute with a clear definition of when a mineral right is deemed abandoned. The mineral right will be deemed abandoned if there

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is both (1) no active use of the mineral rights and (2) a failure by the mineral right owner to file to preserve the inactive mineral right for future use for at least 20 years from the time a surface owner petitions to reunite the surface with the inactive mineral interest.

The first part of House Bill 288 is designed to fix perceived problems with the existing statutory provisions. The Bill will neither alter the balance between surface owner and mineral right owners, nor will the Bill change the environmental or conservation requirements to drill or produce in Ohio. Finally, the bill will not adversely affect tax revenues. In fact, if the bill has its intended results of bringing back old or marginal oil and gas fields to production, the bill should increase Ohio's collection of severance and ad valorem tax.

The second issue addressed in House Bill 288 deals with the administrative practices involved with the permitting and regulation of oil and gas wells in Ohio. Currently, an administrative appeal from a decision by the Chief of the Division of Mineral Resources Management in the Department of Natural Resources is to a body called the Ohio Oil and Gas Commission. The Commission has five (5) members and the current statute provides that no decision may be made without the concurrence of three members. The problem is that, in practice, it may be impossible to get three of the five Commissioners to even hear, much less decide, an appeal. Lack of a quorum can occur because of vacancies on the Commission, illness of a Commissioner or because a Commissioner has to recuse him or herself due to a conflict of interest. If a quorum of Commissioners cannot be assembled, or three votes secured, the appeal is stalled indefinitely.

A similar problem exists within our Courts and is addressed by appointing visiting judges. H.B. 288 applies the same technique by permitting the Chair of the Oil and Gas Commission to appoint visiting Commissioners from the pool of members who make up the oil and gas Technical Advisory Council. The Technical Advisory Council member go through the same screening and appointment process as the Oil and Gas Commissioners and have oil and gas experience and technical skills. Thus, drawing temporary members for the Oil and Gas Commission from the Technical Advisory Council will vest the Commission with the same skill set as the Commission's regular members and will allow the Commission to proceed to decide appeals which are now stalled.

In closing, I hear concerns about the availability and cost price of energy. Given the Ohio's national preeminence in manufacturing and its four month heating season, it is not surprising that Ohio ranks within the top ten states for energy consumption. What is less well

known is that Ohio is also among the top ten states for natural gas and oil production. In fact, almost 15% of the natural gas burned in Ohio's homes and factories is produced locally. House Bill 288 is a small step towards improving local production by streamline existing program and regulations to make them more efficient. It is step worth taking.

The Ohio State Bar Association has played an integral role in drafting and reviewing this legislation and supports it. I ask for your support to pass this bill too. Chairman Hagan and members of the committee, I thank you for your time and I would be happy to answer your questions at this time.

EXHIBIT E

Ohio Bill Analysis, 2006 H.B. 288

Ohio Final Bill Analysis, 2006 House Bill 288

2006
Ohio Legislative Service Commission
2005-2006 Regular Session

Sub. H.B. 288

126th General Assembly

(As Passed by the General Assembly)

Reps. Wagoner, Combs, Cassell, Latta, Stewart, J., Hartnett, Garrison, Coley, Collier, DeGeeter, Distel, Dolan, Domenick, Flowers, Gibbs, Hood, Hughes, Martin, McGregor J., Reidelbach, Seitz, Willamowski
Sens. Schuler, Niehaus, Mumper
Effective date: [FNa1]

ACT SUMMARY

• Defines "mineral" and "mineral interest" for purposes of the mineral interests law, which specifies circumstances under which a mineral interest cannot be deemed abandoned, thereby precluding such an interest being vested in the owner of the surface land.
• Requires that, for any allowable vesting to occur, the landowner must notify the holder of the mineral interest and file an affidavit of abandonment as specified in the act.
• Authorizes the vesting of noncoal mineral interests where a mineral interest includes both coal and noncoal minerals.
• Adds to the circumstances under which vesting of a mineral interest in the landowner is prohibited because production activity has occurred on specified land pursuant to the mineral interest within the prior 20 years, by prohibiting the vesting of a mine, any portion of which is located beneath lands subject to a mineral interest or covered by a lease to which the mineral interest is subject.
• Defines the length of any such 20-year period as ending on the service or publication date of requisite surface landowner notification to the holder of a mineral interest that the landowner is acting to declare the interest abandoned.
• Specifies additional recording requirements for any claim to preserve a mineral interest.
• Requires the abandonment to be memorialized on a specified county record and provides that the mineral interest then becomes vested in the landowner, and the record of the mineral interest ceases to be public notice of the mineral interest.
• Applies the county recorder fee schedule to filings under the mineral interests law and requires affidavits of abandonment to be filed in the record of deeds.
• Separately, allows the chairperson of the Oil and Gas Commission to appoint temporary members to the Commission from the Technical Advisory Council on Oil and Gas if a Commission quorum cannot be obtained otherwise.

CONTENT AND OPERATION

Vesting of abandoned mineral interests

(R.C. 5301.56)

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Ongoing law specifies that any mineral interest held by any person can be deemed abandoned and vested in the owner of the surface of the lands subject to that mineral interest except under certain circumstances. The act revises some of those circumstances and adds new, specified notification and affidavit requirements for allowable vesting to occur.

The act also adds definitions for "mineral" and "mineral interest." A "mineral interest" is any 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. "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. Under the act, "owner" includes the owner's successors and assignees. (R.C. 5301.56(A).)

Circumstances that prohibit vesting

Unchanged by the act is a prohibition against such vesting in a landowner if the United States, the State of Ohio, or any political subdivision, body politic, or U.S. or Ohio agency holds the mineral interest.

Modified by the act is a prohibition against vesting if the mineral interest consists of any right, title, estate, or interest in coal, or in any mining or other rights pertinent to or exercisable in connection with any right, title, estate, or interest in coal. Specifically, the act authorizes vesting of noncoal mineral interests where a mineral interest includes both coal and noncoal minerals. The act also removes a related provision of prior law that, by its terms, was rendered obsolete as outdated. (R.C. 5301.56(B)(1) and former (B)(2); and 5301.53, not in the act.)

Six additional circumstances that prohibit vesting under continuing law are contingent on them having happened within the *preceding* 20 years. The act specifies that this 20-year period is the 20 years immediately preceding the date on which the new holder notification is served or published as required by the act (see below) (R.C. 5301.56(B)(3)).

Of those six circumstances contingent on happening within the 20-year period, the act further changes only one. [FN1] Under ongoing law, vesting is prohibited if the holder [FN2] of the mineral interest has produced or withdrawn any minerals from (1) the lands subject to the mineral interest, (2) lands covered by a lease to which the mineral interest is subject, or (3) in the case of oil or gas, lands voluntarily or otherwise pooled, unitized, or included in oil or gas unit operations pursuant to continuing law, in which the mineral interest is participating and for which the pooling or unitizing instrument or order has been filed or recorded in the Office of the County Recorder of the county in which those lands are located. The act expands this prohibition by additionally prohibiting vesting in the case of a mine any portion of which is located beneath lands subject to the mineral interest or covered by a lease to which the mineral interest is subject and from which the holder of the mineral interest produced or withdrew minerals within the 20-year period (R.C. 5301.56(B)(3)(b)).

Holder notification and affidavit of abandonment

The act provides that, before a mineral interest can become vested in the owner of the surface of the lands subject to that interest, the owner must do two things: (1) notify the holder, or the holder's successors or assignees, of the owner's intent to declare the mineral interest abandoned and (2) file an affidavit of abandonment at least 30, but not later than 60, days after the date such notice is served or published.

Holder notification. The owner must serve the notice by certified mail, return receipt requested, to the last known address of each holder or holder's successors or assignees. If such service cannot be completed, the owner must 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 is located. (R.C. 5301.56(E)(1).)

The notification must contain all of the following: (1) the name of each holder or the holder's successors and assignees, as applicable, (2) a description of the surface of the land that is subject to the mineral interest, including the volume and page number of the recorded deed or of another recorded instrument that contains an accurate and full, specific description of all land affected by the notice, in which case the description in the notice may be the same as that contained in the recorded instrument, (3) a description of the mineral interest to be abandoned, including the volume and page number of the recorded instrument on which the mineral interest is based, (4) a statement attesting that none of the six circumstances that prohibit vesting has occurred within the 20 years immediately preceding the date on which the notice is served or published, (5) a statement of the intent of the owner of the surface of the lands subject to the mineral interest to file an affidavit of abandonment at least 30, but not later than 60, days after the date on which holder notification is served or published, as applicable (R.C. 5301.56(F); and R.C. 5301.52(A)(3), not in the act).

Affidavit of abandonment. The affidavit of abandonment must be filed 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, and must 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 mineral 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 the act, (4) a recitation of the facts constituting the abandonment, and (5) a statement that holder notification was served or published as required by the act (R.C. 5301.56(E)(2) and (G)).

Claim to preclude abandonment

Continuing law details the authority of a holder to file a claim to preserve from abandonment a mineral interest for which holder notification is required. An appropriately filed claim itself preserves the holder's interest. The act specifies that the claim must be filed in the Office of the County Recorder of each county where the land that is subject to the mineral interest is located, and that it be filed not later than 60 days after the date on which holder notification was served or published. Alternatively, where applicable, the holder or the holder's successors or assignees must so file an affidavit identifying one of the six circumstances that prohibit vesting has occurred within the act's prescribed 20-year period. The holder or the holder's successors or assignees must provide notice of the filing of such a claim or affidavit to the person who served or published the holder notice required under the act. (R.C. 5301.56(C), (D), and (H)(1).)

Vesting process

The act further provides that, if a holder or a holder's successor or assignee fails to file such a claim or affidavit to preserve a mineral interest, or files the claim or affidavit more than 60 days after the holder notification is served or published, the landowner seeking abandonment and vesting must cause the county recorder of each applicable county to include the following memorial on the record on which the severed mineral interest is based: "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ...., page ....." (R.C. 5301.56(H)(2).) The act allows a county recorder who uses microfilm as provided under continuing law (R.C. 9.01, not in the act) to place the statement on the affidavit of abandonment instead of on the record on which the severed mineral interest is based, and to record the affidavit as provided under continuing county recorder record-keeping law (R.C. 317.08). (R.C. 5301.56(I).)

The act then provides that, immediately after the memorialization, the mineral interest becomes vested in the owner, and the record of the mineral interest expressly ceases to be notice to the public of the mineral interest or any rights under it. In addition under the act, the record cannot be received as evidence against the owner in any Ohio court on behalf of the former holder or the former holder's successors or assignees. The abandonment and vesting of a mineral interest under the act is effective only as to the property of the owner that filed the affidavit of abandonment required by the act. (R.C.

5301.56(H).)

County recorder authority

The act expressly authorizes a county recorder to apply the county recorder fee schedule (in R.C. 317.32, unchanged by the act) to filings under the act (R.C. 5301.56(I)). Further, it provides that affidavits filed under the mineral interests law must be filed in a county recorder's record of deeds (R.C. 317.08).

Oil and Gas Commission quorum

(R.C. 1509.35 and 1509.38)

The Oil and Gas Commission is a five-member commission appointed by the Governor and responsible for deciding appeals of orders issued by the Chief of the Division of Mineral Resources Management in the Department of Natural Resources. By statute, the appointees must meet certain qualifications: each must qualify, respectively, as a representative of a major petroleum company, a representative of the public, a representative of independent petroleum operators, a person learned and experienced in oil and gas law, and a person learned and experienced in geology. Not more than three members can be of the same political party. The Commission members select the chairperson.

Under continuing law, three Commission members constitute a quorum. Formerly, no Commission action was valid unless it had the concurrence of at least three members. The act instead requires concurrence of a majority of the members voting on a particular action.

Additionally under the act, when the Commission chairperson determines that a quorum cannot be obtained to consider a matter because of vacancies or recusal of its members, he or she is authorized to contact the Technical Advisory Council on Oil and Gas and request a list of Council members who may serve as temporary Commission members. The Council must prepare the list immediately upon receiving the request. Using that list, the Commission chairperson may appoint temporary members, but only for the matter for which a quorum cannot be obtained. The number of temporary members cannot exceed that necessary to obtain the quorum. The professional qualifications and political party restrictions specified for Commission members do not apply to a temporary member. A temporary member is granted the same authority, rights, and obligations as a Commission member, including the right to compensation and other expenses, [FN3] but those authority, rights, and obligations cease when the temporary member's service on the Commission ends.

Under continuing law, the Technical Advisory Council on Oil and Gas advises the Chief of the Division of Mineral Resources Management. The Council consists of eight members appointed by the Governor with the advice and consent of the Senate. Three members must be independent oil or gas producers, operators, or their representatives, operating and producing primarily in Ohio. Three other members must be oil or gas producers, operators, or their representatives having substantial oil and gas producing operations in Ohio and at least one other state. One member must represent the public, and one member must represent persons having landowners' royalty interests in oil and gas production. All members must be Ohio residents, and all members, except the members representing the public and persons having landowners' royalty interests, must have at least five years of practical or technical experience in oil or gas drilling and production. Not more than one member may represent any one company, producer, or operator.

HISTORY

ACTION	DATE
Introduced	06-01-05

Reported, H. Public Utilities and Energy	12-08-05
Passed House (92-1)	01-11-06
Reported, S. Energy & Public Utilities	02-22-06
Passed Senate (32-0)	03-01-06

[FNa1]. *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

[FN1]. *The five other, 20-year circumstances that prohibit vesting are as follows: (1) the mineral interest has been the subject of a title transaction filed or recorded in the Office of the County Recorder of the county in which the lands are located, (2) the mineral interest has been used in underground gas storage operations by the holder, (3) a drilling or mining permit has been issued to the holder and 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 the Office of the County Recorder of the county in which the lands are located, (4) a claim to preserve the mineral interest has been filed in accordance with the mineral interests law, and (5) 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 (R.C. 5301.56(B)(3)(a) to (f)).*

[FN2]. *Under continuing law, a "holder" is the record holder of a mineral interest, and any person who derives 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 (R.C. 5301.56(A)).*

[FN3]. *Each Commission member is paid a per diem determined by the Director of Administrative Services when actually engaged in the performance of work or necessary travel as a member. Additionally, each member is reimbursed for all travel, hotel, and other expenses necessarily incurred in the member's work.*

OH B. An., 2006 H.B. 288

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EXHIBIT F

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LESLIE [illegible]
CLERK OF COURTS
HARRISON COUNTY, OHIO

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

M & H PARTNERSHIP
Plaintiff

vs.

WALTER VANCE HINES, ET AL.
Defendants

Case No. CVH-2012-0059

JUDGMENT ENTRY

This matter is before the Court on Plaintiff's Motion For Summary Judgment filed on March 26, 2013 and Defendant's Motion For Summary Judgment filed March 7, 2013.

The Court has also considered the parties' replies and surreplies to said Motions including that if Defendant Chesapeake Exploration, LLC. The Court further recognizes the factual stipulations of the parties filed with the Court on March 21, 2013.

This matter is before the Court on a Complaint To Quiet Title filed by Plaintiff. Plaintiff contends that they are the surface and mineral owners of the disputed property. They claim ownership of the surface rights to the property through purchase on April 7, 2006. This ownership issue is not in dispute.

Plaintiff claims ownership of the mineral interest of the property pursuant to O.R.C. §5301.56 Ohio's Dormant Mineral Act as it was written in the 1989 version.

Defendants' Hines family do not dispute Plaintiffs surface right ownership. Defendant's Hines family do dispute Plaintiffs claim to the property's mineral rights.

Defendants' Hines family claim that Dormant Mineral Act does not apply to divest them of their mineral interest in the property because qualifying transactions have occurred in the necessary time frame.

Defendants' Hines family further argues that if no qualifying transactions are deemed to have occurred the correct version of ORC §5301.56 is the 2006 version and under said statute they properly preserved their mineral interest.

An examination of the 1989, 2006 ODMA §5301.56 is necessary as well as a review of interpreting case law in resolving the dispute.

O.R.C. §5301.56 (1989 version)

The factors to which Courts must look to decide whether a mineral interest holder had displayed sufficient activity to preserve their rights over a 20 year period or whether the mineral interest had grown stale based upon a lack of activity or interest by the mineral rights holder:

(i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located;

(ii) There has been actual production or withdrawal of minerals by the holder.

(iii) The mineral interest has been used in underground gas storage operations by the holder;

(iv) A drilling or mining permit has been issued to the holder.

(v) A claim to preserve the interest has been filed in accordance with division (c) of this section.

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

In the case at bar, items (ii), (iii), (iv), (vi) have conclusively not been completed by the mineral estate holder. Item (v) claim to preserve interest was not filed in the requisite time period.

Therefore, the item which is controlling pursuant to the 1989 act is item (i) whether the mineral interest has been subject of a title transaction that has been file or recorded in the office of the county recorder of the county in which the lands are located.

A brief discussion on transfers of interest is necessary

1. Surface Rights.

A.) The surface rights were severed from the mineral rights by deed on June 1, 1961. The surface rights passed to Selway Coal Company with Vance and Eleanor Hines reserving the oil and gas rights.

B.) Selway Coal Company passed the surface rights to Robert Fleagane on February 29, 1975.

C.) Robert Fleagane to Shell Mining Company January 1, 1989.

D.) Shell Mining to R & F Coal Company November 12, 1991.

E.) R & F Coal Company merger with Capstone Holding Company February 9, 2000.

F.) Capstone Holding Company to Emanuel J. Miller Et Al. April 20, 2001.

G.) Capstone Holding Company to William and Judith Ledger August 6, 2001.

H.) Emanuel J. Miller Et Al to M & H Partnership April 7, 2006.

Deeds A, B, C, and D contain reservation clauses for oil and gas within the deed. Transaction E, F, G, and H did not recite the reservation. Thus the last title transaction noting the reservation of oil and gas on the surface property was November 12, 1991.

2. Oil and Gas Rights.

   A. The surface rights were severed from the mineral rights by deed on June 1, 1961. The surface rights passed to Consolidation Coal Company with Vance and Eleanor Hines reserving the oil and gas rights.

   B. A lease of the oil and gas rights was recorded from Walter v. Hines to Harry J. Iles on July 15, 1969.

   C. An oil and gas lease from Walter Vance Hines, Richard Scott Hines and David Chris Hines and Richard Scott Hines as Power of Attorney for Drue Anne Hines Danz to Chesapeake Exploration L.L.C. dated October 31, 2011 and recorded February 14, 2012.

The Seventh District Court of Appeals in Dodd v. Croskey Case No. 12 HA 6 Ohio App. 7th Dist (2013) ruled on what constitutes and whether or not a mineral interest has been the "subject of" a title transaction which has been filed or recorded in the office of the county recorder of the county in which the land are located.

The Seventh District held that "The common definition of the word "subject" is, topic of interest, primary theme or basis for action. Under this definition the mineral interests are not the subject of the title transaction.

In the case at bar, the Court finds pursuant to the Dodd decision supra, that the last title transaction that the mineral interests were subject of occurred July 15, 1969. Wherefore, under the 1989 Dormant Mineral Act the Court must decide whether the 1969 transaction was a savings event.

The effect of the 1969 transaction relies on interpretation of the statue and its 20 year look back period.

Riddell v. Layman 5th Dist. App. (1995 WL 498812) is the only appellate decision which touches upon the appropriate 20 year look back period for the 1989 Dormant Mineral Act. The Riddell Court decided that "the title transaction must have occurred within the proceeding twenty years from the enactment of the statue, which occurred on March 22, 1989. Appellee Layman recorded the deed on June 12, 1973, was within the preceding twenty years from the date the statue was enacted."

The Riddel case dealt with a 1994 complaint and a 1973 reservation. Wherefore, the Court specifically finds that a rolling 20 year period of look back is not authorized by the 1989 statute. The Court finds that the 20 year period for a look back is 20 years from enactment March 22, 1989. Wherefore, a title transaction that the mineral interest is subject of must have occurred on or after March 22, 1969 to serve as a savings event.

The Court finds that Walter Vance Hine's lease of mineral interest to Harry J. Isles on July 15, 1969 is a title transaction and that the mineral interest at issue in this matter were the subject of that title transaction. As such, the July 15, 2969 lease serves as a savings event pursuant to the 1989 dormant mineral act and the holding in Riddel Supra.

2006 Dormant Mineral Act.

In 2006, the Ohio legislature amended the dormant mineral act and provided additional due process safeguards to mineral interest holders.

The additional steps germane to this case are:

1) Recording of an affidavit of abandonment §5301.56 (E)(2).
2) Holder may file a claim to preserve mineral interests within 60 days of notice of affidavit of abandonment §5301.56 (H)(1).

In the case at bar, Defendant promptly filed their claim to preserve mineral interest within the 60 day time limit.

Plaintiff's further claim that answering Defendant's do not have standing in this matter in that they are not the successors in interest to the original holder's

of mineral interest Vance and Eleanor Hines. The Court finds that Plaintiff's argument to be without merit. The Court finds that through Ohio's Law of Succession that the mineral interest herein passed from Vance Hines and Eleanor Hines and then to their only heir their son Walter Vane Hines and then from Walter Vance Hines to his children the Defendant's herein. The Court specifically finds Defendant's to be the lineal descendants of the original holders and the successors in interest to the original holders mineral interest.

The Court finds pursuant to both the 1989 and 2006 Dormant Mineral Act the Defendants have preserved their mineral interest. Under 1989 Act, the Court finds the July 15, 1969 lease of minerals from Walter Vance Hines occurred within the statutory look back period as defined in Riddel and as such was a savings event under the statue. Under the 2006 Act, the Court finds that Defendant's properly preserved their mineral rights by filing a notice of preservation with the county recorder.

The Court finds the 2006 law is the applicable law in the case. In Dodd v. Croskey Seventh Dist App (2013) 12 HA 6 (9/12/2013) the Court applied the 2006 law in determining the parties claim. The claim involved a 1947 oil and gas reservation with no further title transactions that the mineral interest were subject.

The Court did not address its choice of the 2006 Act over the 1989 Act in Dodd. However, it is clear from their decision that the 2006 law was applied.

This Court is convinced that applying the 2006 law is the appropriate statute in this case for the following reasons.

R.C. 5301.56 is part of the Marketable Title Act. The Marketable Title Act is ORC 5301.47 – 5301.56. The act is to be read in total and not as separate independent statutes. The purpose of the act is to establish a marketable chain of title. ORC 5301.55 liberal construction "Sections 5301.47 to 5301.56 so inclusive, of the Ohio Revised Code shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transaction by allowing persons to rely on a record chain of title as described in Section 5301.48 of the Ohio Revised Code, subject only to such limitations as appear in Section 5301.49 of the Ohio Revised Code".

The application of an "automatic" vesting clause of the 1989 Dormant Mineral Act is contrary to simplifying and facilitating land title transaction by allowing persons to reply on a record chain of title.

This Court does not believe it was the legislative intent at enactment to make surface holders automatically vested in the mineral rights pursuant to the 1989 Dormant Mineral Act. The terms automatic vesting, terminated, null and void, or extinguished were not used in the statute.

Those terms null and void and extinguished are used in other parts of the marketable title act but the Dormant Mineral Act uses the term abandoned.

The Court does not believe the difference in language to be unconscious. The Court finds pursuant to the Marketable Title Act that Plaintiff at the minimum must have filed a quiet title action prior to 2006 to have the 1989 law apply. Absent such action and determination, notice of the reversion of mineral

interest would not be apparent in the record chain of title and thus violate the purpose of the Marketable Title Act.

Since in this matter no action was filed until 2012, Plaintiff must conform to the applicable law currently in place to perfect their abandonment claim. And such the 2006 Dormant Mineral Act is controlling.

The Court finds this ruling is not in conflict with Texaco v. Short 454 U.S. 516 (1982) Texaco v. Short required due process before title vested in the surface holder. In the case at bar, Defendant Hines family was not given any due process consideration prior to this suit. There is no evidence of a Quiet Title Action filed between 1989 and 2006. In order for the Plaintiff's interest to vest some court action or recording of said interest must have occurred. Plaintiff failed to assert its claim prior to 2006 as such Plaintiff interest did not vest prior to 2006 and is subject to the 2006 amended statute.

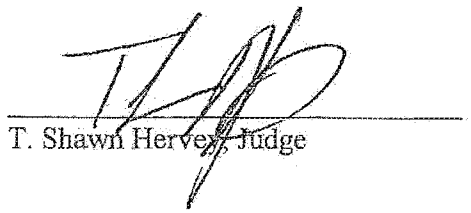
WHEREFORE, it is the ORDER of the Court that:

Plaintiff's Motion For Summary Judgment is denied.

Defendants, Hines Family, Motion For Summary Judgment is granted.

Defendants, Hines Family, is the lawful owner of the oil and gas interest at issue in this matter. Plaintiff's claim of ownership fails under the 1989 and 2006 Dormant Mineral Act. The Court holds the 2006 Dormant Mineral Act to be controlling.

SO ORDERED.



T. Shawn Hervey, Judge

NOTICE: FINAL APPEALABLE ORDER

This is a final appealable order. For each party who is not in default, serve notice to the attorney for each party and to each party who represents himself or herself by regular mail service with certificate of mailing making notation of same upon case docket.

T. Shawn Hervey, Judge

Stamped Copies:
Attorney Patrick E. Noser
Attorney T. Owen Beetham
Attorney Clay K. Kellar

EXHIBIT G

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, OHIO

2014 FEB 27 PM 2:33
BETH ANN ROSE
CLERK OF COURTS

Anthony M. Gentile, et al.

Plaintiffs,

vs.

Case No. 2012-110

George Ackerman, et al.

Defendants.

JUDGMENT ENTRY
(Incorporating Findings of Fact and Conclusions of Law)

This matter is before the Court on the following post-judgment filings:

1. Plaintiffs' Civil Rule 59(A)(9) Motion [filed on January 22, 2014];

2. Defendants' Memorandum in Opposition to Plaintiffs' Civil Rule 59(A)(9) Motion [filed on February 6, 2014];

3. Defendants Leah S. Hunnell, Glenn Christman, Glenna Hall, Tonya Morris, Erik Christman and Jerry Christman's Motion for Relief from Judgment Under Civil Rule 60(B) [filed on February 18, 2014].

This Court entered judgment incorporating Findings of Fact and Conclusions of Law in the within case on January 13, 2014. Plaintiffs' Motion for a New Trial under Civil Rule 59 was timely filed shortly after the Court's Entry granting Summary Judgment in favor of the Answering Defendants herein. Thereafter, the above-listed Defendants timely filed their Rule 60(B) Motion.

This Court finds that although Plaintiffs' requested relief is not properly brought

Monroe County
Common Pleas
Court
- - -
Julie R. Selmon
Judge

FINAL APPEALABLE

COPY

under Civil Rule 59 because neither a jury trial nor a bench trial was held in the within matter, Civil Rule 60(B) is a proper avenue for the relief requested by Plaintiffs herein.

More specifically, Civil Rule 60 allows a Trial Court to grant relief from a previous judgment or order. Rule 60(B) reads in relevant part:

> On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud, misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged . . .; or (5) any other reason justifying relief from the judgment. (Emphasis added)

This Court made an error, and misapplied the law in rendering judgment against Plaintiffs and in favor of the Answering Defendants in its January 13, 2014 Judgment Entry. The findings contained in this Court's January 13th Entry do not properly interpret the two versions of the Ohio Dormant Mineral Act nor do they properly interpret the Seventh District Court of Appeals holding in *Dodd v. Croskey*, 2013-Ohio-4257 (7th Dist. 2013). Moreover, the findings and analysis contained in the Court's Entry herein dated January 13, 2014 are wholly inconsistent with a plethora of earlier decisions rendered by this Court and other Courts within the Seventh Appellate District. See *Wendt v. Dickerson*, Tuscarawas C.P., No. 2012-CV-020135 (February 21, 2013), *Wiseman v. Potts*, Morgan C.P., No. 08-CV-0145 (June 29, 2010), *Walker v. Noon*, Noble C.P., No. 2012-0098 (March 20, 2013), *Bender v. Morgan*, Columbiana C.P., No. 2012-CV-378 (March 20, 2013), *Marty v. Dennis*, Monroe C.P., No. 2012-203 (April 11, 2013), *Blackstone v. Moore*, Monroe C.P., No. 2012-

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Court
- - -
Julie R. Selmon
Judge

166 (January 22, 2014) and *Kuzior v. Fisher*, Monroe C.P., No. 2012-382 (February 21, 2014). All of these cases held that a Severed Mineral Interest can be declared abandoned under the Former DMA , even after the enactment of the 2006 amendment.

FACTS

The Court will restate the undisputed facts herein (and as they were set forth in this Court's January 13th Judgment Entry).

Plaintiffs herein are the owners of eighty (80) acres of certain real estate located in Seneca Township, Monroe County, Ohio. Said property is described in a deed dated August 12, 2011, filed on August 16, 2011 and recorded in Volume 206, Page 37 of the Official Records of Monroe County, Ohio. Although Plaintiffs brought their Complaint with regard to only Tract III, involving the 80-acre property, Defendants are also claiming an interest in one-half of the oil and gas royalties under Plaintiffs' Tract I, a 60.29 acre parcel.

The moving Defendants' purported interest stems from a Sheriff Sale pursuant to a Writ of Partition and Dower of Eva Christman issued by the Monroe County Common Pleas Court on November 8, 1922. This Writ orders the Sheriff to sell the property at issue and further imparts a one-half interest in the "royalty oil, gas and gasoline in and under the . . .premises, and it is ordered that said estate be aparted subject to said one-half royalty." The Defendants are descendants and heirs of the fifteen parts issued.

On April 2, 1923, the Property was sold at the Sheriff's Sale to George M. Christman pursuant to the underlying Monroe County Probate Court Writ. This muniment made the following reservation of interest: "Excepting and reserving the one-half oil, and gas and gasoline royalty in and under the above descrived [sic] premises."

On April 3, 1923, George M. Christman and his wife, Cecelia Christman, sold the Property to L. E. Christman. This muniment's reservation reads (hereinafter sometimes referred to as the "Royalty Reservation"):

> Excepting and reserving the one half oil and gas and gasoline royalty in and under the above described premises, same being the same royalty reserved in deed from Charles D. Barker, Sheriff to Grantor . . . .

This muniment transferred the whole of the surface rights and one-half of the undivided mineral interest to L. E. Christman.

On February 14, 1969, a Certificate of Transfer of Real Estate was issued from the Probate Estate of Lewis E. Christman (L. E. Christman). This muniment again reserved the oil and gas and gasoline royalty, and referenced the prior deed at Volume 93, Page 460 which cites back to the Sheriff's Deed and Writ of Partition and Dower which conveyed the subject one-half interest. This muniment states in pertinent part:

> Excepting and reserving the one half oil and gas and gasoline royalty in and under the above described premises.
>
> * * *
>
> Reference: Deed recorded in Volume 93, Pages 460-461 Monroe County Deed Records.

This muniment transferred the whole of the surface rights and one-half of the undivided mineral interest from L. E. Christman to his seven children.

The next entry in the Monroe County Recorder's Office is also dated February 14, 1969, and is the Certificate of Transfer of Interest in Oil and Gas and Gasoline Royalties issued by the Monroe County Probate Court. This muniment transferred the 1/18th portion of the undivided Christman Mineral Interest L. E. Christman inherited from Eva Christman

via the Writ of Partition and Dower again to L. E. Christman's seven children.

On March 19, 1973, the Property was sold via Warranty Deed from Christman's children to Stephen Edward Hornacek. This muniment transferred the whole of the surface rights and one-half of the undivided mineral interests to Stephen Edward Hornacek, reserving the other undivided one-half Christman Mineral Interest in Christman's heirs.

Subsequently, in March of 1988, Fred E. Maibach purchased the Property from Stephen Edward Hornacek and his wife, Darlene. This Warranty Deed transferred the whole of the surface rights and one-half of the undivided mineral interests to Fred E. Maibach and reserved the undivided one-half Christman Mineral Interest in Christman's heirs.

In December of 2002, the Maibachs sold the Property to the Millers. This legal description included an exception and reservation of the undivided one-half of the oil, gas and gasoline royalty. This muniment transferred the whole of the surface rights and one-half of the undivided mineral interests to the Millers and again reserved the undivided one-half Christman Mineral Interest in Christman's heirs.

On January 9, 2004, the Millers sold the Property to Joseph P. Gentile, Sr. , Joseph P. Gentile, Jr. , and Anthony M. Gentile. This muniment references the undivided one-half Christman Mineral Interest. It transferred the whole of the surface rights and one-half of the undivided mineral interests to Joseph P. Gentile, Sr. , Joseph P. Gentile, Jr. , and Anthony M. Gentile. The Property was then re-sold to Joseph P. Gentile, Sr. with a 1/6 interest and Anthony M. Gentile with a 5/6 interest, which legal description of Tract III also reserved the one-half oil, gas and gasoline royalty interest, and including the appropriate

prior deed reference - again transferring the whole of the surface rights and one-half of the undivided mineral rights.

Finally, the Property was most recently sold via Warranty Deed to Anthony M. Gentile and Kathy A. Gentile, Plaintiffs, in August 2011. The Tract III legal description includes an exception and reservation of the one-half of the oil, gas and gasoline royalty interest with a reference to the prior instrument. Likewise, this muniment transferred the whole of the surface rights and one-half of the undivided mineral rights to the surface owners.

Plaintiffs bring this action alleging two (2) causes of action: (1) that the previous version of Ohio Revised Code § 5301.56, enacted March 22, 1989 operated to have the interest of the Defendants "deemed abandoned"; and in the alternative, (2) that the Ohio Marketable Title Act (ORC § 5301.47 - ORC § 5301.55) operates to extinguish the interest claimed by Defendants.

Defendants ask that the Plaintiffs' claims be rejected and ask this Court to find that Defendants' royalty interests still exist.

More specifically, Defendants argue that Plaintiffs' claims under the Marketable Title Act fail because:

> (A). Defendants' one-half mineral interest is referred to specifically in a muniment within the marketable record title of Plaintiffs' parcel, and, therefore, the interest is preserved under the binding authority of the Ohio Supreme Court decision *Toth v. Berks Title Ins. Co.*, 6 Ohio St. 3d 338 (1983);
>
> (B). Defendants' interest is also recorded in a title transaction which has been recorded subsequent to the effective date of Plaintiffs' Root of Title; and

(C). The Defendants' royalty interest is specifically identified in Plaintiffs' Root of Title.

Additionally, Defendants argue that Plaintiffs' claims under the previous version of the Dormant Mineral Act fail because:

(a). The previous version of the Dormant Mineral Act does not apply, as pursuant to the Seventh District's decision in *Dodd v. Croskey* , this Court should apply the 2006 version of the statute;

(b). Defendants' undivided one-half interest was the subject of numerous title transactions; and

(c). There is a producing well on a lease that encumbers the Property.

PROCEDURAL HISTORY

Plaintiffs originally filed this action against numerous Defendants on April 17, 2012. Eventually, this Court granted a Motion for Default Judgment against some Defendants. Plaintiff filed an Amended Complaint on May 16, 2013, adding a claim under the Dormant Mineral Act. A Motion for Substitution was filed on September 6, 2013 to substitute in Seth and Laura Everly following the death of Lena E. Christman. Thus, at issue in this Summary Judgment Motion, are the interests of these eleven moving Defendants' interests in the oil and gas royalties on the Property.

LAW AND ANALYSIS

Summary Judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Civ.R. 56(C). Three elements must be shown: "(1) that there is no genuine issue as to any material fact; (2) the moving

party is entitled to judgment as a matter of law; and (3) 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." *Harless v. Willis Day Warehousing Co., Inc.* , 375 N.E. 2d 46, 54 Ohio St. 2d 64, 66 (1978). The moving party bears the initial burden of showing there are no genuine issues of material fact. *Id.* Once satisfied, the burden shifts to the non-moving party who must "set forth facts showing that there is a genuine issue for trial." *Dresher v. Burt*, 75 Ohio St. 3d 280, 293 (1996).

This Court finds it necessary to briefly discuss and reconcile any confusion or misunderstanding concerning the current DMA and the Former DMA and the effect of the Seventh District's holding in *Dodd v. Croskey, supra*.

First, there is a difference between a statute that is self-executing and one that is not. Under the Former DMA , rights to a Severed Mineral Interest become "vested in the owner of the surface" of the property by operation of law upon the lapse of 20 years without the occurrence of a savings event identified in division (B)(1)(c). This Court has previously held that the Former DMA is self-executing. See *Marty v. Dennis*, Monroe C.P. 2012-203 (April 11, 2013). It does not contain any requirement that the surface owner of property take any action before the mineral interest is deemed abandoned. *Id.*

Accordingly, under the Former DMA , a mineral interest is deemed abandoned and vested in the surface owner of the property if none of the savings events set forth in (B)(1)(c)(i) through (vi) occurred within any period of 20 years while the Former DMA was in effect, so long as the Severed Mineral Interest is not in coal or held by the United States, this State or any political subdivision.

Monroe County
Common Pleas
Court
- - -
Julie R. Selmon
Judge

If Defendants fail to present evidence of any savings events, the Severed Royalty shall be declared abandoned and vested in the Plaintiffs, under the Former DMA .

The Current DMA does not expressly state that property rights, vested under the Former DMA , are affected by the Current DMA . If the General Assembly intended the 2006 amendment to affect the rights vested in Plaintiffs under the Former DMA , this Court finds that such intent must be expressly stated.

Many courts across the State of Ohio have recognized that title to a mineral interest can be quieted in favor of the surface owner of property under the Former DMA , even after the 2006 amendment. These cases include *Wendt v. Dickerson*, Tuscarawas C.P., No. 2012-CV-020135 (February 21, 2013), *Wiseman v. Potts*, Morgan C.P., No. 08-CV-0145 (June 29, 2010), *Walker v. Noon*, Noble C.P., No. 2012-0098 (March 20, 2013), *Bender v. Morgan*, Columbiana C.P., No. 2012-CV-378 (March 20, 2013), *Marty v. Dennis*, Monroe C.P., No. 2012-203 (April 11, 2013), *Blackstone v. Moore*, Monroe C.P., No. 2012-166 (January 22, 2014) and *Kuzior v. Fisher*, Monroe C.P., No. 2012-382 (February 21, 2014). All of these decisions hold that a Severed Mineral Interest can be declared abandoned under the Former DMA , even after the enactment of the 2006 amendment.

Meanwhile, the issue before the Appellate Court in *Dodd* was whether the statutory abandonment process described in division (H) has been effectively completed.

In *Dodd* , the surface owners filed an action against the holders of a Severed Mineral Interest after having served their notice of intent to claim abandonment, by publication, under division (E)(1). One of the Severed Mineral Interest Holders subsequently recorded a deed and an affidavit preserving minerals. The surface owners

alleged that the deed was not properly completed, that it did not conform to the recording statute, and that it did not appear in the chain of title. The surface owners further alleged that the affidavit preserving minerals was not signed by all the Severed Mineral Interest Holders and that the affiant was not acting as their agent.

The surface owners in *Dodd* believed that they had fulfilled the requirements of the DMA . They asked the Court to strike the deed and the affidavit preserving minerals. The surface owners asked the Court to find that the affidavit was ineffective, and that the statutory abandonment process described in division (H)(2) had been successfully completed. After both parties filed Motions for Summary Judgment, the Trial Court rejected the surface owners' arguments and held in favor of the Severed Mineral Interest Holders.

On appeal, the surface owners argued that the Severed Mineral Interest Owner's affidavit preserving minerals was not a "savings event," referring to the filing of a claim to preserve or an affidavit under division (H)(1).

The Seventh District Court of Appeals issued its decision on September 23, 2013. The issue before the Court on appeal concerned the process by which mineral interest may be deemed abandoned and deemed to have vested to the owner of the surface rights.

The Seventh District Court of Appeals rejected the surface owners' argument. Since division (H)(1) expressly states that its filings may be made "after the date on which notice was served or published," the Court held that it allows "a present act" by the mineral interest holder. *Dodd* , ¶28. The Court held that this present act "prevents the interest from being determined to be abandoned." *Id.* The Court was referring to an abandonment

under the statutory process described in division (H); it did not address, and the surface owners did not argue, whether, the filing of a claim under division (H)(1), the mineral interest might nevertheless be deemed abandoned in an action to quiet title, based on the operation of division (B).

Additionally, this Court is mindful of the decision rendered in *Dahlgreen, et al. v. Brown Farm Properties, LLC*, Case No. 13 CVH 27445 (Carroll County C.P., Nov. 5, 2013).

This Court has not previously followed the *Dahlgreen* decision, nor is it bound to do so.

In the within case, this Court finds that Defendants' understanding of the effect of the Former DMA is misplaced. After careful analysis and contrary to this Court's erroneous previous findings (from January 13, 2014), this Court finds that there has been no savings event under division (B)(1)(c) during the 20 years preceding the enactment of the 1989 DMA .

More specifically, the Defendants herein have stipulated and therefore it is undisputed that there has not been a "title transaction" of the subject purported Mineral Interest herein for the twenty (20) year period immediately preceding March 22, 1989 (the effective date of the DMA).

Also, this Court finds that there is no evidence and no record of any actual production of oil and/or gas from the subject property during the twenty (20) year period immediately preceding March 22, 1989 (the effective date of the DMA).

Likewise, the Court finds that during the twenty (20) year period immediately preceding the effective date of the DMA , the purported Severed Mineral Interest was not

used in underground gas storage operations by the holder; no drilling or mining permits were issued to the Defendants and no claims to preserve the purported interest were filed under division (c) of the Former DMA .

Last, the Court finds that it is undisputed that there were no separately listed tax parcel numbers created for the purported Severed Mineral Interest in the Monroe County Auditor's tax list or the Monroe County Treasurer's duplicate tax list.

This Court finds that after analyzing Plaintiffs' claims under the Former DMA , Defendants are unable to demonstrate or show the occurrence of any of the savings conditions outlined in § 5301.56(B) during the twenty (20) year period immediately preceding March 22, 1989. Accordingly, this Court finds that Defendants' purported interest in the Severed Mineral Interest herein is hereby abandoned by operation of the Former DMA and said Mineral Interest is hereby vested and quieted in favor of the surface owner, the Plaintiffs herein, pursuant to Ohio Revised Code § 5301.56.

The Court, having ruled in Plaintiffs' favor under the Former DMA and finding that Defendants' purported interest in the Severed Mineral Interest herein has been abandoned, hereby finds Plaintiffs' and Defendants' remaining arguments and positions to be moot.

This Court's prior Judgment Entry dated January 13, 2014 is hereby vacated in its entirety and the same shall be deemed a nullity.

The Court further finds that there is no just reason for delay, and that this "Judgment Entry Incorporating Findings of Fact and Conclusions of Law" is a final appealable order, as defined under Civil Rule 54.

Costs are assessed in full to the Defendants. Judgment is hereby granted the Clerk of this Court to collect on her costs.

IT IS SO ORDERED.

Honorable Julie R. Selmon
Enter as of the date of filing

Copies to: Richard A. Yoss/Craig E. Sweeney, Esquire
Miles D. Fries, Esquire
Mariah D. Butler, Esquire
Gregory D. Brunton, Esquire
John R. Estadt, Esquire/Erik Schramm, Esquire
Dave Lackey, Esquire

Monroe County
Common Pleas
Court
- - -
Julie R. Selmon
Judge