

ORIGINAL

IN THE SUPREME COURT OF OHIO

HANS MICHAEL CORBAN,

Petitioner,

v.

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

MERIT BRIEF OF AMICI CURIAE JEFFCO RESOURCES, INC., CHRISTOPHER AND VERONICA WENDT, CAROL S. MILLER, MARK AND KATHY RASTETTER, DOUGLAS HENDERSON, JOHN YASKANICH, DJURO AND VESNA KOVACIC, BRETT AND KIM TRISSEL, AND STEVEN E. AND DIANE CHESHIER IN SUPPORT OF PETITIONER

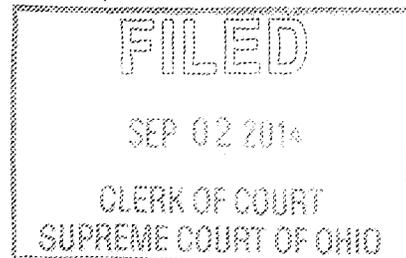
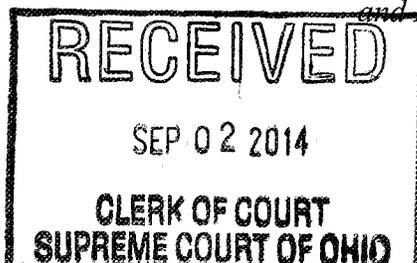
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STATEMENT OF AMICUS INTEREST

Amici Curiae, Jeffco Resources, Inc., Christopher and Veronica Wendt, Carol S. Miller, Mark and Kathy Rastetter, Douglas Henderson, John Yaskanich, Djuro and Vesna Kovacic, Brett and Kim Trissel, and Steven E. and Diane Cheshier, submit this Amicus Brief in support of Petitioner, Hans Michael Corban, on Certified Question of State Law I: “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?”

Amici Curiae are Ohio residents and real property owners who will be directly affected by the Court’s interpretation of R.C. 5301.56 (in effect prior to June, 30, 2006) (“1989 DMA”). Amici Curiae own over 9,000 acres of real property located in the State of Ohio, including Belmont, Carroll, Guernsey, Harrison, Jefferson, and Noble Counties, portions of which were previously subject to severances of oil, gas, and/or other mineral rights. They, like many other landowners throughout the State of Ohio, have obtained vested ownership rights in previously severed mineral rights through the inaction of the previous holders of those rights; in many cases such inaction can span multiple generations and decades. Amici Curiae have a vested interest in preserving their ownership of mineral rights which were previously abandoned and vested under the 1989 DMA.

As discussed more fully below, the 1989 DMA was adopted March 22, 1989 in order to promote the efficient production and exploration of Ohio’s natural resources, including oil, gas, and related hydrocarbons, promote title simplicity by re-unifying old unused interests, which over time can become splintered and fractionalize, in a readily identifiable surface owner, and provide title certainty that if certain statutorily specified events did not occur within a certain

time frame, then the interest was abandoned and vested in the surface owner. It promoted these policy goals by placing minimal obligations upon those individuals who owned severed mineral rights, i.e., those mineral rights not owned by the surface owners of the affected surface estates, in order to preserve those interests, including merely filing a claim to preserve once every 20 years.

STATEMENT OF THE CASE AND FACTS

Ohio's goal is to ensure that domestic natural resources are fully utilized and do not remain dormant for extensive periods of time. This State is currently a hotbed for the production of oil and gas reserves, and has a long, rich history of oil and gas production dating back to the mid-1800's. This boom was followed by a number of other oil booms throughout the last 130 years. During these periods, landowners reserved their oil and gas rights in real estate transactions. However, some reservations were forgotten and abandoned over the years. Over time, the reserving parties passed away without ever transferring the reserved interest, their estates often failed to probate these mineral reservations, and the reserving parties and the heirs failed to take any action to preserve or develop the mineral interests. Due to this fractionalization and the inability in many cases to locate all the owners of the reserved interests, over time these valuable resources are lost, and remain undeveloped and neglected.

In the 1980's, due to the great number of forgotten and abandoned mineral interests, the legislative body acted. To promote the production of natural resources, title simplicity, and title certainty, the Ohio Legislature passed the 1989 DMA. The 1989 DMA is a statewide, uniform system to ensure that oil, gas, and other mineral rights do not remain dormant through years of inaction. This statute requires mineral owners to follow simple, minimal steps to preserve their mineral interests. The goal is to provide clarity to chains of title containing long-ignored and unused mineral interests and reservations by reunifying these interests back into the surface chain of title.

By rejoining surface and mineral estates the resources are returned to the control of the surface owner. In this way, the statute favors the party most likely to pursue development of these rights and simplifies title ownership. Thus, the surface owner prevails over the party

who abandoned those rights by allowing them to languish for years. R.C. 5301.56 (A)(1). To retain an otherwise dormant mineral interest, one of the following must occur in every twenty-year period:

1. The mineral interest must have been subject to a title transaction that has been filed or recorded with the county recorder's office in the county in which the property is located;
2. The holder of the mineral interest obtained actual withdrawal or production of minerals from the mineral interest, i.e. from lands specifically associated with the mineral interest;
3. The mineral interest has been used in underground storage;
4. A drilling permit has been issued to the holder;
5. An appropriate claim to preserve has been filed with the county recorder's office; or
6. A separate tax identification number has been issued to the severed mineral interest.

R.C. 5301.56 (B)(1)(c)(i)-(vi). If the holder of the severed mineral rights failed to undertake one of the enumerated savings events, those severed rights were abandoned and vested with the requisite surface estate. *Id.* Importantly, at nowhere in the text of the 1989 DMA is an obligation imposed upon the surface owner. A surface owner was not obligated to take any action to effectuate the abandonment and vesting. Instead, it was the inaction of the dormant mineral holder which brought about the abandonment.

In 2006, the General Assembly amended the 1989 DMA. In amending the statute, the General Assembly removed the automatic abandonment mechanism and put in place a statutory notice mechanism. R.C. 5301.56 (in effect June 30, 2006). Under the amended statute, a surface owner is required provide notice of his or her intent to have a severed mineral interest declared abandoned to the holder of that interest. R.C. 5301.56(E)-(H). However, the 2006

amendments do not apply retroactively to any severed mineral interest which was previously abandoned under the 1989 DMA, between March 22, 1992 and June 30, 2006.

ARGUMENT

I. **CERTIFIED QUESTION OF STATE LAW I**: “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?”

All Ohio courts that have addressed this question are in accord that the 1989 DMA applies to claims asserted after the 2006 amendments if the statutory requirements for abandonment were met prior to the change in the law. *Swartz v. Householder*, 7th Dist. Nos. 13 JE 24 and 13 JE 25, 2014-Ohio-2359 (June 2, 2014); *Walker v. Shondrick-Nau*, 7th Dist. No. 13 NO 402, 2014-Ohio-1499 (Apr. 3, 2014); *Miller v. Hutson*, Carroll C.P. No. 2013 CVH 27538 (June 23, 2014); *Thompson v. Custer*, Trumbull C.P. No. 2013 CV 2358 (June 16, 2014); *Whittaker v. Northwood Energy Corporation*, Monroe C.P. No. 2012-374 (June 5, 2014); *Blackstone v. Moore*, Monroe C.P. No. 2012-166 (Jan. 22, 2014); *Menges v. Strunk*, Belmont C.P. No. 13 CV 00269 (Dec. 30, 2013); *Hendershot v. Korner*, Belmont C.P. No. 12-CV-453 (Oct. 28, 2013); *Taylor v. Crosby*, Belmont C.P. No. 11 CV 422 (Sep. 16, 2013); *Tribett v. Shepherd*, Belmont C.P. No. 12-CV-180 (July 22, 2013); *Eisenbarth v. Reusser*, Monroe C.P. No. 2012-292 (June 6, 2013); *Marty v. Dennis*, Monroe C.P. No. 2012-203 (Apr. 11, 2013); *Wendt v. Dickerson*, Tuscarawas C.P. No. 2012 CV 02 0133 (Feb. 21, 2013); *Wiseman v. Potts*, Morgan C.P. 08CV0145 (2008).

It has been suggested to this Court in the jurisdictional memorandums that there is a split of authority on the answer to certified question number one. This is not correct. The Respondents are likely to rely almost entirely on two trial court decisions: *Dahlgren v. Brown*, Carroll C.P. No. 13CVH27445 (Nov. 5, 2013) and *M&H Partnership v. Hines*, Harrison C.P.

No. CVH-2012-59 (Jan. 14, 2014). However, the rationale of these cases, specifically, that the surface owner of real property affected by a severed mineral interest must have taken action prior to the 2006 amendments to the DMA was explicitly rejected by the Seventh District Court of Appeals. *Walker*, 2014-Ohio-1499, p. 12 (“Noon did not have any mineral interest in the subject property after March 22, 1992, because on that date the interest automatically vested in the surface owner by operation of the statute. And once the mineral interest vested in the surface owner, it ‘completely and definitely’ belonged to the surface owner.”); see also *Swartz*, 2014-Ohio-2359.

In noting that numerous trial courts in both the Seventh and Fifth Districts have upheld the applicability of the 1989 DMA, the court in *Walker*, 2014-Ohio-1499, p. 12, stated:

One trial court in our District has found to the contrary. *Dahlgren v. Brown Farm*, Carroll County 2013 CVH 274455. The trial court in *Dahlgren* found no merit to the “automatic vesting” theory. Instead, it classified the mineral rights under the 1989 version as “inchoate” rights. By definition, “inchoate” means “not completely formed or developed yet.” Merriam–Webster Online Dictionary. This definition is in direct contrast to the definition of “vested” which means that something “so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent.” *Jordan v. Indus. Comm.*, 120 Ohio St.3d at ¶ 9, quoting *Harden*, 101 Ohio St.3d at ¶ 9. Thus, the *Dahlgren* court's characterization of the mineral rights under the 1989 version is contrary to the statute itself, which states that the mineral rights are “vested.”

Further, any argument the first certified question has been subject to conflicting treatment by the Seventh District Court of Appeals is simply misleading. Respondents are likely to cite *Dodd v. Croskey*, 7th Dist. No. 12HA6, 2013-Ohio-4257 (Sep. 23, 2013), for this proposition. However, no arguments or claims associated with the 1989 DMA were presented in *Dodd*, a fact the Seventh District recently clarified in *Swartz*, 2014-Ohio-2359, p. 5:

First, appellants note that our *Dodd* case did not discuss the 1989 DMA. However, the parties in that case did not present arguments to this court under the 1989 DMA. See *Dodd*, 2013-Ohio-4257. They only presented

arguments concerning the 2006 DMA. If parties do not invoke a statute, we proceed under the impression that the parties agreed that said statute was not dispositive, i.e. if parties agree that there was no abandonment under the 1989 DMA, then they proceed under only the 2006 DMA. Thus, the lack of reference to the 1989 DMA in *Dodd* is not dispositive as to whether the 1989 DMA can still be used to assert vested rights.

Further, it is worth noting that at the time *Dahlgren* was decided the only appellate case addressing Ohio's Dormant Mineral Act was *Dodd*, and the *Dahlgren* court's decision may have been based on a similar misconception regarding the applicability of *Dodd* to the first certified question. *See Dahlgren*, Carroll C.P. No. 13CVH27445 (noting that *Dodd* applied the 2006 version to events that arose before its enactment without discussion of that choice). The Seventh District has subsequently clarified this misconception and no conflict exists.

Based on the *Swartz* and *Walker* decisions and the decisions of every other trial court in this state, the law of Ohio is currently uniform on the answer to Certified Question of State Law I: the 1989 DMA was self-executing and applies to severed mineral interests abandoned prior to the change in the law on June 30, 2006.

A. THE 1989 DMA WAS SELF-EXECUTING AND THEREFORE, OPERATED AUTOMATICALLY TO CAUSE SEVERED OIL, GAS, AND OTHER MINERAL INTERESTS TO BECOME ABANDONED AND VESTED WITH THE RELATED SURFACE ESTATES.

Under the 1989 DMA, a severed mineral interest was deemed abandoned and reunited with the surface estate unless it was preserved by one of the 1989 DMA's enumerated "savings events." *Swartz*, 2014-Ohio-2359; *Walker*, 2014-Ohio-1499; R.C. 5301.56 (B)(1)(c)(i)-(vi). The plain language of the 1989 DMA provides that a severed mineral interest which is not subject to a preserving event during a relevant twenty-year period "**shall be deemed abandoned and vested in the owner of the surface.**" R.C. 5301.56(B)(1). The 1989 DMA operates automatically, meaning the surface owner need not take any action to effectuate the abandonment and title vesting. *Walker*, 2014-Ohio-1499, p. 12 ("Noon did not have any mineral

interest in the subject property after March 22, 1992, because on that date the interest automatically vested in the surface owner by operation of the statute. Further, once the mineral interest vested in the surface owner, it ‘completely and definitely’ belonged to the surface owner.”); *Swartz*, 2014-Ohio-2359.

Once abandoned, the mineral interest becomes one with the surface estate. *Id.* This is the only reasonable interpretation of the plain language of the 1989 DMA. As such, the Court is duty bound to apply the text, as written. *Sugarcreek Twp. v. Centerville*, 133 Ohio St.3d 467, 979 N.E.2d 261 (2012) (finding that a court must apply statutory language consistent with the plain language unless the statutory language is ambiguous); *In re T.R.*, 120 Ohio St.3d 136, 138, 896 N.E.2d 1003 (2008) (“When we engage in statutory interpretation, we must first examine the plain language of the statute.”) Any interpretation of the 1989 DMA which would impose an obligation on the surface owner ignores the plain text of the 1989 DMA and cannot be sustained.

Even if one were to entertain the argument that the 1989 DMA’s abandonment mechanism is ambiguous, which it is not, the legislative history of the 1989 DMA affirmatively supports the creation of an automatic abandonment mechanism. (See Fiscal Note Sub. S.B. 223, pp. 48-50, a copy of which is attached hereto as App. Ex. 1). The 1989 DMA was introduced to work parallel to the Marketable Title Act by “terminating unused mineral interests not preserved by operations, transfers or a filing of notice of an intent to preserve interest.” (App. Ex. 1, pp. 48-50). Plain and simple, the mineral rights “revert to the surface landowner if the mineral right holder does nothing to the rights for 20 years. To extend their rights, a mineral right holder would simply have to file an extension with the local county recorder.” (App. Ex. 1, p. 1).

In addition, the drafters of the 1989 DMA reviewed the Uniform Dormant Mineral Interests Act, as drafted in 1986 by the National Conference of Commissioners of Uniform State Laws. (App. Ex. 1, pp. 48-50). The Uniform Dormant Mineral Interests Act would have expressly required action by the surface owner, but noted that some jurisdictions did not require any judicial action. (App. Ex. 1, p. 60). The General Assembly did not adopt that portion of the uniform act. Instead of giving the surface owner the right to “maintain an action” when the statutory requirements were met, the General Assembly expressly stated that the mineral interest “**shall be deemed abandoned and vested in the owner of the surface.**” As a result, it is clear that the General Assembly did not intend to impose an obligation on surface owners based upon the fact that they had sufficient language before them to do just that, and instead chose to make abandonment expressly conditioned on the inactivity of the mineral rights holder, including the failure to simply file a timely claim to preserve.

B. THE 1989 DMA CREATED VESTED PROPERTY RIGHTS.

The plain and express language of the 1989 DMA provides that unused severed mineral interests were legally deemed abandoned, automatically, without the need for the surface owners to take any action. The 1989 DMA did not create inchoate rights, as the *Dahlgren* court held and as the Respondents will suggest. *Walker*, 2014-Ohio-1499, ¶12 (“Thus, the *Dahlgren* court’s characterization of the mineral rights under the 1989 version is contrary to the statute itself, which states that the mineral rights are vested.”). An inchoate right is “[a] right that has **not** fully developed, matured, or **vested**.” Garner, *Black’s Law Dictionary* (9th Ed. 2009) (emphasis added). The 1989 DMA statutory language provides that the surface owner had a “vested” interest if the statutory requirements (mineral rights holder’s inactivity) were met. The term “inchoate” and “vested” are opposite terms. *See e.g., Bauman v. Hogue*, 160 Ohio St. 296, 301, 116 N.E.2d 439 (1953); *Swartz*, 2014-Ohio-2359, at p. 12 (“We conclude that it is contrary

to the plain language of the statute to hold that the surface owner's right to the abandoned mineral interests are inchoate even though the statute expressly stated that the right vested upon the lack of a savings event within the pertinent time period.”)

One of the most common examples of an inchoate right is a spouse's right to dower. The right to dower is inchoate because it is expressly contingent upon one spouse surviving the other. *Goodman v. Gerstle*, 158 Ohio St. 353, 358, 109 N.E.2d 489 (1952) (“During the lifetime of both spouses, dower is a contingent inchoate right and becomes vested in the surviving spouse only upon the death of the other spouse.”) Thus, once a spouse passes away and the dower right vests, a change in Ohio's dower statutes cannot divest that spouse's rights. *See id.* Severed mineral interests which were not preserved under the 1989 DMA vested based upon the severed mineral interests' dormancy for twenty-plus years, as the right to dower would become vested on the date of death of one's spouse. At that exact moment in time the surface owners for the affected real property became the owner of those rights, without any further action needed or without the fulfillment of any additional condition.

C. THE 1989 DMA OPERATES IN THE SAME MANNER AS THE OHIO MARKETABLE TITLE ACT AND PROMOTES TITLE CERTAINTY.

The 1989 DMA is not unique in its use of automatic abandonment and extinguishment of real property interests. Ohio's Marketable Title Act operates in the exact same manner. Under the Marketable Title Act, a real property interest which is not preserved by an enumerated preservation event during a specified time period is deemed ineffective. R.C. 5301.47, *et seq.* The Marketable Title Act also does not require the party seeking extinguishment to take any action. *Evans v. Cormican*, 5th Dist. Licking No. 09 CA 76, 2010-Ohio-541, (Jan. 5, 2010) (finding that the Marketable Title Act operates, **automatically**, to remove clouds from title that pre-date the root of title); *see Heifner v. Bradford*, 4 Ohio St.3d 49,

446 N.E.2d 440 (1983); *see Collins v. Moran*, 7th Dist. Mahoning No. 02 CA 218, 2004-Ohio-1381 (March 17, 2004). Importantly, the Marketable Title Act does not require advance notice to the interest holder before extinguishment occurs. *See id.*

Just like the 1989 DMA, the Marketable Title Act provides the interest owner with the ability and opportunity to preserve his or her interest by simply filing a notice to preserve. *See* R.C. 5301.51. However, if no such preservation notice was filed during the applicable period and the interest was extinguished automatically by the Marketable Title Act, then the Marketable Title Act provides that an extinguished interest cannot be revived by the filing of a notice to preserve after the fact. R.C. 5301.49(D). Thus, the Marketable Title Act explicitly provides that once an interest is extinguished by failure of the owner to timely preserve his or her interest, the former owner forever and irrevocably loses his or her interest. An untimely filed preservation notice is of no effect.

The 1989 DMA fundamentally operates in the same manner by requiring the severed mineral holders to take simple steps to preserve their mineral interests, except it looks at a twenty-year period, rather than 40 years from the “root of title”. Similarly to the Marketable Title Act generally, R.C. 5301.56(B)(1) provides that any severed mineral interest which is not subjected to one of the enumerated “savings events” “shall be **deemed abandoned and vested** in the owner of the surface.” (Emphasis added). Any argument to the contrary ignores the plain language of the 1989 DMA.

The automatic vesting under the 1989 DMA is also similar to Ohio’s adverse possession statute. An adverse possessor is not required to bring a quiet title lawsuit before title is vested in him or her; instead, the adverse possessor need only meet all elements of adverse possession for a continuous period of 21 years. *State ex rel. A.A.A. Investments v. City of*

Columbus, 17 Ohio St.3d 151, 152, 478 N.E.2d 773 (1985) (“[O]nce the statutory period enunciated in R.C. 2305.04 has expired, the former titleholder has lost his claim of ownership and the adverse possessor is thereafter maintaining its possession, not taking property.”); *Heider v. Unknown Heirs, Devisees & Personal Representatives of Frances Brenot*, 6th Dist. Wood Nos. WD-05-012, WD-05-020, 2006-Ohio-122 (Jan. 13, 2006). R.C. 2305.04 places the burden of action on the title holder of the real property, as he or she must act to eject the adverse possessor before the twenty-year period has run. *Id.* Similarly, the 1989 DMA required the severed mineral holder to take one of several, simple actions every 20 years in order to preserve his or her interest. Once the statutory period under the 1989 DMA expired without a savings event, the former mineral interest holder lost his or her claim of ownership and the surface owner is thereafter maintaining its possession.

Additionally, this Court has expressly held that a statute which vests real property rights of one party, based upon that party’s inaction, to another party is not a taking. *State ex rel. A.A.A. Investments*, 17 Ohio St.3d at 152. When construing Ohio’s adverse possession statute, R.C. 2305.04, this Court held that the vesting of title to real property in favor of the adverse possessor is not a taking because such vesting does not occur based upon state action, but instead, is based upon the title holder’s inaction. *Id.* In so holding, this Court relied on *Texaco v. Short*, 454 U.S. 516, 102 S.Ct. 781 (1982), which found that Indiana’s dormant mineral statute, which is substantially similar to the 1989 DMA, did not constitute a taking. *Id.*

D. THE 1989 DMA SIMPLIFIES AND FACILITATES OIL AND GAS TRANSACTIONS.

The 1989 DMA’s automatic abandonment mechanism promotes the oft-stated policy goal of promoting efficient use of oil, gas, and other mineral rights and simplifying the chain of title. The 1989 DMA is concerned with the absence of events contained within the

public record, such as the presence of recorded title documents identifying the owners of the interest or the presence of producing oil and gas wells on property. As such, a landman who is attempting to ascertain the rightful owner of oil and gas rights need only review the public records associated with a severed mineral interest rather than attempt to locate the potentially numerous fractional and unnamed heirs of an interest reserved decades before. If none of the enumerated “savings event” have occurred within any of the relevant twenty-year periods, then the landman is safe to lease those rights from the surface owner of the once-affected real property. Such a procedure makes land transactions more efficient, a conclusion which was reached by the United States Supreme Court in *Texaco*, 454 U.S. 516, fn. 34 (“Moreover, if a mineral interest has been inactive for a sufficient period of time, a developer may well decide that notice is entirely unnecessary. Title opinions and title insurance, based normally on a thorough search of county records, may be sufficient to assure a potential developer that an ancient and dormant mineral estate, like other possible clouds on title, is without legal significance.”) The 1989 DMA promote this policy by operating in a similar manner as the Marketable Title Act: automatic removal and/or abandonment of dormant real property interests.

E. THE 1989 DMA DID NOT REQUIRE A SURFACE OWNER TO TAKE ANY ACTION.

Any interpretation of the 1989 DMA which finds that the surface owner was required to take action to finalize abandonment and vesting ignores the statute’s plain and unambiguous language. The plain and unambiguous language of the 1989 DMA imposed no obligation on the surface owner; instead, it required severed mineral owners to take minimal steps to preserve their interests. As such, the Court is duty bound to apply the text, as written. *Sugarcreek Twp.*, 133 Ohio St.3d 467 (finding that a court must apply statutory language consistent with the plain language unless the statutory language is ambiguous); *In re T.R.*, 120

Ohio St.3d at 138 (“When we engage in statutory interpretation, we must first examine the plain language of the statute.”) Any interpretation of the 1989 DMA which would impose an obligation on the surface owner ignores the plain text of the DMA and cannot be sustained. *Swartz*, 2014-Ohio-2359; *Walker*, 2014-Ohio-1499.

F. THE 1989 DMA DOES NOT IMPOSE A FORFEITURE, BUT MERELY PROVIDES FOR STATUTORY ABANDONMENT UNLESS THE MINERAL RIGHT HOLDER HAS TIMELY PRESERVED HIS OR HER INTEREST.

The 1989 DMA places the burden to act upon the mineral right holders, or their interest is statutorily abandoned. The United States Supreme Court upheld this automatic abandonment in *Texaco*, above, in reviewing the self-executing feature of an Indiana statute, substantially similar to the 1989 DMA. Any assertion that the 1989 DMA is a forfeiture statute is wrong. The 1989 DMA does not impose any forfeiture or taking upon mineral holders. Instead, it provides a statutory framework for determining whether those holders have abandoned their interests. It gives the mineral holders ample opportunity to act to avoid abandonment, specifically by providing a three-year grace period from March 22, 1989 to March 22, 1992, during which a mineral holder could take one of several actions to preserve their interest including the simple filing of a claim to preserve. Thereafter, the mineral holder could simply file a claim to preserve once every 20 years, a very minimal burden. It is the inaction of the severed mineral interest holders that results in abandonment, not the actions of the state or the surface owners.

There is no public policy against abandonment of the real property rights, which go neglected and unused for decades. In fact, the public policy of Ohio, as enacted in the 1989 DMA, is that public policy favors subjecting dormant, severed mineral interests to abandonment and termination. The 1989 DMA is no more repugnant than the Marketable Title Act (or statutes

of limitation generally), both of which operate to automatically abandon and extinguish old dormant real estate interests. Further, this purpose and public policy of Ohio is to be liberally construed in favor of the surface owner. *See* R.C. 5301.55.

As previously discussed, this Court has expressly held that a statute which vests real property rights of one party, based upon that party's inaction, to another party is not a taking. *State ex rel. A.A.A. Investments*, 17 Ohio St.3d at 152. When construing Ohio's adverse possession statute, R.C. 2305.04, this Court held that the vesting of title to real property in favor of the adverse possessor is not a taking because such vesting does not occur based upon state action, but instead, is based upon the title holder's inaction. *Id.* In so holding, this Court relied on *Texaco*, which found that Indiana's dormant mineral statute, which is substantially similar to the 1989 DMA, did not constitute a taking. *Id.* As such, the 1989 DMA does not result in a taking or forfeiture, but rather abandonment, based upon the prior title holder's inaction.

G. THE 2006 AMENDMENTS TO THE 1989 DMA COULD NOT UNDO THE 1989 DMA'S PRIOR OPERATION.

It is precisely because the 1989 DMA is self-executing that the 2006 amendments to the statute can have no effect on property rights vested under the 1989 DMA. *Swartz*, 2014-Ohio-2359, p. 10 (“[W]hen the 2006 version was enacted, any mineral interest that was abandoned under the 1989 version stayed abandoned and continued to be vested in the surface owner, and once the mineral interest vested in the surface owner, it reunited with the surface estate pursuant to statute regardless of whether the event has yet to be formalized.”); *Walker*, 2014-Ohio-1499. Any argument that the 2006 amendments to the statute are to be applied to surface owners who acquired rights under the 1989 DMA violates Ohio law and must be ignored.

When determining whether a repeal or amendment of a statute may be applied retroactively, Ohio courts follow a two-prong test. *State of Ohio v. Consilio*, 114 Ohio St.3d

295, 871 N.E.2d 1167 (2007). The first prong, created in accordance with R.C. 1.48, asks whether the statute was “expressly made” retroactive. R.C. 1.48; *Hyle v. Porter*, 117 Ohio St.3d 165, 882 N.E.2d 899 (2008). Only if the answer is “yes” can one then proceed to the second prong, which focuses upon whether the statute affects substantive rights or is remedial in nature. *Consilio*, 114 Ohio St.3d 295. Any statute and/or amendment that retroactively impairs “vested substantive rights” is void. *Id.*

1. **The 2006 amendments do not expressly provide for retroactive application.**

The default rule is that Ohio statutes are applied prospectively. If the retroactivity of a statute is not expressly stated in plain terms, the presumption in favor of prospective application controls and ends the analysis. *Consilio*, 114 Ohio St.3d 295, paragraph one of the syllabus (“A statute must clearly proclaim its own retroactivity to overcome the presumption of prospective application. Retroactivity is not to be inferred.”) Pursuant to R.C. 1.48, if a statute is silent as to whether it is to apply retroactively, a court must apply it prospectively only. *Consilio*, 114 Ohio St.3d 295 citing *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 849 N.E.2d 268 (2006). A court can never infer that a statute is to be applied retroactively. *Id.*; *Ackison v. Anchor Packing Co.*, 120 Ohio St.3d 228, 231, 897 N.E.2d 1118 (2008) (“The General Assembly’s failure to clearly enunciate retroactivity ends the analysis, and the relevant statute may be applied only prospectively.”)

In *Consilio*, the Supreme Court held the General Assembly is presumed to know that it must include express retroactive language to create that effect, and that it has done so in the past. 114 Ohio St.3d 295, n.3 citing *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, 522 N.E.2d 489 (1988), and *State ex rel. Slaughter*, 132 Ohio St. 437, 9 N.E.2d 505 (1937). In *Van Fossen*, the statute at issue stated that it applied to “any action * * * pending in any court

on the effective date of this section.” 36 Ohio St.3d at 103. In *State ex rel. Slaughter*, the statute at issue stated, “The provisions of this act shall apply to all work-relief employees who are injured * * * whether such injury or death occurs prior to the operative date of this act or subsequent thereto.” 132 Ohio St. at 539.

The 2006 amendments to the 1989 DMA do not include any representation that they were to be applied retroactively. *Swartz*, 2014-Ohio-2359, at p. 10 (“[T]he 2006 DMA contains no language eliminating property rights that were previously expressly said to be vested, i.e. it contains no statement that its new requirements for surface owners and the new rights for mineral holders apply retrospectively.”); *Walker*, 2014-Ohio-1499, at p. 14. Therefore, the presumption in favor of prospective application controls and ends the analysis. *Hyle*, 117 Ohio St.3d 165; *Consilio*, 114 Ohio St.3d 295; *Walker*, 2014-Ohio-1499 (“[T]he 2006 version of R.C. 5301.56 does not specifically provide for retroactive application. Thus, the 1989 version, which was in effect at the relevant time to render the mineral interest vested in the surface owner, controls here.”); *Swartz*, 2014-Ohio-2359.

2. **Even if the General Assembly intended the 2006 amendments to the 1989 DMA to apply retroactively, they cannot be applied against surface owners who obtained vested property rights under the 1989 DMA.**

The legal effect of conduct (or the lack thereof) should ordinarily be assessed under the law that existed when the conduct took place. Because the 2006 version of the statute does not expressly indicate that it was intended to apply retroactively, there is no need to analyze the second prong of the retroactivity test. *Hyle*, 117 Ohio St.3d 165; *Consilio*, 114 Ohio St.3d 295. However, even if this Court were to analyze the second prong, it would find that Respondents’ position is not supported.

Application of the 2006 law's requirements on surface owners who previously obtained vested title to severed minerals under the 1989 DMA's automatic operation between 1992 and 2006 would violate the second prong. The 2006 law, if applied to surface owners who met the 1989 DMA's elements prior to the 2006 amendment, would undoubtedly impair substantive rights. The changes in the law, if applied retroactively, do not merely provide a new procedure to recognize abandoned interests, but would change and divest those interests already "abandoned and vested" under the express terms of the 1989 DMA and would recast those rights as inchoate claims with new burdens and obligations.

A statute is substantive, and thereby runs afoul of Ohio's constitutional ban on retroactive laws, if it "impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligation[s], or liabilities as to a past transaction or creates a new right." *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 224, 883 N.E.2d 377 (2008). This Court has defined a "vested right" as:

A 'vested right' may be created by common law or statute and is generally understood to be the power to lawfully do certain actions or possess certain things; in essence, it is a property right." *Washington Cty. Taxpayers Assn. v. Peppel* (1992), 78 Ohio App.3d 146, 155, 604 N.E.2d 181.

A vested right is one which it is proper for the state to recognize and protect, and which an individual cannot be deprived of arbitrarily without injustice[.]" *State v. Muqdady* (2000), 110 Ohio Misc.2d 51, 55, 744 N.E.2d 278, or without his or her consent. *Scamman v. Scamman* (1950), 56 Ohio Law Abs. 272, 90 N.E.2d 617, 619. A right cannot be considered "vested" unless it amounts to something more than a mere expectation of future benefit or interest founded upon an anticipated continuance of existing laws. *737 *Roberts v. Treasurer* (2001), 147 Ohio App.3d 403, 411, 770 N.E.2d 1085; see, also, *In re Emery* (1978), 59 Ohio App.2d 7, 11, 13 O.O.3d 44, 391 N.E.2d 746.

State ex rel. Jordan v. Indus. Comm., 120 Ohio St.3d 412, 413-14, 900 N.E.2d 150 (2008); see *Walker*, 2014-Ohio-1499, p. 11; see also *Swartz*, 2014-Ohio-2359, at p. 9 ("A vested interest can

be a property right created by statute; it so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent.”)

Based upon the precedent discussed above, the 2006 changes to the 1989 DMA cannot be applied against real property owners who obtained vested rights in abandoned severed mineral interests. Applying the 2006 version of the statute against such individuals would undo and divest their vested ownership right in the previously severed mineral rights. *Swartz*, 2014-Ohio-2359; *Walker*, 2014-Ohio-1499. As previously discussed, the plain language of the 1989 DMA created an automatic abandonment mechanism and vested property rights.

More so, if the General Assembly had intended the 2006 statute to affect property rights previously vested under the 1989 DMA, it would have been required to provide a reasonable grace period before those effects were implemented (just as the original 1989 DMA had a three-year grace period from March 22, 1989 until March 22, 1992, for any “holder” to preserve their interest). See *Gregory v. Flowers*, 32 Ohio St.2d 48, 290 N.E.2d 181 (1972) citing *Smith v. New York Central Rd. Co.*, 122 Ohio St. 45, 170 N.E. 637 (1930).

As is clear from Ohio precedent, the changes instituted in 2006, as applied against surface owners vested with ownership under the 1989 DMA, would affect substantive rights. Those changes do not merely affect the remedy offered by the 1989 DMA, but instead would materially and fundamentally unwind prior abandoned and vested interests. It would do so by imposing a new retroactive obligation on surface owners, and therefore, are substantive and not remedial. Because the 2006 amendments would affect substantive rights, they cannot be applied retroactively against surface owners who previously acquired ownership rights under the 1989 DMA.

3. **Application of the 2006 amendments against property owners who obtained vested rights under the 1989 DMA would violate R.C. 1.58, Ohio's saving law.**

Additionally, any argument seeking to have the 2006 amendments applied retroactively against surface owners who meet the 1989 DMA's requirements also contravenes R.C. 1.58, Ohio's general savings law. It provides that in the event a statute is amended or repealed, those changes have no effect on "the **prior operation of the statute...**" (Emphasis added). R.C. 1.58(A)(1). As previously discussed, the 1989 DMA operated automatically to cause dormant mineral interests to become abandoned and vested with the surface estate, so long as none of the enumerated "savings events" had occurred during a twenty-year period. The Ohio Legislature's actions in 2006 to amend, repeal, or otherwise change the 1989 DMA could not affect, and do not affect, the prior operation of the 1989 DMA.

CONCLUSION

Based on the foregoing, in answering the First Certified Question of State Law, the Court should hold that the 1989 DMA was self-executing, without the need for action by surface owners, and should further hold that any rights acquired thereunder cannot and were not impacted by the 2006 amendments to the statute. The 1989 DMA applies to claims asserted after 2006 when 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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APPENDIX EXHIBIT 1

FISCAL NOTE



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

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

This bill would make changes in mineral rights law.

EXPLANATION OF ESTIMATE:

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

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

YR

As Introduced	1.4
117th General Assembly	1.6
Regular Session	1.7
1987-1988	1.8
MESSRS. CUPP-SCHAFRATH-NETTLE	1.10
	1.11

A B I L L

To amend sections 317.18, 317.20, 317.201, and	1.14
5301.53, to enact new section 5301.56, and to	1.15
repeal section 5301.56 of the Revised Code to	1.16
provide a method for the termination of dormant	
mineral estates and the vesting of their title in	1.17
the surface owners, in the absence of certain	1.18
occurrences within the preceding 20 years,	1.19
including the filing by the holder of the mineral	1.20
interest of a notice of claim.	
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:	1.23
Section 1. That sections 317.18, 317.20, 317.201, and	1.25
5301.53 be amended and new section 5301.56 of the Revised Code be	1.26
enacted to read as follows:	1.27
Sec. 317.18. At the beginning of each day's business the	1.30
county recorder shall make and keep up general alphabetical	1.31
indexes, direct and reverse, of all the names of both parties to	1.33
all instruments theretofore received for record by him. The	1.34
volume and page where such instrument is recorded may be omitted	1.35
until it is actually recorded if the file number is entered in	1.36
place of the volume or page; but such file number may be omitted	2.1
from any index volume in use on April 21, 1896, if the form of	2.3
the index volume is not adapted to entering the file number. The	2.5
indexes shall show the kind of instrument, the range, township,	2.7
and section or the survey number and number of acres, or the	2.8
permanent parcel number provided for under section 319.28 of the	2.9
Revised Code, or the lot and subplot number and the part thereof,	2.10
all as the case requires, of each tract, parcel, or lot of land	2.12
described in any such instrument of writing. The name of each	2.13

grantor shall be entered in the direct index, under the appropriate letter, followed on the same line by the name of the grantee, or, if there is more than one grantee, by the name of the first grantee followed by "and others" or their equivalent. The name of each grantee shall be entered in the reverse index under the appropriate letter, followed on the same line by the name of the grantor, or, if there is more than one grantor, by the name of the first grantor followed by "and others" or their equivalent.

As to notices of claims filed in accordance with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code there shall be entered in the reverse index under the appropriate letter the name of each claimant, followed on the same line by the name of the present owner of title against whom the claim is asserted, if the notice contains the name of the present owner; or, if the notice contains the names of more than one such owner, there shall be entered the name of the first owner followed by "and others" or their equivalent.

In all cases of deeds, mortgages, or other instruments of writing made by any sheriff, master commissioner, marshal, auditor, executor, administrator, trustee, or other officer, for the sale, conveyance, or encumbrance of any lands, tenements, or hereditaments, and recorded in the recorder's office, the recorder shall index the parties to such instrument under their appropriate letters, respectively, as follows:

(A) The names of the persons represented by such officer as owners of the lands, tenements, or hereditaments described in any such instruments;

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

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

In all cases of instruments filed in accordance with sections 5311.01 to 5311.22 of the Revised Code, the name of each owner shall be entered in the direct index, under the appropriate

letter, followed on the same line by the name of the condominium 3.16
 property, and the name of the condominium property shall be 3.17
 entered in the reverse index under the appropriate letter
 followed on the same line by the name of the owner of the 3.18
 property, or, if the instrument contains the names of more than 3.19
 one owner there shall be entered the name of the first owner 3.20
 followed by "and others" or its equivalent. 3.21

Any general alphabetical index commenced--after-June-77 3.22
~~1977~~ shall be COMMENCED in conformity to this section, and 3.23
 whenever, in the opinion of the board of county commissioners, it 3.25
 becomes necessary to transcribe, on account of its worn out or 3.26
 incomplete condition, any volume of such AN index now in use, 3.29
 such volume shall be revised and transcribed to conform with this 3.30
 section; except that in counties having a sectional index in 3.31
 conformity with section 317.20 of the Revised Code, such 3.33
 transcript shall be only a copy of the original. 3.34

Sec. 317.20. When, in the opinion of the board of county 3.36
 commissioners sectional indexes are needed, and it so directs, in 4.1
 addition to the alphabetical indexes provided for in section 4.2
 317.18 of the Revised Code, the board may provide for making, in 4.3
 books prepared for that purpose, sectional indexes to the records 4.4
 of all real estate in the county, beginning with some designated 4.5
 year and continuing through such period of years as it specified, 4.6
 by placing under the heads of the original surveyed sections or 4.7
 surveys, or parts of a section or survey, squares, subdivisions, 4.8
 or the permanent parcel numbers provided for under section 319.28 4.10
 of the Revised Code, or lots, on the left-hand page, or on the 4.12
 upper portion of such page of the index book, the following: 4.13

(A) The name of the grantor; 4.14

(B) Next to the right, the name of the grantee; 4.16

(C) The number and page of the record where the instrument 4.18
 is found recorded; 4.19

(D) The character of the instrument, to be followed by a 4.21
 pertinent description of the property conveyed by the deed, 4.22
 lease, or assignment of lease;

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

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

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

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

- (A) The name of each claimant;
- (B) Next to the right, the name of each owner of title;

(C) The deed book number and page where the instrument containing the claim has been recorded;	5.27 5.28
(D) The type of claim asserted; and on the opposite page on the corresponding line a pertinent description of the property affected as appears in such notice.	5.30 5.31 5.32
Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING:	5.35 6.1 6.2
(A) To-bar-any ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;	6.4 6.5 6.7 6.8
(B) To-bar-or-extinguish-any ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose;	6.10 6.11 6.12
(C) To-bar-or-extinguish-any ANY easement or interest in the nature of an easement, the existence of which, is clearly observable by physical evidence of its use;	6.14 6.15 6.17
(D) To-bar-or-extinguish-any ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;	6.19 6.20 6.21 6.22 6.23 6.26 6.27 6.28
(E) To-bar-or-extinguish-any ANY right, title, estate, or interest in coal, and any mining or other rights pertinent thereto or exercisable in connection therewith;	6.30 6.31 6.32
(F) To-bar-or-extinguish-any ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;	6.33 6.34
(G) To-bar-or-extinguish-any ANY right, title, or interest of the United States, or of the-state-of-Ohio THIS STATE, or any political subdivision, body politic, or agency thereof.	6.36 7.2 7.3

Sec. 5301.56. (A) AS USED IN THIS SECTION: 7.5

(1) "HOLDER" INCLUDES NOT ONLY THE RECORD HOLDER OF A 7.7
MINERAL INTEREST, BUT ALSO ANY PERSON WHO DERIVES HIS RIGHTS 7.8
FROM, OR A COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM 7.10
DOES NOT INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS 7.11
ADVERSE TO THE INTEREST OF THE RECORD HOLDER.

(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED 7.13
UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE 7.15
HOLDER TO DRILL AN OIL OR GAS WELL OR MINE OTHER MINERALS. 7.16

(B) ANY MINERAL INTEREST HELD BY ANY PERSON OTHER THAN THE 7.19
OWNER OF THE SURFACE OF THE LANDS SHALL BE DEEMED ABANDONED AND 7.20
VESTED IN THE OWNER OF THE SURFACE, IF NEITHER OF THE FOLLOWING 7.21
IS TRUE:

(1) THE MINERAL INTEREST IS ONE IN COAL, OR MINING OR 7.23
OTHER RIGHTS PERTINENT THERETO, AS DESCRIBED IN DIVISION (E) OF 7.24
SECTION 5301.53 OF THE REVISED CODE; 7.25

(2) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE 7.27
FOLLOWING HAS OCCURRED: 7.28

(a) THE INTEREST HAS BEEN CONVEYED, LEASED, TRANSFERRED, 7.30
OR MORTGAGED BY AN INSTRUMENT FILED OR RECORDED IN THE RECORDER'S 7.31
OFFICE OF THE COUNTY IN WHICH THE LANDS ARE LOCATED; 7.32

(b) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF 7.34
MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A 7.35
LEASE TO WHICH SUCH INTEREST IS SUBJECT, OR, IN THE CASE OF OIL 7.36
OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT 8.1
OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED 8.2
CODE, IN WHICH THE INTEREST IS PARTICIPATING; 8.3

(c) THE INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE 8.6
OPERATIONS BY THE HOLDER;

(d) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE 8.8
HOLDER; 8.9

(e) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED UNDER 8.12
DIVISION (C) OF THIS SECTION.

NO MINERAL INTEREST SHALL BE DEEMED ABANDONED UPON THE 8.14
BASIS OF FAILURE OF COMPLIANCE WITH DIVISION (B) OF THIS SECTION 8.16
PRIOR TO THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION. 8.17

(C) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 8.19
DEEMED ABANDONED UNDER DIVISION (B) OF THIS SECTION MAY BE FILED 8.21
FOR RECORD BY THE HOLDER WITH THE COUNTY RECORDER OF THE COUNTY 8.22
IN WHICH THE LAND IS LOCATED. THE CLAIM SHALL CONSIST OF A 8.23
NOTICE, VERIFIED UNDER OATH, OF THE NATURE OF THE INTEREST
CLAIMED, A DESCRIPTION OF THE LAND, THE VOLUME AND PAGE OF ANY 8.24
RECORDED INSTRUMENT ON WHICH IT IS BASED, THE NAME AND ADDRESS OF 8.26
THE HOLDER, AND THAT HE DOES NOT INTEND TO ABANDON BUT TO
PRESERVE HIS RIGHTS. SUCH CLAIM PRESERVES THE RIGHTS OF ALL 8.27
HOLDERS OF A MINERAL INTEREST IN THE SAME LAND. ANY HOLDER OF AN 8.29
INTEREST FOR USE IN UNDERGROUND GAS STORAGE OPERATIONS MAY
PRESERVE HIS INTEREST, AND THOSE OF ANY LESSOR THEREOF, BY A 8.30
SINGLE CLAIM, DEFINING THE BOUNDARIES OF THE STORAGE FIELD OR 8.31
POOL AND ITS FORMATIONS, WITHOUT DESCRIBING EACH SEPARATE 8.32
INTEREST CLAIMED. SUCH A CLAIM ALSO ESTABLISHES PRIMA-FACIE 8.33
EVIDENCE OF THE USE OF SUCH INTEREST IN UNDERGROUND GAS STORAGE 8.34
OPERATIONS. 8.35

(D) A CLAIM FILED UNDER DIVISION (C) OF THIS SECTION SHALL 9.2
BE RECORDED AS PROVIDED IN SECTIONS 317.18 TO 317.201 AND 5301.52 9.3
OF THE REVISED CODE.

(E) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY FROM 9.6
THE PRESUMPTION OF ABANDONMENT UNDER THIS SECTION BY OCCURRENCE 9.7
OF ANY OF THE EVENTS DESCRIBED IN DIVISION (B)(2) OF THIS 9.8
SECTION, INCLUDING SUCCESSIVE FILINGS OF CLAIMS UNDER DIVISION 9.9
(C) OF THIS SECTION. THE FILING OF A CLAIM UNDER DIVISION (C) OF 9.10
THIS SECTION DOES NOT AFFECT THE RIGHT OF A LESSOR OF AN OIL OR 9.11
GAS LEASE TO OBTAIN ITS FORFEITURE UNDER SECTION 5301.332 OF THE 9.12
REVISED CODE.

(F) THIS SECTION DOES NOT APPLY TO ANY MINERAL INTEREST 9.14
HELD BY ANY GOVERNMENTAL ENTITY. 9.15

Section 2. That existing sections 317.18, 317.20, 317.201, 9.17
and 5301.53 and section 5301.56 of the Revised Code are hereby 9.18
repealed. 9.19

As Reported by the Senate Judiciary Committee	1.4
117th General Assembly	1.6
Regular Session	1.7
1987-1988	1.8
Sub. S. B. No. 223	1.7
MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE	1.10
	1.11

A B I L L 1.12

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

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

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

Sec. 317.18. At the beginning of each day's business the county recorder shall make and keep up general alphabetical indexes, direct and reverse, of all the names of both parties to all instruments theretofore received for record by him. The volume and page where such instrument is recorded may be omitted until it is actually recorded if the file number is entered in place of the volume or page, but such file number may be omitted from any index volume in use on April 22, 1896, if the form of the index volume is not adapted to entering the file number. The indexes shall show the kind of instrument, the range, township, and section or the survey number and number of acres, or the permanent parcel number provided for under section 319.28 of the Revised Code, or the lot and subplot number and the part thereof, all as the case requires, of each tract, parcel, or lot of land described in any such instrument of writing. The name of each 1.26

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grantor shall be entered in the direct index under the appropriate letter, followed on the same line by the name of the grantee, or, if there is more than one grantee, by the name of the first grantee followed by "and others" or their equivalent. The name of each grantee shall be entered in the reverse index under the appropriate letter, followed on the same line by the name of the grantor, or, if there is more than one grantor, by the name of the first grantor followed by "and others" or their equivalent.

As to notices of claims filed in accordance with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code there shall be entered in the reverse index under the appropriate letter the name of each claimant, followed on the same line by the name of the present owner of title against whom the claim is asserted, if the notice contains the name of the present owner; or, if the notice contains the names of more than one such owner, there shall be entered the name of the first owner followed by "and others" or their equivalent.

In all cases of deeds, mortgages, or other instruments of writing made by any sheriff, master commissioner, marshal, auditor, executor, administrator, trustee, or other officer, for the sale, conveyance, or encumbrance of any lands, tenements, or hereditaments, and recorded in the recorder's office, the recorder shall index the parties to such instrument under their appropriate letters, respectively, as follows:

(A) The names of the persons represented by such officer as owners of the lands, tenements, or hereditaments described in any such instruments;

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

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

In all cases of instruments filed in accordance with sections 5311.01 to 5311.22 of the Revised Code, the name of each owner shall be entered in the direct index, under the appropriate

letter, followed on the same line by the name of the condominium 3.16
 property, and the name of the condominium property shall be 3.17
 entered in the reverse index under the appropriate letter
 followed on the same line by the name of the owner of the 3.18
 property, or, if the instrument contains the names of more than 3.19
 one owner, there shall be entered the name of the first owner 3.20
 followed by "and others" or its equivalent. 3.21

Any general alphabetical index commenced--after-June-7, 3.22
~~1911~~, shall be COMMENCED in conformity to this section, and 3.23
 whenever, in the opinion of the board of county commissioners, it 3.25
 becomes necessary to transcribe, on account of its worn out or 3.26
 incomplete condition, any volume of such AN index now in use, 3.29
 such volume shall be revised and transcribed to conform with this 3.30
 section; except that in counties having a sectional index in 3.31
 conformity with section 317.20 of the Revised Code, such 3.33
 transcript shall be only a copy of the original. 3.34

Sec. 317.20. When, in the opinion of the board of county 3.36
 commissioners sectional indexes are needed, and it so directs, in 4.1
 addition to the alphabetical indexes provided for in section 4.2
 317.18 of the Revised Code, the board may provide for making, in 4.3
 books prepared for that purpose, sectional indexes to the records 4.4
 of all real estate in the county, beginning with some designated 4.5
 year and continuing through such period of years as it specified, 4.6
 by placing under the heads of the original surveyed sections or 4.7
 surveys, or parts of a section or survey, squares, subdivisions, 4.8
 or the permanent parcel numbers provided for under section 319.28 4.10
 of the Revised Code, or lots, on the left-hand page, or on the 4.12
 upper portion of such page of the index book, the following: 4.13

- (A) The name of the grantor; 4.14
- (B) Next to the right, the name of the grantee; 4.16
- (C) The number and page of the record where the instrument 4.18
 is found recorded; 4.19
- (D) The character of the instrument, to be followed by a 4.21
 pertinent description of the property conveyed by the deed, 4.22
 lease, or assignment of lease;

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

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

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

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

- (A) The name of each claimant;
- (B) Next to the right, the name of each owner of title;

(C) The deed book number and page where the instrument containing the claim has been recorded;	5.27 5.28
(D) The type of claim asserted; and on the opposite page on the corresponding line a pertinent description of the property affected as appears in such notice.	5.30 5.31 5.32
Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING:	5.35 6.1 6.2
(A) To bar any ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;	6.4 6.5 6.7 6.8
(B) To bar or extinguish any ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose;	6.10 6.11 6.12
(C) To bar or extinguish any ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;	6.14 6.15 6.17
(D) To bar or extinguish any ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;	6.19 6.20 6.21 6.22 6.23 6.26 6.27 6.28
(E) To bar or extinguish any ANY right, title, estate, or interest in coal, and any mining or other rights pertinent thereto or exercisable in connection therewith;	6.30 6.31 6.32
(F) To bar or extinguish any ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;	6.33 6.34
(G) To bar or extinguish any ANY right, title, or interest of the United States, or of the state of Ohio THIS STATE, or any political subdivision, body politic, or agency thereof.	6.36 7.2 7.3

Sec. 5301.56. (A) AS USED IN THIS SECTION:	7.5
(1) "HOLDER" INCLUDES NOT ONLY THE RECORD HOLDER OF A MINERAL INTEREST, BUT ALSO ANY PERSON WHO DERIVES HIS RIGHTS FROM, OR A COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM DOES NOT INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS ADVERSE TO THE INTEREST OF THE RECORD HOLDER.	7.7 7.8 7.10 7.11
(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE HOLDER TO DRILL AN OIL OR GAS WELL OR MINE OTHER MINERALS.	7.13 7.15 7.16
(B) ANY MINERAL INTEREST HELD BY ANY PERSON OTHER THAN THE OWNER OF THE SURFACE OF THE LANDS SHALL BE DEEMED ABANDONED AND VESTED IN THE OWNER OF THE SURFACE, IF NEITHER OF THE FOLLOWING IS TRUE:	7.19 7.20 7.21
(1) THE MINERAL INTEREST IS ONE IN COAL, OR MINING OR OTHER RIGHTS PERTINENT THERETO, AS DESCRIBED IN DIVISION (E) OF SECTION 5301.53 OF THE REVISED CODE;	7.23 7.24 7.25
(2) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE FOLLOWING HAS OCCURRED:	7.27 7.28
(a) THE 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 IS LOCATED;	7.30 7.32
(b) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A LEASE TO WHICH SUCH INTEREST IS SUBJECT, OR, IN THE CASE OF OIL OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED CODE, IN WHICH THE INTEREST IS PARTICIPATING, PROVIDED THAT THE INSTRUMENT 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;	7.34 7.35 7.36 8.1 8.2 8.4 8.5 8.6 8.7 8.8
(c) THE INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE OPERATIONS BY THE HOLDER;	8.11
(d) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE HOLDER, PROVIDED THAT AN AFFIDAVIT STATING THE NAME OF THE PERMIT	8.13 8.15

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

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

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

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

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

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

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

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

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

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

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

(F) THIS SECTION DOES NOT APPLY TO ANY MINERAL INTEREST 9.35
HELD BY ANY GOVERNMENTAL ENTITY. 10.1

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

As Passed by the Senate	1.4
117th General Assembly	1.6
Regular Session	1.7
1987-1988	1.8
MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE-MR. BURCH	1.10
	1.11
<hr/>	
A B I L L	1.12
To amend sections 317.18, 317.20, 317.201, and	1.14
5301.53, to enact new section 5301.56, and to	1.15
repeal section 5301.56 of the Revised Code to	1.16
provide a method for the termination of dormant	
mineral estates and the vesting of their title in	1.17
the surface owners, in the absence of certain	1.18
occurrences within the preceding 20 years,	1.19
including the filing by the holder of the mineral	1.20
interest of a notice of claim.	
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:	1.23
Section 1. That sections 317.18, 317.20, 317.201, and	1.25
5301.53 be amended and new section 5301.56 of the Revised Code be	1.26
enacted to read as follows:	1.27
Sec. 317.18. At the beginning of each day's business the	1.30
county recorder shall make and keep up general alphabetical	1.31
indexes, direct and reverse, of all the names of both parties to	1.33
all instruments theretofore received for record by him. The	1.34
volume and page where such instrument is recorded may be omitted	1.35
until it is actually recorded if the file number is entered in	1.36
place of the volume or page; but such file number may be omitted	2.1
from any index volume in use on April 21, 1896, if the form of	2.3
the index volume is not adapted to entering the file number. The	2.5
indexes shall show the kind of instrument, the range, township,	2.7
and section or the survey number and number of acres, or the	2.8
permanent parcel number provided for under section 319.28 of the	2.9
Revised Code, or the lot and subplot number and the part thereof,	2.10
all as the case requires, of each tract, parcel, or lot of land	2.12
described in any such instrument of writing. The name of each	2.13

grantor shall be entered in the direct index under the appropriate letter, followed on the same line by the name of the grantee, or, if there is more than one grantee, by the name of the first grantee followed by "and others" or their equivalent. The name of each grantee shall be entered in the reverse index under the appropriate letter, followed on the same line by the name of the grantor, or, if there is more than one grantor, by the name of the first grantor followed by "and others" or their equivalent.

As to notices of claims filed in accordance with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code there shall be entered in the reverse index under the appropriate letter the name of each claimant, followed on the same line by the name of the present owner of title against whom the claim is asserted, if the notice contains the name of the present owner; or, if the notice contains the names of more than one such owner, there shall be entered the name of the first owner followed by "and others" or their equivalent.

In all cases of deeds, mortgages, or other instruments of writing made by any sheriff, master commissioner, marshal, auditor, executor, administrator, trustee, or other officer, for the sale, conveyance, or encumbrance of any lands, tenements, or hereditaments, and recorded in the recorder's office, the recorder shall index the parties to such instrument under their appropriate letters, respectively, as follows:

(A) The names of the persons represented by such officer as owners of the lands, tenements, or hereditaments described in any such instruments;

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

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

In all cases of instruments filed in accordance with sections 5311.01 to 5311.22 of the Revised Code, the name of each owner shall be entered in the direct index, under the appropriate

letter, followed on the same line by the name of the condominium 3.16
 property, and the name of the condominium property shall be 3.17
 entered in the reverse index under the appropriate letter
 followed on the same line by the name of the owner of the 3.18
 property, or, if the instrument contains the names of more than 3.19
 one owner there shall be entered the name of the first owner 3.20
 followed by "and others" or its equivalent. 3.21

Any general alphabetical index commenced--after-June-77 3.22
~~1911~~ shall be COMMENCED in conformity to this section, and 3.23
 whenever, in the opinion of the board of county commissioners, it 3.25
 becomes necessary to transcribe, on account of its worn out or 3.26
 incomplete condition, any volume of such AN index now in use, 3.29
 such volume shall be revised and transcribed to conform with this 3.30
 section; except that in counties having a sectional index in 3.31
 conformity with section 317.20 of the Revised Code, such 3.33
 transcript shall be only a copy of the original. 3.34

Sec. 317.20. When, in the opinion of the board of county 3.35
 commissioners sectional indexes are needed, and it so directs, in 4.1
 addition to the alphabetical indexes provided for in section 4.2
 317.18 of the Revised Code, the board may provide for making, in 4.3
 books prepared for that purpose, sectional indexes to the records 4.4
 of all real estate in the county, beginning with some designated 4.5
 year and continuing through such period of years as it specified, 4.6
 by placing under the heads of the original surveyed sections or 4.7
 surveys, or parts of a section or survey, squares, subdivisions, 4.8
 or the permanent parcel numbers provided for under section 319.28 4.10
 of the Revised Code, or lots, on the left-hand page, or on the 4.12
 upper portion of such page of the index book, the following: 4.13

- (A) The name of the grantor; 4.14
- (B) Next to the right, the name of the grantee; 4.16
- (C) The number and page of the record where the instrument 4.18
 is found recorded; 4.19
- (D) The character of the instrument, to be followed by a 4.21
 pertinent description of the property conveyed by the deed, 4.22
 lease, or assignment of lease;

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

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

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

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

- (A) The name of each claimant;
- (B) Next to the right, the name of each owner of title;

(C) The deed book number and page where the instrument containing the claim has been recorded;	5.27 5.28
(D) The type of claim asserted; and on the opposite page on the corresponding line a pertinent description of the property affected as appears in such notice.	5.30 5.31 5.32
Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING:	5.35 6.1 6.2
(A) To bar any ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;	6.4 6.5 6.7 6.8
(B) To bar or extinguish any ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose;	6.10 6.11 6.12
(C) To bar or extinguish any ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;	6.14 6.15 6.17
(D) To bar or extinguish any ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;	6.19 6.20 6.21 6.22 6.23 6.26 6.27 6.28
(E) To bar or extinguish any ANY right, title, estate, or interest in coal, and any mining or other rights pertinent thereto or exercisable in connection therewith;	6.30 6.31 6.32
(F) To bar or extinguish any ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;	6.33 6.34
(G) To bar or extinguish any ANY right, title, or interest of the United States, or of the state of Ohio THIS STATE, or any political subdivision, body politic, or agency thereof.	6.36 7.2 7.3

Sec. 5301.56. (A) AS USED IN THIS SECTION: 7.5

(1) "HOLDER" INCLUDES NOT ONLY THE RECORD HOLDER OF A 7.7
MINERAL INTEREST, BUT ALSO ANY PERSON WHO DERIVES HIS RIGHTS 7.8
FROM, OR A COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM 7.10
DOES NOT INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS 7.11
ADVERSE TO THE INTEREST OF THE RECORD HOLDER.

(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED 7.13
UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE 7.15
HOLDER TO DRILL AN OIL OR GAS WELL OR MINE OTHER MINERALS. 7.16

(B) ANY MINERAL INTEREST HELD BY ANY PERSON OTHER THAN THE 7.19
OWNER OF THE SURFACE OF THE LANDS SHALL BE DEEMED ABANDONED AND 7.20
VESTED IN THE OWNER OF THE SURFACE, IF NEITHER OF THE FOLLOWING 7.21
IS TRUE:

(1) THE MINERAL INTEREST IS ONE IN COAL, OR MINING OR 7.23
OTHER RIGHTS PERTINENT THERETO, AS DESCRIBED IN DIVISION (E) OF 7.24
SECTION 5301.53 OF THE REVISED CODE; 7.25

(2) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE 7.27
FOLLOWING HAS OCCURRED: 7.28

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

(b) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF 7.34
MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A 7.35
LEASE TO WHICH SUCH INTEREST IS SUBJECT, OR, IN THE CASE OF OIL 7.36
OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT 8.1
OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED 8.2
CODE, IN WHICH THE INTEREST IS PARTICIPATING, PROVIDED THAT THE 8.4
INSTRUMENT CREATING OR PROVIDING FOR THE POOLING OR UNITIZATION 8.5
OF OIL OR GAS INTERESTS HAS BEEN FILED OR RECORDED IN THE OFFICE 8.6
OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS THAT ARE 8.7
SUBJECT TO THE POOLING OR UNITIZATION ARE LOCATED; 8.8

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As Reported by the House Civil and Commercial Law Committee	1.4
117th General Assembly	1.6
Regular Session	1.7
1987-1988	1.8
MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE-MR. BURCH	1.10
	1.11

A B I L L 1.12

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

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

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

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

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

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

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

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

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

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

(C) A record of powers of attorney; 3.14

(D) A record of plats, in which shall be recorded all 3.16
 plats and maps of town lots, of the subdivision thereof, and of 3.17
 other divisions or surveys of lands, and any center line survey 3.18
 of a highway located within the county, the plat of which shall 3.19
 be furnished by the director of transportation or county 3.20
 engineer, and all drawings as provided for in sections ~~5311-01 to~~ 3.22
~~5311-22~~ CHAPTER 5311. of the Revised Code; 3.23

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

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

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

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

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

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

is entered in place of the volume or page, ~~but such file number~~ 4.36
~~may be omitted from any index volume in use on April 21, 1896, if~~ 5.2
~~the form of the index volume is not adapted to entering the file~~ 5.3
number. The indexes shall show the kind of instrument, the 5.5
range, township, and section or the survey number and number of 5.6
acres, or the permanent parcel number provided for under section 5.7
319.28 of the Revised Code, or the lot and subplot number and the 5.9
part thereof, all as the case requires, of each tract, parcel, or 5.10
lot of land described in any such instrument of writing. The 5.12
name of each grantor shall be entered in the direct index under 5.13
the appropriate letter, followed on the same line by the name of 5.14
the grantee, or, if there is more than one grantee, by the name 5.15
of the first grantee followed by "and others" or their ITS 5.17
equivalent. The name of each grantee shall be entered in the 5.18
reverse index under the appropriate letter, followed on the same 5.19
line by the name of the grantor, or, if there is more than one 5.20
grantor, by the name of the first grantor followed by "and 5.21
others" or their ITS equivalent. 5.23

As to notices of claims filed in accordance with sections 5.24
5301.51 and 5301.52, AND 5301.56 of the Revised Code, there 5.26
shall be entered in the reverse index under the appropriate 5.27
letter the name of each claimant, followed on the same line by 5.28
the name of the present owner of title against whom the claim is 5.29
asserted, if the notice contains the name of the present owner; 5.30
or, if the notice contains the names of more than one such owner, 5.32
there shall be entered the name of the first owner followed by 5.34
"and others" or their ITS equivalent. 5.36

In all cases of deeds, mortgages, or other instruments of 6.1
writing made by any sheriff, master commissioner, marshal, 6.2
auditor, executor, administrator, trustee, or other officer, for 6.4
the sale, conveyance, or encumbrance of any lands, tenements, or 6.6
hereditaments, and recorded in the recorder's office, the 6.7
recorder shall index the parties to such instrument under their 6.8
appropriate letters, respectively, as follows: 6.9

(A) The names of the persons represented by such officer 6.10
as owners of the lands, tenements, or hereditaments described in 6.12
any such instruments;

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

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

In all cases of instruments filed in accordance with 6.17
~~sections-5311-01-to-5311-22~~ CHAPTER 5311. of the Revised Code, 6.20
the name of each owner shall be entered in the direct index, 6.21
under the appropriate letter, followed on the same line by the 6.22
name of the condominium property, and the name of the condominium 6.23
property shall be entered in the reverse index under the 6.24
appropriate letter followed on the same line by the name of the 6.26
owner of the property, or, if the instrument contains the names 6.28
of more than one owner, there shall be entered the name of the 6.30
first owner followed by "and others" or its equivalent. 6.31

Any general alphabetical index ~~commenced after June 7,~~ 6.32
~~1917,~~ shall be COMMENCED in conformity to this section, and 6.33
whenever, in the opinion of the board of county commissioners, it 6.35
becomes necessary to transcribe, on account of its worn out or 6.36
incomplete condition, any volume of such AN index now in use, 7.3
such volume shall be revised and transcribed to conform with this 7.4
section; except that in counties having a sectional index in 7.5
conformity with section 317.20 of the Revised Code, such 7.7
transcript shall be only a copy of the original. 7.8

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

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

(A) The name of the grantor; 7.24

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

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

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

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

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

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

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

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

- (A) The name of each claimant; 9.1
- (B) Next to the right, the name of each owner of title; 9.3
- (C) The deed book number and page where the instrument containing the claim has been recorded; 9.6
- (D) The type of claim asserted; and-on. 9.8

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

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

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

(B) ~~To-bar-or-extinguish-any~~ ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose; 9.22

(C) ~~To-bar-or-extinguish-any~~ ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use; 9.24

(D) ~~To-bar-or-extinguish-any~~ ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, 9.25

B

pole, tower, or other physical facility and whether or not the 10.8
existence of such facility is observable; 10.9

(E) ~~To bar or extinguish any~~ ANY right, title, estate, or 10.11
interest in coal, and any mining or other rights pertinent 10.12
~~thereto TO~~ or exercisable in connection therewith WITH ANY RIGHT, 10.14
TITLE, ESTATE, OR INTEREST IN COAL; 10.15

(F) ~~To bar or extinguish any~~ ANY mortgage recorded in 10.16
conformity with section 1701.66 of the Revised Code; 10.17

(G) ~~To bar or extinguish any~~ ANY right, title, or interest 10.19
of the United States, or of ~~the state of Ohio~~ THIS STATE, or OF 10.22
any political subdivision, body politic, or agency thereof OF THE 10.24
UNITED STATES OR THIS STATE.

Sec. 5301.56. (A) AS USED IN THIS SECTION: 10.26

(1) "HOLDER" MEANS THE RECORD HOLDER OF A MINERAL 10.29
INTEREST, AND ANY PERSON WHO DERIVES HIS RIGHTS FROM, OR HAS A 10.30
COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM DOES NOT 10.31
INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS ADVERSE 10.32
TO THE INTEREST OF THE RECORD HOLDER.

(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED 10.34
UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE, TO THE 10.36
HOLDER TO DRILL AN OIL OR GAS WELL OR TO MINE OTHER MINERALS. 11.1

(B)(1) ANY MINERAL INTEREST HELD BY ANY PERSON, OTHER THAN 11.4
THE OWNER OF THE SURFACE OF THE LANDS SUBJECT TO THE INTEREST, 11.5
SHALL BE DEEMED ABANDONED AND VESTED IN THE OWNER OF THE SURFACE, 11.7
IF NONE OF THE FOLLOWING APPLIES: 11.8

(a) THE MINERAL INTEREST IS IN COAL, OR IN MINING OR OTHER 11.11
RIGHTS PERTINENT TO OR EXERCISABLE IN CONNECTION WITH AN INTEREST 11.13
IN COAL, AS DESCRIBED IN DIVISION (E) OF SECTION 5301.53 OF THE 11.15
REVISED CODE;

(b) THE MINERAL INTEREST IS HELD BY THE UNITED STATES, 11.18
THIS STATE, OR ANY POLITICAL SUBDIVISION, BODY POLITIC, OR AGENCY 11.19
OF THE UNITED STATES OR THIS STATE, AS DESCRIBED IN DIVISION (G) 11.20
OF SECTION 5301.53 OF THE REVISED CODE; 11.21

(c) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE 11.23
FOLLOWING HAS OCCURRED: 11.24

- (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; 11.26
11.28
11.29
- (ii) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A LEASE TO WHICH THE MINERAL INTEREST IS SUBJECT, OR, IN THE CASE OF OIL OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED CODE, IN WHICH THE MINERAL INTEREST IS PARTICIPATING, PROVIDED THAT THE INSTRUMENT OR ORDER CREATING OR PROVIDING FOR THE POOLING OR UNITIZATION OF OIL OR GAS INTERESTS HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS THAT ARE SUBJECT TO THE POOLING OR UNITIZATION ARE LOCATED; 11.31
11.32
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12.1
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12.7
- (iii) THE MINERAL INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE OPERATIONS BY THE HOLDER; 12.10
12.11
- (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; 12.13
12.14
12.16
12.17
12.18
12.19
- (v) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED IN ACCORDANCE WITH DIVISION (C) OF THIS SECTION; 12.22
- (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. 12.24
12.25
12.26
12.28
- (2) A MINERAL INTEREST SHALL NOT BE DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION BECAUSE NONE OF THE CIRCUMSTANCES DESCRIBED IN THAT DIVISION APPLY, UNTIL THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION. 12.30
12.32
12.33
12.35

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

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

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

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

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

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

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

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

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

As Passed by the House	1.4
117th General Assembly	1.6
Regular Session	1.7
1987-1988	1.8
MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE-MR. BURCH	1.10
	1.11

A B I L L

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

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

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

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

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

Code; all articles dedicating nature preserves accepted by the	2.17
director of natural resources under section 1517.05 of the	2.18
Revised Code; all agreements for the registration of lands as	2.19
archaeological or historic landmarks under section 149.51 or	2.20
149.55 of the Revised Code; and all conveyances of conservation	2.21
easements under section 5301.68 of the Revised Code; AND ALL	2.23
INSTRUMENTS OR ORDERS DESCRIBED IN DIVISION (B)(1)(c)(11) OF	2.25
SECTION 5301.56 OF THE REVISED CODE;	2.26
(B) A record of mortgages, in which shall be recorded:	2.28
(1) All mortgages, including amendments, supplements,	2.30
modifications, and extensions thereof OF MORTGAGES, or other	2.32
instruments of writing by which lands, tenements, or	2.33
hereditaments are or may be mortgaged or otherwise conditionally	2.35
sold, conveyed, affected, or encumbered;	3.1
(2) All executory installment contracts for the sale of	3.2
land executed after September 29, 1961, which by the THEIR terms	3.4
thereof are not required to be fully performed by one or more of	3.5
the parties thereto TO THEM within one year of the date of the	3.6
contracts;	3.7
(3) All options to purchase real estate, including	3.8
supplements, modifications, and amendments thereof OF THE	3.10
OPTIONS, but no such instrument shall be recorded if it does not	3.12
state a specific day and year of expiration of its validity.	3.13
(C) A record of powers of attorney;	3.14
(D) A record of plats, in which shall be recorded all	2.16
plats and maps of town lots, of the subdivision thereof, and of	3.17
other divisions or surveys of lands, and any center line survey	3.18
of a highway located within the county, the plat of which shall	3.19
be furnished by the director of transportation or county	3.20
engineer and all drawings as provided for in sections 5311.01 to	3.22
5311.22 CHAPTER 5311. of the Revised Code;	3.23
(E) A record of leases, in which shall be recorded all	3.24
leases, memoranda of leases, and supplements, modifications, and	3.25
amendments thereof OF LEASES AND MEMORANDA OF LEASES.	3.26

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

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

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

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

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

is entered in place of the volume or page, but such file number 4.36
 may be omitted from any index volume in use on April 21, 1896, if 5.2
 the form of the index volume is not adapted to entering the file 5.3
 number. The indexes shall show the kind of instrument, the 5.5
 range, township, and section or the survey number and number of 5.6
 acres, or the permanent parcel number provided for under section 5.7
 319.28 of the Revised Code, or the lot and subplot number and the 5.9
 part thereof, all as the case requires, of each tract, parcel, or 5.10
 lot of land described in any such instrument of writing. The 5.12
 name of each grantor shall be entered in the direct index under 5.13
 the appropriate letter, followed on the same line by the name of 5.14
 the grantee, or, if there is more than one grantee, by the name 5.15
 of the first grantee followed by "and others" or their ITS 5.17
 equivalent. The name of each grantee shall be entered in the 5.18
 reverse index under the appropriate letter, followed on the same 5.19
 line by the name of the grantor, or, if there is more than one 5.20
 grantor, by the name of the first grantor followed by "and 5.21
 others" or their ITS equivalent. 5.23

As to notices of claims filed in accordance with sections 5.24
 5301.51 and, 5301.52, AND 5301.56 of the Revised Code, there 5.26
 shall be entered in the reverse index under the appropriate 5.27
 letter the name of each claimant, followed on the same line by 5.28
 the name of the present owner of title against whom the claim is 5.29
 asserted, if the notice contains the name of the present owner; 5.30
 or, if the notice contains the names of more than one such owner, 5.32
 there shall be entered the name of the first owner followed by 5.34
 "and others" or their ITS equivalent. 5.36

In all cases of deeds, mortgages, or other instruments of 6.1
 writing made by any sheriff, master commissioner, marshal, 6.2
 auditor, executor, administrator, trustee, or other officer, for 6.4
 the sale, conveyance, or encumbrance of any lands, tenements, or 6.6
 hereditaments, and recorded in the recorder's office, the 6.7
 recorder shall index the parties to such instrument under their 6.8
 appropriate letters, respectively, as follows: 6.9

(A) The names of the persons represented by such officer 6.10
as owners of the lands, tenements, or hereditaments described in 6.12
any such instruments;

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

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

In all cases of instruments filed in accordance with 6.17
~~sections 5311-01 to 5311-22~~ CHAPTER 5311, of the Revised Code, 6.20
the name of each owner shall be entered in the direct index, 6.21
under the appropriate letter, followed on the same line by the 6.22
name of the condominium property, and the name of the condominium 6.23
property shall be entered in the reverse index under the 6.24
appropriate letter followed on the same line by the name of the 6.26
owner of the property, or, if the instrument contains the names 6.28
of more than one owner, there shall be entered the name of the 6.30
first owner followed by "and others" or its equivalent. 6.31

Any general alphabetical index commenced ~~after June 7,~~ 6.32
~~1917~~ shall be COMMENCED in conformity to this section, and 6.33
whenever, in the opinion of the board of county commissioners, it 6.35
becomes necessary to transcribe, on account of its worn out or 6.36
incomplete condition, any volume of such AN index now in use, 7.3
such volume shall be revised and transcribed to conform with this 7.4
section; except that in counties having a sectional index in 7.5
conformity with section 317.20 of the Revised Code, such 7.7
transcript shall be only a copy of the original. 7.8

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

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

(A) The name of the grantor; 7.24

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

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

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

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

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

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

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

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

- (A) The name of each claimant; 9.1
 - (B) Next to the right, the name of each owner of title; 9.3
 - (C) The deed book number and page where the instrument 9.5
 containing the claim has been recorded; 9.6
 - (D) The type of claim asserted; and on 9.8
- ON the opposite page on the corresponding line, a pertinent 9.11
 description of the property affected as appears in such notice 9.13
 SHALL BE ENTERED.

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

- (A) ~~To bar any~~ ANY lessor or his successor as reversioner 9.21
 of his right to possession on the expiration of any lease, or any 9.22
 lessee or his successor of his rights in and to any lease, EXCEPT 9.24
 AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE; 9.25
- (B) ~~To bar or extinguish any~~ ANY easement or interest in 9.27
 the nature of an easement created or held for any railroad or 9.28
 public utility purpose; 9.29
- (C) ~~To bar or extinguish any~~ ANY easement or interest in 9.31
 the nature of an easement, the existence of which is clearly 9.32
 observable by physical evidence of its use; 9.34
- (D) ~~To bar or extinguish any~~ ANY easement or interest in 9.36
 the nature of an easement, or any rights granted, excepted, or 10.1
 reserved by the instrument creating such easement or interest, 10.2
 including any rights for future use, if the existence of such 10.3
 easement or interest is evidenced by the location beneath, upon, 10.4
 or above any part of the land described in such instrument of any 10.7
 pipe, valve, road, wire, cable, conduit, duct, sewer, track,

pole, tower, or other physical facility and whether, or not the 10.8
existence of such facility is observable; 10.9

(E) ~~To-bar-or-extinguish-any~~ ANY right, title, estate, or 10.11
interest in coal, and any mining or other rights pertinent 10.12
thereto TO or exercisable in connection therewith WITH ANY RIGHT, 10.14
TITLE, ESTATE, OR INTEREST IN COAL; 10.15

(F) ~~To-bar-or-extinguish-any~~ ANY mortgage recorded in 10.16
conformity with section 1701.66 of the Revised Code; 10.17

(G) ~~To-bar-or-extinguish-any~~ ANY right, title, or interest 10.19
of the United States, or of the state of Ohio THIS STATE, or OF 10.22
any political subdivision, body politic, or agency thereof OF THE 10.24
UNITED STATES OR THIS STATE.

Sec. 5301.56. (A) AS USED IN THIS SECTION: 10.26

(1) "HOLDER" MEANS THE RECORD HOLDER OF A MINERAL 10.29
INTEREST, AND ANY PERSON WHO DERIVES HIS RIGHTS FROM, OR HAS A 10.30
COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM DOES NOT 10.31
INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS ADVERSE 10.32
TO THE INTEREST OF THE RECORD HOLDER.

(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED 10.34
UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE 10.36
HOLDER TO DRILL AN OIL OR GAS WELL OR TO MINE OTHER MINERALS. 11.1

(B)(1) ANY MINERAL INTEREST HELD BY ANY PERSON, OTHER THAN 11.4
THE OWNER OF THE SURFACE OF THE LANDS SUBJECT TO THE INTEREST, 11.5
SHALL BE DEEMED ABANDONED AND VESTED IN THE OWNER OF THE SURFACE, 11.7
IF NONE OF THE FOLLOWING APPLIES: 11.8

(a) THE MINERAL INTEREST IS IN COAL, OR IN MINING OR OTHER 11.11
RIGHTS PERTINENT TO OR EXERCISABLE IN CONNECTION WITH AN INTEREST 11.13
IN COAL, AS DESCRIBED IN DIVISION (E) OF SECTION 5301.53 OF THE 11.15
REVISED CODE;

(b) THE MINERAL INTEREST IS HELD BY THE UNITED STATES, 11.18
THIS STATE, OR ANY POLITICAL SUBDIVISION, BODY POLITIC, OR AGENCY 11.19
OF THE UNITED STATES OR THIS STATE, AS DESCRIBED IN DIVISION (G) 11.20
OF SECTION 5301.53 OF THE REVISED CODE; 11.21

(c) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE 11.23
FOLLOWING HAS OCCURRED: 11.24

7
9

(1) THE MINERAL INTEREST HAS BEEN THE SUBJECT OF A TITLE 11.26
TRANSACTION THAT HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE 11.28
COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS ARE LOCATED; 11.29

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

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

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

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

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

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

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

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

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

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

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

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

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317.201, and 5301.53 and section 5301.56 of the Revised Code are 14.16
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PROPONENT TESTIMONY ON BEHALF OF
SENATE BILL 223 AND HOUSE BILL 521,
AN OHIO DORMANT MINERAL ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNIFORM DORMANT MINERAL INTERESTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

Approved and Recommended for Enactment
in All the States

At its

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

With Prefatory Note and Comments

UNIFORM DORMANT MINERAL INTERESTS ACT

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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 (1) any recorded interest owned by any person in any mineral that is the subject of the instrument,

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

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

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

COMMENT

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. PRESERVATION OF MINERAL INTEREST BY NOTICE.

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

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

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

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

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

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

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

COMMENT

This section is broadly drawn to permit a mineral owner to preserve not only his or her own interest but also any or all interests. For example, the mineral owner may share an interest with one or more other persons. This section permits the mineral owner to require the mineral owner to preserve the interests of all of the co-owners by specifying the interests to be preserved. Likewise, the mineral interest being preserved may be subject to an overriding royalty or sublease or executive lease. In this situation, the mineral owner may elect also to preserve any or all of the interests subject to it, by specifying the interests in the notice of intent to preserve. The mineral owner may also elect to preserve the interest as to some or all of the minerals included in the interest.

Where the mineral interest being preserved is of limited duration, recordation of a notice under this section does not extend the interest beyond the time the interest expires by its own terms. Where the mineral interest being preserved is a lien, recordation of the notice does not excuse compliance with any other applicable conditions or requirements for preservation of the lien.

The bracketed language in paragraph (c)(2) is for use in a jurisdiction that does not have a tract index system. It is intended to assist in indexing a notice of intent to preserve an interest despite a gap in the recorded mineral chain of title.

Paragraph (c)(3) permits a blanket recording as to all interests in the county, provided that there is a prior recorded instrument, or a judgment whether or not recorded, that establishes the name of the mineral owner in the county records. The blanket recording provision is a practical necessity for large mineral owners. Where a county does not have a general index of grantors and grantees, it will be necessary to establish a separate index of notices of intent to preserve mineral interests for purposes of the blanket recording.

SECTION 6. LATE RECORDING BY MINERAL OWNER.

(a) In this section, "litigation expenses" means costs and expenses that the court determines are reasonably and necessarily incurred in preparing for and prosecuting an action, including reasonable attorney's fees.

(b) In an action to terminate a mineral interest pursuant to this [Act], the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest as a condition of dismissal of the action upon payment into court for the benefit of the surface owner of the real property the litigation expenses attributable to the mineral interest or portion thereof as to which the notice is recorded.

(c) This section does not apply in an action in which a mineral interest has been unused within the meaning of Section 4(b) for a period of 40 or more years next preceding commencement of the action.

COMMENT

This section applies only where the mineral owner seeks to make a late recording in order to obtain dismissal of the action. The section is not intended to require payment of litigation expenses as a condition of dismissal where the mineral owner secures dismissal upon proof that the mineral interest is not dormant by virtue of recordation or use of the property within the previous 20 years, as prescribed in Section 4 (termination of dormant mineral interest). Moreover, the remedy provided by this section is available only if there has been some recordation or use of the property within the previous 40 years.

SECTION 7. EFFECT OF TERMINATION.

A court order terminating a mineral interest [, when recorded,] merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments.

COMMENT

In some states it is standard practice for judgments such as this to be recorded. In other states entry of judgment alone may suffice to make the judgment part of the land records.

Merger of a terminated mineral interest with the surface is subject not only to existing tax liens and assessments, but also to other outstanding liens on the mineral interest. However, an outstanding lien on a mineral interest is itself a mineral interest that may be subject to termination under this Act. It should be noted that termination of a mineral interest under this Act that has been tax-deeded to the state or other public entity is subject to compliance with relevant requirements for release of tax-deeded property.

The appurtenant surface rights and obligations referred to in Section 7 include the right of entry on the surface and the obligation of support of the surface. However, termination of the support obligation of the surface under this Act does not terminate any support obligations owed to adjacent surface owners.

It is possible under this section for a surface owner to acquire greater mineral interests than the surface owner started with. Assume, for example, there are equal co-owners of the surface, one of whom conveys his or her undivided 50% share of minerals. Upon termination of the conveyed mineral interest under this Act, the interest would merge with the surface estate in proportion to the ownership of the surface estate, so that each owner would acquire one-half of the mineral interest. The end result is that the conveying surface owner would hold an undivided one-fourth of the minerals and the nonconveying surface owner 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) _____