

In the
Supreme Court of Ohio

LELAND EISENBARTH, <i>et al.</i> ,	:	Case No. 2014-1767
	:	
Plaintiffs-Appellants,	:	On Appeal from the
	:	Monroe County Court of Appeals,
v.	:	Seventh Appellate District
	:	
DEAN REUSSER, <i>et al.</i> ,	:	Court of Appeals Case
	:	No. 13 MO 10
Defendants-Appellees.	:	

**MERIT BRIEF OF AMICUS CURIAE STATE OF OHIO
IN SUPPORT OF APPELLANTS**

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INTRODUCTION

As shown by the many cases now before the Court involving R.C. 5301.56 (better known as the Dormant Mineral Act), the question of how to determine who owns mineral interests that were long ago severed from a surface estate poses significant challenges. The doctrine of adverse possession, the traditional vehicle for identifying and eliminating abandoned property interests is of little help: Adverse possession only applies to *surface* property and not to *subsurface* mineral interests. See Uniform Dormant Mineral Interests Act (1986) introductory cmt. at 2; see also *Gill v. Fletcher*, 74 Ohio St. 295, 305-06 (1906). That is one reason why the General Assembly adopted the Dormant Mineral Act in 1989; it wanted to “encourage the development of minerals in Ohio which have been previously ignored due to defects in title.” William J. Taylor, Proponent Testimony on Behalf of Senate Bill 223 and House Bill 521, An Ohio Dormant Mineral Act at 3 (1988).

To further this goal, the Dormant Mineral Act, as originally enacted, stated that mineral interests shall be deemed abandoned and vested in a surface owner if no savings event had occurred “[w]ithin the preceding twenty years.” R.C. 5301.56(B)(1)(c) (1989). This dormancy period is at issue in this appeal. The Seventh District Court of Appeals held that calculation of dormancy was “fixed” and the statute applied *only* to those mineral interests that had been dormant for at least twenty years *at the time* R.C. 5301.56 became effective in 1989. App. Op. ¶ 51. That decision is at odds with both the text and purpose of R.C. 5301.56.

The text of R.C. 5301.56 compels the conclusion that the dormancy period under the Dormant Mineral Act is a rolling period, not a fixed one. That is, the phrase “[w]ithin the preceding twenty years” should be interpreted to encompass *any* twenty-year period of dormancy. As used in the statute, the word “preceding” referred to the time period before the property was deemed abandoned and vested in the surface owner. If the General Assembly had

intended for R.C. 5301.56 to have a fixed period of operation, applicable only to interests that were dormant at the time it became effective in 1989, it would not have provided a means for mineral interest owners to preserve those interests well beyond the statute's initial effective date. The Seventh District's interpretation of the Act would render the preservation language, and other portions of the Act, superfluous.

The purpose of the Dormant Mineral Act confirms that the General Assembly intended the original version of R.C. 5301.56 to apply *whenever* a severed mineral interest had been dormant for at least twenty years. Supporters of the Act understood it as measuring dormancy beginning "after the last use of the interest." Taylor Testimony at 2 (comparing Act to Michigan Dormant Mineral Act). In that respect, the original version of the Act was similar to the Indiana statute that the United States Supreme Court upheld as constitutional in *Texaco v. Short*, 454 U.S. 516 (1982), years before R.C. 5301.56 was enacted. Like the Ohio Act, Indiana's statute was designed to "remedy uncertainties in titles and facilitate the exploitation of energy sources and other valuable mineral resources." *See Texaco*, 454 U.S. at 524 n.15. The only way to fully accomplish this purpose is to treat R.C. 5301.56 as a forward-looking statute with a rolling twenty-year dormancy period.

Finally, this appeal also raises an issue already before the Court in *Chesapeake v. Buell*. In that case, the Court will decide whether an oil-and-gas lease constitutes a title transaction (and thus a savings event) under the Dormant Mineral Act. *See Chesapeake Exploration, L.L.C. v. Buell*, 138 Ohio St. 3d 1446, 2014-Ohio-1182. If the Court determines that the original version of the Dormant Mineral Act contained a rolling dormancy period, there is no need to reach the question presented in the second proposition of law. If, however, the Court determines that the dormancy period is fixed, it should hold this case for its decision in *Chesapeake Exploration*.

For the foregoing reasons, and for the reasons that follow, the Court should reverse the decision of the Seventh District Court of Appeals and hold that, as originally adopted, the Dormant Mineral Act contained a rolling twenty-year dormancy period.

STATEMENT OF AMICUS INTERESTS

First and foremost, the State is interested in this case because it is party to a case currently pending at the jurisdictional stage that, like this one, raises questions about how to interpret R.C. 5301.56's dormancy period. *See Carney v. Shockley*, No. 2015-0235. Furthermore, as in other Dormant Mineral Act cases before the Court, the State also has interests in both public-interest and landowner capacities. From a public-interest perspective, the State has an interest in “remedy[ing] uncertainties in titles and . . . [facilitating] the exploitation of energy sources and other valuable mineral resources.” *See Texaco, Inc. v. Short*, 454 U.S. 516, 524 n.15 (1982) (citation omitted). From a property-owner perspective, the State's interest in obtaining a clear interpretation of the Dormant Mineral Act is similar to the interests of any other property owner throughout Ohio.

STATEMENT OF THE CASE AND FACTS

A. The mineral interests underlying this case were severed in 1954, and no savings events occurred between at least 1974 and 2008.

The mineral interests at issue in this case were severed from the overlying surface estate in 1954. Half of the interests remained with the surface owners, the predecessors of the Eisenbarth Plaintiffs, and the other half went to the predecessors of the Reusser Defendants. App. Op. ¶ 5. The Eisenbarths retained the right to lease all the minerals under the property (both theirs and those belonging to the Reussers). *Id.* The Eisenbarths did so several times over the years, including as part of a lease recorded in 1974. *Id.* After the 1974 lease, no further leases were recorded until 2008, when the Eisenbarths—believing that they had acquired

ownership of all the mineral interests through automatic operation of R.C. 5301.56—signed an oil-and-gas lease solely on their own behalf. App. Op. ¶ 8. In 2012 the Eisenbarths signed an additional oil-and-gas lease with a separate company and received a substantial signing bonus. *Id.*

B. The Eisenbarths filed a lawsuit seeking a declaration that the Reussers had abandoned their mineral interests and the Reussers counterclaimed.

After they signed the 2008 lease, the Eisenbarths in 2009 published a notice of abandonment for the Reusser’s portion of the mineral interests underlying the surface estate. App. Op. ¶ 8. In response, the Reussers filed a claim to preserve that interest. *Id.* The Eisenbarths then filed a lawsuit seeking, among other things, a declaration that the Reussers’ interest had been abandoned under the 1989 version of the Dormant Mineral Act. App. Op. ¶ 9. The Reussers counterclaimed; they sought both to quiet title to their half of the mineral interests and to obtain half of the signing bonus that the Eisenbarths received when they signed the 2012 mineral lease. App. Op. ¶ 9

The trial court ruled in favor of the Reussers. It found on cross motions for summary judgment that the 1974 lease of all the mineral interests was a savings event for the Reussers’ interest and, using a fixed twenty-year dormancy period, found that the Reussers’ interest was not abandoned. *Id.* ¶ 10. The trial court reasoned that because a lease was signed in 1974, which “as a matter of simple math... occurred within the twenty (20) years preceding the date the Dormant Minerals Act was passed,” the Reussers’ interest was preserved from that date forward. *See Eisenbarth, et al. v. Reusser, et al.*, Monroe C.P. No. 2012-292 at 11 (Jun. 6, 2013).

On appeal to the Seventh District Court of Appeals, the Eisenbarths argued in relevant part that the trial court erred both in finding that the lease was a savings event, and in finding that a fixed twenty-year period applied for abandonment. App. Op. ¶¶ 16, 34. The Seventh District

upheld the trial court’s decision on both assignments of error, finding that a lease is a savings event and that the 1989 Dormant Mineral Act applies a one-time, twenty-year dormancy period. App. Op. ¶¶ 2-3. Both the trial court and the Seventh District’s decisions operated on the assumption that the 1989 Dormant Mineral Act was a self-executing statute and that it, rather than the 2006 Dormant Mineral Act, applied to the disputed claims. App. Op. ¶ 9 fn 1. That portion of the decision below was not appealed and is not at issue in this case. *See id.*

ARGUMENT

The State of Ohio’s Proposition of Law No. 1:

The original Dormant Mineral Act contained a rolling dormancy period, such that any severed mineral interests were deemed abandoned and vested in the owner of a surface estate if no savings event occurred within any twenty-year period.

The Dormant Mineral Act as effective in 1989 stated that a mineral interest “shall be deemed abandoned and vested in the owner” of the surface estate if one of several enumerated savings events had not occurred “[w]ithin the preceding twenty years.” R.C. 5301.56(B)(1)(c) (1989). The question presented here is whether the statute adopts a *one-time* dormancy period (applying only to those interests that had been dormant for twenty years when the statute became effective) or a *rolling* dormancy period (applying whenever an interest had been dormant for twenty consecutive years in 1989 or thereafter).

Both the text of the original Dormant Mineral Act and the underlying purpose of the statute demonstrate that the General Assembly intended for it to apply to more than simply those mineral interests that were dormant in 1989. That is, the twenty-year dormancy period applied to *any* twenty-year period of abandonment beginning “after the last use of the interest,” William J. Taylor, Proponent Testimony on Behalf of Senate Bill 223 and House Bill 521, An Ohio Dormant Mineral Act at 2 (1988) (“Taylor Testimony”), not just the twenty-year period before passage of the Act. Similar to adverse-possession actions, the purpose of the Dormant Mineral

Act gives surface owners a means to reunite the mineral interests with their surface interests and make use of valuable resources by clarifying title to the land. If allowed to stand, the Seventh District’s decision applying a fixed twenty-year dormancy period would undermine that purpose and would frustrate the General Assembly’s intent.

A. The Dormant Mineral Act’s text indicates the statute was intended apply whenever a severed mineral interest had been dormant for twenty years.

Ohio statutes must be read in their entirety, and must be interpreted so that all parts of the statute are effective and no section is rendered meaningless. *See* R.C. 1.47(B). Courts may not “pick out one sentence and disassociate it from the context,” *Hauser v. Dayton Police Dept.*, 140 Ohio St. 3d 268, 2014-Ohio-3636 ¶ 9 (internal citations omitted), and they must “give effect to each term and avoid a construction that renders any provision meaningless, inoperative, or superfluous,” *Burkhart v. H.J. Heinz Co.*, 140 Ohio St. 3d 429, 2014-Ohio-3766 ¶ 31.

When interpreted in a manner that is consistent with these basic rules of statutory construction, the text of the 1989 Dormant Mineral Act demonstrates that the General Assembly intended the statute’s dormancy period to operate on a rolling basis. Most significantly, the Act provided a mechanism by which holders of severed mineral interests could preserve their interests from being abandoned. R.C. 5301.56(C) described the process for preserving a mineral interest and preventing abandonment. In turn, R.C. 5301.56(D)(1) stated that the holder of a mineral interest could preserve that interest “indefinitely” through “successive filings of claims to preserve under division (C) of this section.”

The General Assembly’s creation of a means to use “successive” filings to “indefinitely” preserve severed interests indicates that the legislature intended for the 1989 version of the Dormant Mineral Act to apply more broadly than simply to interests that were dormant in 1989. If, as the Seventh District held, the 1989 Dormant Mineral Act only operated for one twenty-year

period, there would be no need for *successive* filling, and R.C. 5301.56(D)(1) would be superfluous. Logic and the canons of statutory construction therefore compel the conclusion that the legislature intended for R.C. 5301.56 to operate continuously, declaring dormant mineral interests abandoned *whenever* they had lain dormant for a period of twenty consecutive years. *See Farnsworth v. Burkhardt*, 2014-Ohio-4184 ¶ 90 (7th Dist.) (DeGenaro, J., concurring in judgment only) (“The provision in R.C. 5301.56(D)(1) delineating the process for preserving severed mineral rights for successive terms signals the General Assembly’s intention that in order to preserve that interest, every 20 years a savings event must occur, or the holder must file a claim to preserve, in order to retain their interest for another 20 years.”).

B. The purpose of the Dormant Mineral Act is best served by a rolling application of the twenty-year dormancy period.

In addition to giving full effect to all parts of a statute, a court must interpret a statute in light of the “object sought to be attained” by the General Assembly. R.C. 1.49(A). A court may not interpret a statute in a way that circumvents its purpose. *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St. 3d 540, 543-44 (1996) (citations omitted). In this case, a forward-looking statute, with a rolling twenty-year dormancy period, gives best effect to the General Assembly’s purpose in adopting the original version of the Dormant Mineral Act.

1. The 1989 Dormant Mineral Act was intended to promote the use and development of mineral resources.

The Dormant Mineral Act was adopted to encourage the use and development of property and mineral resources by reuniting abandoned mineral interests with the surface estate. Over the course of many years, severed mineral interests in Ohio had been transferred and factionalized, making it difficult if not impossible to put them to productive use. Taylor Testimony at 2-3. Unlike surface property, the common law doctrine of adverse possession does not apply to subsurface mineral estates. *See* Uniform Dormant Mineral Interests Act (1986) introductory cmt.

at 2; *see also Gill v. Fletcher*, 74 Ohio St. 295, 305-06 (1906). The Dormant Mineral Act was therefore needed to “remedy uncertainties in titles and facilitate the exploitation of energy sources and other valuable mineral resources.” *Cf. Texaco*, 454 U.S. at 524 n.15; *see also Taylor Testimony* at 2. It was designed to “encourage the development of minerals in Ohio which ha[d] previously been ignored” and “lead to severance tax revenues and enhance the economy” of the State. *Taylor Testimony* at 3.

The best way to carry out the Dormant Mineral Act’s purpose is to give the Act broad effect. In this case, that means reading the phrase “[w]ithin the preceding twenty years” in R.C. 5301.56(B)(1)(c) as referring to *any* twenty-year dormancy period, starting with the effective date and applying continuously thereafter (until the statute was amended in 2006). To read the twenty-year period as referring *only* to the period of time prior to the adoption of the Act would severely restrict its applicability and limit its effectiveness in clearing land titles of abandoned mineral interests. It would also contravene the General Assembly’s purpose in passing the legislation and upset the expectations of its supporters, who understood the Act as measuring dormancy beginning “after the last use of the [mineral] interest.” *See Taylor Testimony* at 2 (comparing Ohio legislation to Michigan Dormant Mineral Act, which also has a rolling dormancy period).

2. The 1989 Dormant Mineral Act is comparable to adverse possession actions, which accrue after any twenty-one-year period of dormancy.

In many ways Dormant Mineral Acts, such as the one that became effective in 1989, are best understood as mineral-specific, adverse-possession statutes. Adverse-possession actions have been long held to be lawful, and have a “venerable place in the regulation of the use and ownership of real property in Ohio.” *See Evanich v. Bridge*, 119 Ohio St. 3d 260, 2008-Ohio-3820 ¶ 14. Once a prescribed statutory period has passed, adverse possession

automatically vests ownership of a property interest in the person who has been using the property rather than the one who abandoned it. Significantly, “[i]n the case of adverse possession, property is not taken.” *State ex rel. A.A.A. Investments v. City of Columbus*, 17 Ohio St. 3d 151, 152 (1985). Rather it automatically vests and after that time period, the new owner is not *taking* but rather *exercising* possession. *Id.* Under adverse possession, dormancy is measured on a rolling basis, starting from the date of the last savings event. Any consecutive twenty-one-year period of dormancy is sufficient to effectuate the transfer of property rights. *See id.* (“[O]nce the statutory period enunciated in R.C. 2305.04 has expired, the former titleholder has lost his claim of ownership.”).

The Dormant Mineral Act is similar. As with adverse possession, the Act establishes a statutory period whose purpose is to identify abandoned property interests. *See* R.C. 5301.56(B)(1) (1989). And, also like adverse possession, the Dormant Mineral Act was intended to automatically terminate abandoned mineral interests “by operation of time and non-use.” Taylor Testimony at 2. Just like adverse possession then, dormancy and abandonment under the Dormant Mineral Act should be measured from the date of the last use or transfer of the property interest in question—in this case, severed mineral interests. *See id.* at 2 (referring to date of “last use of the interest”).

C. The Seventh District’s interpretation of the 1989 Dormant Mineral Act is unpersuasive.

The Seventh District mistakenly interpreted the 1989 Dormant Mineral Act to apply only to interests that became dormant prior to its enactment. App. Op. ¶ 51. *First*, the court based its interpretation in part on a misunderstanding of the purpose and effect of the Dormant Mineral Act. Referring to the law as a forfeiture, the court limited the applicability of the Act in an attempt to decrease the instances of forfeiture. App. Op. ¶ 49 (noting that “forfeitures are

abhorred in the law”). The Dormant Mineral Act is *not* a forfeiture statute, however, and abandonment under the statute does not constitute a taking. As explained above, the Dormant Mineral Act is instead comparable to adverse possession; it is, as the United States Supreme Court noted when upholding Indiana’s Dormant Mineral Act, merely an exercise of the State’s traditional power “to permit unused or abandoned interests in property to revert to another after the passage of time.” *Texaco, Inc.*, 454 U.S. at 526. The Seventh District’s justification for narrowly interpreting R.C. 5301.56 (1989) is therefore ultimately unpersuasive.

Second, the Seventh District failed in its attempt to reconcile its interpretation of the Act with the statutory text. The court of appeals suggested that R.C. 5301.56(D)(1)’s reference to filing successive claims might refer to claims filed under a *separate* law—the Marketable Title Act. App. Op. ¶ 49. Under that interpretation, the Seventh District wrote, the Act might have simply permitted mineral-interest owners to file a claim to preserve their rights under the new statute—even if they had previously filed a claim under the Marketable Title Act. *Id.* But that interpretation is at odds with the statute’s text. R.C. 5301.56(D)(1) (1989) did not refer to just *any* claim to preserve, it referred specifically to “claims to preserve mineral interests under division (C) of this section.”

Third, the Seventh District offered no persuasive explanation for why the General Assembly would adopt, in its own words, a “dead letter law.” App. Op. ¶ 50. It speculated that the General Assembly may have planned to “enact a new version for the next twenty-year period if public policy reasons for abandonment still applied in the future.” *Id.* But it gave no reason why the public policy reasons that compelled the General Assembly to adopt the Dormant Mineral Act in 1989 would not be equally compelling in future years or why the General Assembly would go to the effort to enact important legislation, only to undertake the process

again as early as the very next year. And, perhaps recognizing the flaws in its interpretation, the Seventh District majority even acknowledged that the General Assembly might have intended for the Act to have a rolling dormancy period applicable to “multiple future periods”—but faulted the General Assembly for how it chose to express that intent. *Id.*

Fourth, the Seventh District mistakenly relied on *Riddel v. Layman*, No. 94CA114, 1995 WL 498812 (5th Dist. July 10, 1995). App. Op. ¶ 41. The Fifth District in *Riddel* was faced with deciding which of two events should be analyzed under the statute—a 1965 title transaction or the recording of that transaction eight years later in 1973. *See Riddel*, 1995 WL 498812 at *2. Thus, the court’s calculation of the twenty-year period of dormancy as from the date of enactment of the 1989 Dormant Mineral Act was not central to its ultimate holding. *Id.* Additionally, even if *Riddel* did adopt a fixed dormancy period, its interpretation of the 1989 Dormant Mineral Act was flawed for the same reasons discussed above.

The State of Ohio’s Proposition of Law No. 2:

A lease is not a title transaction, and therefore does not qualify as a savings event under the 1989 Dormant Mineral Act.

Whether a lease constitutes a title transaction for purposes of the Dormant Mineral Act has been well-briefed and argued before the Court in *Chesapeake v. Buell*, No. 2014-0067. As the State explained in its amicus brief in that case, a lease is not a title transaction under R.C. 5301.56(B)(1)(c)(i) (1989) because the lease does not affect property ownership—title to the property remains with the lessor. *See State of Ohio Amicus Br. 7-12.* Therefore, because a lease is not a title transaction, it also is not a savings event under the Dormant Mineral Act, and the Court should hold accordingly. *Id.*

Ultimately, however, the Court need not confront that question in this case. As discussed in the State’s First Proposition of Law, the Court should that hold that the original version of the Dormant Mineral Act was forward looking and applied whenever a severed mineral interest had been dormant for a period of twenty consecutive years. Under that interpretation, even if a lease *is* a title transaction, the mineral interests in question were still abandoned in 1994—twenty years after the lease was recorded. *See* App. Op. ¶ 125 (DeGenaro, J., concurring in judgment only).

CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the Seventh District Court of Appeals.

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APPENDIX

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.