

IN THE SUPREME COURT OF OHIO

EDWARD J. THOMPSON, et al.,

Plaintiffs-Appellants,

v.

NATHAN J. CUSTER, et al.,

Defendants-Appellees,

Ohio Supreme Court Case No. 2015-0195

On Appeal from the Trumbull County Court of Appeals, Eleventh District Court of Appeals

Court of Appeals Case No. 2014-T-0052

**MEMORANDUM IN RESPONSE OF APPELLEE
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**STATEMENT AS TO WHETHER THIS CASE IS OF PUBLIC OR GREAT
GENERAL INTEREST**

“Abandonment” and “forfeiture” are not synonymous. This case does not involve any forfeiture or taking of property rights. Instead, it involves the straightforward interpretation of the Ohio Dormant Mineral Act enacted in 1989, R.C. 5301.56 (the “1989 DMA”), which sets forth strict guidelines for determining whether a party statutorily **abandoned** his or her severed mineral interest. Such a statutory abandonment mechanism is appropriate and has been condoned by this Court. *See State ex rel. A.A.A. Investments v. City of Columbus*, 17 Ohio St.3d 151, 152, 478 N.E. 2d 773 (1985) (finding that Ohio’s adverse possession statute does not operate a taking).

All three Ohio appellate districts that have examined the 1989 DMA have come to the same conclusion: the 1989 DMA was a statute of automatic abandonment based upon the inaction of the severed mineral holder, and that once a severed mineral interest was abandoned and vested with the affected surface estate, a subsequent change in the statute could not retroactively divest surface owners of their now vested property rights. *Thompson v. Custer*, 11th Dist. Trumbull No. 2013 CV 2358, 2014-Ohio-5711 (Dec. 19, 2014); *Wendt v. Dickerson*, 5th Dist. No. 2014 AP 01 0003, 2014-Ohio-4615 (Oct. 16, 2014); *Dahlgren v. Brown Farms Properties L.L.C.*, 7th Dist. Case No. 13 CA 896, 2014-Ohio-4001 (Sep. 9, 2014); *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. Noble No. 13 NO 402, 2014-Ohio-1499 (Apr. 3, 2014). Appellants have not even attempted to advance any argument or explanation to cause this Court to reject the three Ohio appellate districts’ analyses and holdings – all of which are in accord as to the 1989 DMA’s automatic abandonment and vesting.

STATEMENT OF THE CASE AND FACTS

The 1989 DMA, like similar valid statutes enacted in other states, serves the legitimate state interest of placing mineral interests in the hands of those persons best suited to actively control them. In Ohio, as elsewhere around the country, mineral interests may be severed from the surface estate, resulting in separate, dominant mineral interests and subservient surface interests. Often, as in this case, the severed mineral interest is forgotten or simply ignored for decades. Dormant mineral acts, like the 1989 DMA, provide a legal mechanism to reunite these abandoned mineral interests with the surface estate so the surface owners may develop these interests or, if they prefer, prevent the development of those interests by distant heirs of the original severing parties who opportunistically stumble upon them decades later. Thus, the 1989 DMA fostered certainty of ownership of and meaningful control over the State's natural resources, and promoted title simplicity by re-unifying old unused interests, which over time can become splintered and fractionalized, with a readily identifiable surface owner.

This case involves a reservation of one-half (1/2) the oil and gas rights in a deed dated March 18, 1950, and recorded on March 22, 1950, at Volume 541, Page 4 of the Trumbull County Recorder's Office ("Reservation"). For over 60 years, from 1950 to 2012, Appellants took absolutely no action related to the Reservation. Appellants made no attempt to even identify a single statutorily-defined "savings event" between March 22, 1969 and through March 22, 1992 that would have preserved their interest. In fact, it is undisputed that no "savings event" occurred pursuant to the 1989 DMA.

BP America Production Company ("BP") is an oil and gas exploration and production company with significant leasehold interests in eastern Ohio. BP and other exploration and

production companies have, like in this case, leased oil and gas rights based on operation of the 1989 DMA. Nathan J. Custer and Noelle M. Custer (the “Custers”) are the current owners of the real estate that is the subject of this litigation, consisting of approximately 98.963 acres located in Vernon Township, Trumbull County, Ohio (the real estate is hereinafter referred to as the “Real Estate” and the mineral interest therein is referred to as the “Mineral Interest”). On April 11, 2012, BP entered into an oil and gas lease with the Custers for the Mineral Interest. A memorandum of the oil and gas lease was recorded as Instrument No. 201204120007667 in the Official Records of Trumbull County on April 12, 2012.

Appellants claim to possess an interest in one-half (1/2) of the Mineral Interest as the heirs and/or successors of the original holders of the Reservation. However, at no time between 1950 and 2012, were Appellants conveyed any right in the Reservation or Mineral Interest of record. As further explained below, the Mineral Interest related to the Reservation was abandoned and vested with the Custers by operation of the 1989 DMA on March 22, 1992, who then properly leased the full Mineral Interest to BP.

ARGUMENTS AGAINST PROPOSITIONS OF LAW

I. **PROPOSITION OF LAW NO. I: The 2006 version of the Dormant Minerals Act (“DMA”) is the only version of the Act to be applied after its 6/30/06 effective date.**

Appellants have failed to provide any analysis or argument as to why their position should be accepted. Appellants merely quoted a portion of an overruled trial court decision which offers no legal or substantive support for Proposition of Law No. I. *Dahlgren v. Brown Farms Properties L.L.C.*, Carroll C.P. No. 13CVH27445 (Nov. 5, 2013) was overruled by the Seventh District Court of Appeals in *Dahlgren*, 2014-Ohio-4001. Therefore, the Court should decline to accept Appellants’ Proposition of Law No. I. See S.Ct.Prac.R. 7.02(C)(4).

Further, Appellants' Proposition of Law No. I erroneously presumes that the 1989 DMA was not an automatic abandonment and vesting statute. This position is untenable. (*See* Discussion of Proposition of Law No. II). It is precisely because the 1989 DMA is self-executing that the 2006 amendments to the statute can have no effect on Custers', and subsequently BP's, property rights. *Thompson*, 2014-Ohio-5711; *Wendt*, 2014-Ohio-4615; *Walker*, 2014-Ohio-1499. In *Swartz*, the court recognized that when 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. 2014-Ohio-2359, ¶34. Despite this fact, Appellants ask that the 2006 amendments be applied retroactively against any surface owner who acquired rights under the 1989 DMA's prior operation. Appellants' desired result violates Ohio law and must be ignored.

A. The 2006 amendments did not expressly provide for retroactive application.

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.

The default rule is that statutes are applied prospectively. *Id.* 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. *Id.*, 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."); R.C. 1.48. 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.”)

The 2006 amendments to the 1989 DMA did not include any statement that they were to be applied retroactively. *Swartz*, 2014-Ohio-2359, at ¶ 34 (“[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 ¶ 51. 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.”).

B. Even if the General Assembly intended the 2006 version of the 1989 DMA to apply retroactively, it cannot be applied against Appellees because they obtained a substantive vested property right to the Real Estate’s oil and gas.

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 1989 DMA 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 the Court were to analyze the second prong, it would find that Appellants’ 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 would violate the second prong because to do so 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 them 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). The plain language of the 1989 DMA created vested property rights in surface owners. *Walker*, 2014-Ohio-1499, ¶ 40; *Swartz*, 2014-Ohio-2359, at ¶ 29.

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 the Custers lost their property rights (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 a result, Proposition of Law No. I should undoubtedly be answered in the negative, and therefore, this Court should decline to entertain Appellants’ arguments.

II. **PROPOSITION OF LAW NO. II: The 1989 version of the DMA impliedly required some form of implementation before finally settling the subsurface owners’ and surface owners’ competing mineral interests, either by recorded abandonment claim permitting the subsurface owner to challenge its validity or by appropriate court proceedings to confirm the abandonment.**

Appellants’ lone citation to *Dahlgren v. Brown Farms Properties L.L.C.*, Carroll C.P. No. 13CVH27445 (Nov. 5, 2013), without any analysis, is flawed for several reasons, including it

was overruled by the Seventh District Court of Appeals. *Dahlgren*, 2014-Ohio-4001.¹ More importantly, 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.

A. The 1989 DMA was self-executing and operated automatically to abandon and vest severed mineral interests with the related surface estates.

1. The plain language of the 1989 DMA provided for automatic abandonment and vesting of dormant mineral interests.

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) (emphasis added); *Thompson*, 2014-Ohio-5711; *Wendt*, 2014-Ohio-4615; *Dahlgren*, 2014-Ohio-4001; *Walker*, 2014-Ohio-1499, ¶ 41 (“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.”).

¹ Additionally, the trial court in *Dahlgren* failed to recognize that the very case before it was the mineral holders’ opportunity to challenge the surface owner’s claim that the mineral interest had been abandoned. *Swartz*, 2014-Ohio-2359, ¶ 38 (“Finally, we note that *Dahlgren* expressed concern about the opportunity to contest abandonment without recognizing that the very suit before it was the opportunity to so contest (that there were savings events in the pertinent time period).”). Further, it is worth noting that at the time the trial court decided *Dahlgren* the only appellate case addressing Ohio’s Dormant Mineral Act was *Dodd v. Croskey*, 7th Dist. No. 12HA6, 2013-Ohio-4257 (Sep. 23, 2013), and the trial court’s decision may have been based on a misconception regarding the applicability of *Dodd* to the issue of which version of the Dormant Mineral Act to 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 2006. 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). However, the Seventh District Court of Appeals clarified in *Swartz* that no arguments or claims associated with the 1989 version of the statute were presented in *Dodd*, and “If parties do not invoke a statute, we proceed under the impression that the parties agreed that said statute was not dispositive. . . . 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. 2014-Ohio-2359, ¶ 17.”

Nowhere in the text of the 1989 DMA is any obligation imposed upon the surface owner. The only reasonable interpretation of the 1989 DMA is automatic abandonment and vesting. As a result, 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); *In re T.R.*, 120 Ohio St.3d 136, 138, 896 N.E.2d 1003 (2008). Any interpretation of the 1989 DMA which would impose an obligation on the surface owner ignores the plain text of the statute and cannot be sustained.

Ohio's three appellate districts that have examined the 1989 DMA and upheld its automatic abandonment and vesting are also consistent with the analysis of the Indiana Supreme Court in *Short v. Texaco*, 273 Ind. 518, 522, 406 N.E.2d 625 (1980), the U.S. Supreme Court in *Texaco v. Short*, 454 U.S. 516 (1982) (which affirmed the Indiana Supreme Court), and the Michigan Supreme Court in *Van Slooten v. Larson*, 410 Mich. 21, 299 N.E.2d 675 (1978), *appeal dismissed sub nom., Craig v. Bickel*, 455 U.S. 901 (1982). The Indiana Supreme Court noted its statute "does not contemplate an adjudication before a tribunal before a lapse occurs. When the statutory conditions exist the lapse occurs." *Short*, 273 Ind. at 522. Similarly, the Michigan Supreme Court explained the act is not concerned with the owner's intent to abandon, but rather "is designed to increase the marketability and development of severed mineral interests by creating a rule of substantive law which requires owners to undertake minimal acts indicative of ownership at least each 20 years." *Van Slooten*, 410 Mich. at 50-51.

2. **The legislative history of the 1989 DMA supports automatic abandonment and vesting.**

Even if the 1989 DMA was ambiguous, which it is not, its legislative history affirmatively supports the creation of an automatic abandonment mechanism. (See Fiscal Note Sub. S.B. 223, pp. 48-50). 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.” (Fiscal Note Sub. S.B. 223, pp. 48-50) (emphasis added). 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.” (*Id.*, p. 1).

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. (Fiscal Note Sub. S.B. 223, 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. (Fiscal Note Sub. S.B. 223, 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, the 1989 DMA was enacted as an automatic abandonment statute and in no way imposed any implementation action by surface owners.

The sponsor testimony referenced 15 states with existing dormant mineral laws, but “[t]he only individual state statute that the drafters cited as a model was Michigan’s DMA.” The Michigan DMA, which was expressly used as a model for Ohio’s 1989 DMA, also uses both the key phrases “deemed abandoned” and “vest,” and is an automatic self-executing statute.² The Michigan Act was upheld in *Van Slooten* as self-executing nine years before Ohio enacted the 1989 DMA. In fact, the sponsor testimony in discussing the Michigan DMA, states,

² Michigan’s DMA provides in relevant part, “[a]ny interest in oil or gas in any land owned by any person other than the owner of the surface, which has not been sold, leased, mortgaged, or transferred by instrument recorded in the register of deeds office for the county where that interest in oil or gas is located for a period of 20 years shall . . . be **deemed abandoned**.” M.C.L.A. 554.291(1) (emphasis added). Michigan’s DMA continues, that “[a]ny interest in oil or gas **deemed abandoned** as provided in subsection (1) shall **vest** as of the date of such abandonment in the owner or owners of the surface in keeping with the character of the surface ownership.” M.C.L.A. 554.291(2).

“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.**” (Fiscal Note Sub. S.B. 223, p. 49) (emphasis added). The same rule of substantive law was established by the General Assembly in enacting the 1989 DMA.

B. The 1989 DMA created vested property rights.

The 1989 DMA’s text provides that the surface owner had a “vested” interest if the statutory requirements (mineral rights holder’s inactivity) were met. The 1989 DMA did not create inchoate rights. 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 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 ¶ 38 (“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.”)

C. The 1989 DMA operated 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 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 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). Further, 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.

The 1989 DMA fundamentally operates in the same manner by requiring the severed mineral holders to take simple minimal steps to preserve their mineral interests. 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.” It is undisputed that no “savings events” occurred in this case.

D. The 1989 DMA’s automatic abandonment and vesting mechanism is similar to adverse possession, which places the burden on the title holder to act before the limitations period runs.

Automatic vesting under the 1989 DMA is 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*, 17 Ohio St.3d at 152 (“[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-one-year period has run. *Id.* Similarly, the 1989 DMA required the severed mineral holder to take one of several, simple minimal 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.

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*, *supra*, which found Indiana’s automatic abandonment and vesting under its dormant mineral statute did not constitute a taking. *Id.*

E. The 1989 DMA simplifies and facilitates oil and gas transactions.

Appellants claim to possess a one-half interest in the Mineral Interest, but at no time between 1950 and 2012, were Appellants conveyed any right in the Reservation or Mineral Interest of record. The only readily identifiable interest holder was the surface owner. 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. Such a conclusion 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 promoted this policy by operating in a manner similar to the Marketable Title Act: automatic removal and/or abandonment of dormant real property interests.

F. The 1989 DMA did not impose a forfeiture, but merely provided for statutory abandonment unless the mineral right holder timely preserved the interest.

“Abandonment” and “forfeiture” are not synonymous. 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 the Indiana statute. Any assertion that the 1989 DMA is a forfeiture statute is wrong. The 1989 DMA did not impose any forfeiture or taking upon Appellants. Instead, it provided a statutory framework for determining whether they abandoned their interests through six decades of inactivity. The Appellants had ample opportunity to act to avoid abandonment, including a three-year grace period from March 22, 1989 to March 22, 1992, during which any one of them could have taken one of several actions to preserve their interest, including the simple filing of a claim to preserve, a very minimal burden. It was Appellants’ inaction that resulted in abandonment, not the actions of the state or the surface owners.

There is no public policy against abandonment of 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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via regular U.S. Mail this

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