

IN THE SUPREME COURT OF OHIO

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

**BRIEF OF MURRAY ENERGY CORPORATION
AMICUS CURIAE IN SUPPORT OF APPELLANTS**

Mark S. Stemm (0023146)
(COUNSEL OF RECORD)
L. Bradfield Hughes (0070997)
Christopher J. Baronzzi (0078109)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street, Suite 3000
Columbus, Ohio 43215
(614) 227-2092 (telephone)
(614) 227-2100 (facsimile)
mstemm@porterwright.com
bhughes@porterwright.com
cbaronzzi@porterwright.com

*Counsel for Amicus Curiae
Murray Energy Corporation*

Richard Yoss (0003220)
(COUNSEL OF RECORD)
Craig E. Sweeney (0087841)
YOSS LAW OFFICE
122 N. Main Street
Woodsfield, OH 43793
(740) 472-0707 (telephone)
(740) 472-0770 (facsimile)
yosslaw.craig@gmail.com
yosslawoffice@gmail.com

*Counsel for Appellants, Keith Eisenbarth,
Leland Eisenbarth, and Michael Eisenbarth*

FILED
APR 28 2015
CLERK OF COURT
SUPREME COURT OF OHIO

Gregory W. Watts (0082127)
(COUNSEL OF RECORD)
Matthew W. Onest (0087907)
David E. Butz (0039363)
William G. Williams (0013107)
KRUGLIAK, WILKINS, GRIFFITHS,
& DOUGHERTY Co., L.P.A.
4775 Munson Street, N.W.
P.O. Box 36963
Canton, Ohio 44735-6963
(330) 497-0700 (telephone)
(330) 497-4020 (facsimile)
gwatts@kwgd.com
monest@kwgd.com
dbutz@kwgd.com
bwilliams@kwgd.com

Counsel for Amici Curiae Jeffco Resources, Inc., Mark and Kathy Rastetter, Douglas Henderson, Djuro and Vesna Kovacic, Brett and Kim Trissel, John Yaskanich, Barbara L. Miller, Jeffrey V. Miller, Jerilyn E. Christensen and Kjeld F. Christensen, Co-Trustees of the Kjeld F. Christensen Revocable Trust dated September 25, 2012 and the Jerilyn E. Christensen Revocable Trust dated September 25, 2012, Ralph and Sharley Greer, and Steven E. and Diane Cheshier.

Robert J. Tscholl (0028532)
400 South Main Street
North Canton, Ohio 44720
(330) 497-8614 (telephone)
(330) 497-8613 (facsimile)
btscholl740@yahoo.com

Co-Counsel for Amici Curiae Charles J. Schucht, Wilma L. Schucht, Theresa E. Schucht, and the Schucht Family Trust U/A Dated April 2, 2013

Matthew W. Warnock (0082368)
(COUNSEL OF RECORD)
Daniel E. Gerken (0088259)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
(614) 227-2300 (telephone)
(614) 227-2390 (facsimile)
mwarnock@bricker.com
ggerken@bricker.com

Counsel for Appellees Dean F. Reusser, Marilyn Ice, Wilda Fetty, Robert Maag, Vernon Reusser, Paul Reusser, David Reusser, and Dennis Reusser

James F. Matthews (0040206)
(COUNSEL OF RECORD)
BAKER, DUBLIKAR, BECK, WILEY &
MATTHEWS
400 South Main Street
North Canton, Ohio 44720
(330) 499-6000 (telephone)
(330) 499-6423 (facsimile)
matthews@bakerfirm.com

Counsel for Amici Curiae Charles J. Schucht, Wilma L. Schucht, Theresa E. Schucht, and the Schucht Family Trust U/A Dated April 2, 2013

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTERESTS OF *AMICUS CURIAE*1

INTRODUCTION AND SUMMARY2

LAW AND ARGUMENT4

Proposition of Law No. 1:

 A rolling -- not fixed -- look-back period applies to the 1989 Dormant Mineral Act, former R.C. 5301.56, Sub.S.B. No. 223, 142 Ohio Laws 981, 985-988.4

 A. Interpreting the 1989 DMA to have a rolling -- not fixed -- look-back period is consistent with the public policy goals animating the General Assembly’s enactment of the statute, including the development of minerals previously undeveloped due to defects in title.....4

 B. Key pieces of legislative history confirm that the drafters of the 1989 DMA never intended to change the way courts interpret or apply numerous statutes in the Revised Code containing phrases akin to “within the preceding twenty years”.8

 C. The drafters of the 1989 DMA looked to Michigan as a model, and Michigan applies a rolling look-back to its dormant mineral act.....12

 D. The Seventh District’s application of the maxim “the law abhors a forfeiture” to support its interpretation of the 1989 DMA as having a fixed look-back period is misplaced14

 E. The Seventh District’s dismissive interpretation of the right of mineral holders to make “successive filings of claims to preserve” under the 1989 DMA contradicts the plain language of the statute18

CONCLUSION.....19

CERTIFICATE OF SERVICE21

APPENDIX

Former R.C. 5301.56, Sub.S.B. No. 223, 142 Ohio Laws 981, 985-988 A-1

Proponent Testimony on Behalf of Senate Bill 223 and House Bill 521, an Ohio Dormant Mineral Act, by William J. Taylor..... A-10

Correspondence from the Ohio Farm Bureau to Senator Paul Pfeifer, Chairman, Senate Judiciary Committee (February 5, 1988)..... A-13

Legislative Service Commission Summary of Enactments, 117th General Assembly (July-December 1988)..... A-15

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Eisenbarth v. Reusser</i> , 7 Dist. No. 13 MO 10, 2014-Ohio-3792	<i>passim</i>
<i>Farnsworth v. Burkhart</i> , 7th Dist. No. 13 MO 14, 2014-Ohio-4184.....	15
<i>Harper v. Jones</i> , 49 Ohio Law Abs. 289, 74 N. E.2d 397 (1946)	7
<i>Kerzka v. Farr</i> , 2013 Mich. App. LEXIS 1487 (Mich. Ct. App. Sept. 10, 2013)	14
<i>Meeks v. Papadopulos</i> , 62 Ohio St.2d 187, 404 N.E.2d 159 (1980)	12
<i>Newbury Township Bd. of Township Trustees v. Lomak Petroleum</i> , 62 Ohio St.3d 387, 583 N.E.2d 302 (1992).....	6
<i>Oberlin v. Wolverine Gas & Oil Co.</i> , 181 Mich. App. 506, 450 N.W.2d 68 (1989).....	14
<i>Quarto Mining Co. v. Litman</i> , 42 Ohio St.2d 73, 326 N.E.2d 676 (1975)	7
<i>R.K.E. Trucking, Inc. v. Zaino</i> , 98 Ohio St.3d 495, 2003-Ohio-2149	12
<i>Snyder v. Ohio Dept. of Natural Res.</i> , 140 Ohio St.3d 322, 2014-Ohio-3942.....	7
<i>State v. Am. Dynamic Agency, Inc.</i> , 70 Ohio St.2d 41, 434 N.E.2d 735 (1982).....	12
<i>State ex rel. Cincinnati Enquirer v. Jones-Kelley</i> , 118 Ohio St.3d 81, 2008-Ohio-1770.....	12
<i>State ex rel. Falke, Pros. Atty. v. Montgomery Cty. Residential Dev., Inc.</i> , 40 Ohio St.3d 71, 531 N.E.2d 688 (1988).....	15, 16, 17
<i>Texaco v. Short</i> , 454 U.S. 516, 102 S.Ct. 781 (1982)	5
<i>Tribett v. Shepherd</i> , 7th Dist. No. 13 BE 22, 2014-Ohio-4320	15
<i>Van Slooten v. Larsen</i> , 410 Mich. 21, 299 N.W.2d 704 (Mich. 1980)	14
STATUTES	
R.C. 1.49	5, 9, 15
R.C. 145.112	8, 9
R.C. 2919.225	9, 10

R.C. 5301.47	<i>passim</i>
R.C. 5301.51	19
R.C. 5301.55	5
Former R.C. 5301.56, Sub.S.B. No. 223, 142 Ohio Laws 981, 985-988	<i>passim</i>

LEGISLATIVE HISTORY

Correspondence from the Ohio Farm Bureau to Senator Paul Pfeifer, Chairman, Senate Judiciary Committee (February 5, 1988)	10, 11
Proponent Testimony on Behalf of Senate Bill 223 and House Bill 521, an Ohio Dormant Mineral Act, by William J. Taylor	5, 13, 17
Ohio Legislative Service Commission, Summary of Enactments, 117th General Assembly (July-December 1988)	12

OTHER AUTHORITIES

I Dobbs, Law of Remedies: Damages-Equity-Restitution (2d ed. 1993)	15
16A Fletcher, Cyclopedia of the Law of Private Corporations (Perm. Ed. 1988) 193, Section 8035	17
37 Ohio Jurisprudence 2d 19, Mines and Minerals, Section 14	7
National Conference of Commissioners on Uniform State Laws, Uniform Statute and Rule Construction Act (1995)	15

INTERESTS OF AMICUS CURIAE MURRAY ENERGY CORPORATION

Amicus curiae Murray Energy Corporation (“MEC”) is the largest privately owned coal company in America. In Ohio, MEC’s subsidiary coal mines account for over 60% of the State’s total annual coal production. MEC also controls 28,000 acres of land suitable for oil and gas development, and (through its subsidiary American Natural Gas Company, Inc.), operates 468 oil and gas wells, including 166 producing wells and two injection wells in the State of Ohio.

As the owner of thousands of surface acres, as an underground coal mining company, and as an oil-and-gas company, MEC brings a uniquely holistic, surface-to-underground perspective to this dispute about abandoned mineral rights. As a surface owner, MEC has made (and must continue to make) significant business decisions concerning the development of subsurface mineral rights that are based on a reasonable, common-sense interpretation of Ohio’s 1989 Dormant Mineral Act (“1989 DMA”). Where those oil and gas rights have gone unused for a period of at least twenty years ending between March 23, 1992 through June 29, 2006, and have thus merged with MEC’s surface rights under the plain language of the 1989 DMA, then MEC (as the surface owner) must be able to develop them without concern that long-lost holders of the interests will suddenly appear out of the woodwork, assert their long-abandoned interests, and impair MEC’s plans.

As Ohio’s largest coal mining company with vast coal reserves, MEC must also be able to confirm with certainty who owns the mineral rights in areas to be mined for coal, because the placement of oil and gas wells in such areas is a critical issue that directly implicates not only the safety of underground coal miners, but also whether it will be economically feasible to mine coal in a given area. A single oil and gas well can sterilize millions of tons of coal if not located in coordination with the mining plan. Until now, based on the only reasonable reading of the 1989

DMA, MEC could be certain that abandoned mineral interests had automatically merged with its surface estate, and it could then plan its extremely capital-intensive coal-mining operations accordingly. Now, that certainty has been lost, and mineral development of all forms has been impeded as a result of the Seventh District's unreasonable interpretation of the 1989 DMA.

Indeed, the whole point of the 1989 DMA when enacted by the General Assembly was to encourage the development of long-abandoned mineral interests, consistent with the public policy of the State of Ohio, by removing uncertainty about the ownership of those interests. Unfortunately, the Seventh District has adopted an interpretation of the 1989 DMA that will encourage more of the very uncertainty that the Act was enacted to resolve. MEC thus joins Appellants in asking this Court to restore certainty by reversing the Seventh District's erroneous interpretation of the 1989 DMA.

INTRODUCTION AND SUMMARY

There are now at least nine cases either pending before, or appealed to, this Court concerning whether the 1989 Dormant Mineral Act ("1989 DMA"), former R.C. 5301.56,¹ incorporates a "fixed" or "rolling" look-back period. In a split decision by the Seventh District Court of Appeals in this case, two judges determined that the 1989 DMA's look-back period is fixed, meaning that the only twenty-year period of dormancy whereby a severed mineral interest was deemed abandoned under that Act was the twenty-year period immediately preceding the Act's effective date of March 22, 1989 (plus the three-year grace period in the statute). As indicated by Appellants, the decision of the Seventh District finding a fixed look-back period is at odds with the rulings of the vast majority of Ohio common pleas and federal district court judges to have previously considered the issue. The finding of a fixed look-back period was also

¹ Sub.S.B. No. 223, 142 Ohio Laws 981, 985-988 (Appx. A-1, A-5 – A-8.)

sharply criticized by Judge DeGenaro in this case, who concurred in the judgment only and called the majority's substantive 1989 DMA analysis "flawed."

Amicus curiae MEC, like many other property owners, has long relied upon the plain language of the 1989 DMA to conclude that it is the owner of 100% of the oil and gas estate, due to the non-occurrence of a savings event in *any* twenty-year period ending between March 23, 1992, and June 29, 2006. The Seventh District's erroneous decision in *Eisenbarth* has pulled the rug out from under that reliance and restored the very chaos and uncertainty about ownership of long-abandoned mineral interests that the 1989 DMA was enacted to avoid. As such, MEC joins Appellants and their other *amici* in respectfully urging this Court to reverse the Seventh District's erroneous decision, and to recognize that a rolling, twenty-year look-back period applies to the 1989 DMA.

It is inconceivable that the General Assembly intended to pass a statute that would be operative for only one day without significant discussion appearing in legislative history about such an unusual feature, or without a clear sunset provision in the statute. It is equally inconceivable, given the objectives of the statute, that the drafters of the 1989 DMA intended for their new statute to become a dead letter immediately after its enactment, or to disallow the abandonment of mineral interests created after March 22, 1969, even after decades of nonuse. Yet that is the practical effect of the Seventh District's interpretation of the 1989 DMA. As MEC will demonstrate briefly below, such an interpretation flies in the face of multiple public-policy goals, which animated the General Assembly's enactment of the 1989 DMA in the first place, and will stymie substantial mineral development in the State of Ohio. Indeed, the Seventh District's erroneous interpretation of the 1989 DMA has already impaired some of MEC's

specific plans and contracts it executed to develop mineral interests that, by any reasonable interpretation of the 1989 DMA, should have long ago merged with MEC's surface rights.

Key pieces of legislative history confirm that the General Assembly never anticipated that the phrase "within the preceding twenty years" in the 1989 DMA would be interpreted any differently than the way similar phrases in numerous other statutes in the Revised Code are applied -- on a rolling basis. Instead, the drafters of the 1989 DMA looked to Michigan as a model -- a state where multiple courts have interpreted the look-back period in the dormant mineral act to apply on a rolling basis. Finally, MEC will explain how the Seventh District's decision is at odds with the plain language of the 1989 DMA, and how the court misapplied the legal maxim "the law abhors a forfeiture" to support its erroneous decision.

LAW AND ARGUMENT

Proposition of Law No. 1:

A rolling -- not fixed -- look-back period applies to the 1989 Dormant Mineral Act, former R.C. 5301.56, Sub.S.B. No. 223, 142 Ohio Laws 981, 985-988.

A. Interpreting the 1989 DMA to have a rolling -- not fixed -- look-back period is consistent with the public policy goals animating the General Assembly's enactment of the statute, including the development of minerals previously undeveloped due to defects in title.

By recognizing a rolling look-back period under the 1989 DMA, this Court will help achieve the legislature's stated goal in enacting the DMA, which is to extinguish old, unused mineral interests in order to help clear title. Recognizing the intended rolling look-back period will also help achieve the longstanding public policy of Ohio to encourage oil and gas production. Finally, recognizing a rolling look-back period will help protect surface owners who may otherwise have to share their property with oil and gas production facilities with little or no right to direct or control those facilities.

As part of Ohio's Marketable Title Act, R.C. 5301.47, *et seq.* ("OMTA"), the clear objective of the 1989 DMA was to extinguish old, unused, severed mineral interests in order to facilitate title transactions and the productive use of the mineral interests and the associated surface estate. The OMTA provides that "Sections 5301.47 to 5301.56, inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions * * *." R.C. 5301.55. Likewise, proponent testimony for the 1989 DMA advised that the proposed statute, like the Michigan and Model Acts upon which it was based, would provide an additional mechanism for the elimination of dormant mineral interests which, when used in conjunction with the Marketable Title Act, would effectively accomplish that legislative purpose. *See* Proponent Testimony on Behalf of Senate Bill 223 and House Bill 521, an Ohio Dormant Mineral Act, by William J. Taylor (Appx. A-10 – A-12). Even the United States Supreme Court has recognized that the purpose of dormant mineral acts passed by numerous states all around the country is to "remedy uncertainties in titles and to facilitate the exploitation of energy sources and other valuable mineral resources. *** The objectives are valid and similar to those served by acts of limitation and the law of adverse possession." *Texaco v. Short*, 454 U.S. 516, 102 S.Ct. 781, n.15 (1982).

If this Court finds that the look-back provision in the statute is ambiguous, then it has an obligation to construe the statute with due consideration for the General Assembly's goals and with regard to "the consequences of a particular construction." R.C. 1.49. Unfortunately, the lower courts in this case did not appear to be mindful of their statutory-construction obligations, or how their overly restrictive interpretation of the 1989 DMA would impact those goals. But, by recognizing a rolling look-back period, this Court has the opportunity give effect to the

legislature's intent and to avoid the absurd, illogical results created by a fixed look-back period that operates on only one day.

By recognizing a rolling look-back period, this Court will also serve Ohio's public policy of encouraging oil and gas production in a manner consistent with the health, safety, and welfare of the citizens of Ohio. As this Court has held, "It is the public policy of the state of Ohio to encourage oil and gas production when the extraction of those resources can be accomplished without undue threat of harm to the health, safety and welfare of the citizens of Ohio." *Newbury Township Bd. of Township Trustees v. Lomak Petroleum*, 62 Ohio St.3d 387, 389, 583 N.E.2d 302 (1992). Recognizing a rolling application of the 1989 DMA will not merely clear title to severed minerals to facilitate oil and gas leasing and production, it will serve the health, safety, and welfare of the citizens of Ohio far better than would a fixed look-back.

Generally speaking, it is MEC's experience that the owners of severed mineral interests that have gone unused for more than twenty years are often unaware of their interest and are frequently out-of-state heirs or insolvent companies that have no other interest in the property. On the other hand, the owners of surface estates *are* generally aware of their property and they often live on it, farm it, lease it, hunt and fish on it, and conduct other business or recreation on it (including coal mining). The cause of this divergent character of surface estates versus mineral estates is simple -- surface estates are taxed and carefully tracked by the County Auditor. On the other hand, until the last few years, mineral estates were almost never separately identified and taxed. Thus, a reservation of an oil and gas interest on a large farm in 1971, for example, may have been unknown by the reserving party's heirs, who never probated that interest when their ancestor passed, and who have no other connection to, or interest in, the property. But, the surface estate, if for no other reason than its tax liability, is rarely so neglected and it would be

common for the surface estate to be transferred and developed over the course of the same forty-four year period -- often by subdividing it into smaller parcels that are actively used for farming, residential or commercial purposes, or even coal-mining operations. But, eventually, when an oil and gas speculator tracks down the heirs to the 1971 reservation and asks to lease those rights from the heirs, the heirs will have no incentive to negotiate lease provisions that protect, or are compatible with, the current use of the surface or other mining operations, and which protect the health, safety and welfare of those other interest holders. The only incentive the heirs have is to maximize the money they receive from their oil and gas interest, and this is where the problem arises for any court concerned with the health, safety, and welfare of the citizens of Ohio.

In Ohio, surface owners and mineral owners have competing rights to use the surface in connection with their respective interests and plans for use and development of the property. As recently explained by this Court:

It is a truism that neither the owner of the surface interest nor the owner of the mineral interest has full ownership. Each has rights that are subject to the rights of the other. Thus, the owner of the surface interest cannot reasonably claim that no minerals can be mined, just as the owner of the mineral interest cannot reasonably expect to have unfettered access to the minerals. *** [T]he right to the integrity of the surface is not sacrosanct, because it is always subject to some diminution incidental to mining.

Snyder v. Ohio Dept. of Natural Res., 140 Ohio St.3d 322, 327, 2014-Ohio-3942, ¶ 13, 18 N.E.3d 416 (internal citations omitted), *see also Quarto Mining Co. v. Litman*, 42 Ohio St.2d 73, 83, 326 N.E.2d 676 (1975) (“Unless the language of the conveyance by which the minerals are acquired repels such construction, a severed mineral estate is considered to include those rights to use of the surface as are reasonably necessary for the proper working of the mine and the obtaining of the minerals.”) (citing 37 Ohio Jurisprudence 2d 19, Mines and Minerals, Section 14 and *Harper v. Jones*, 49 Ohio Law Abs. 289, 74 N.E. 2d 397 (1946)).

With these principles in mind, it is apparent that a rolling application of the 1989 DMA will facilitate oil and gas production and will also best serve the health, safety, and welfare of Ohioans. Oil and gas production will be encouraged by eliminating the old, fractional mineral interests and vesting those rights in the owners of the surface, thereby eliminating the quagmire of title problems and also the practical problems of locating the rightful owners of the minerals. Likewise, surface owners are properly incentivized to negotiate appropriate lease terms that will be compatible with the existing character and use of the surface estate to ensure that oil and gas operations do not interfere with that existing use or otherwise endanger their health, safety, and welfare. A fixed look-back period, on the other hand, drastically restricts the application of 1989 DMA and, for that reason, does not serve these public policy goals nearly as well.

B. Key pieces of legislative history confirm that the drafters of the 1989 DMA never intended to change the way courts interpret or apply numerous statutes in the Revised Code containing phrases akin to “within the preceding twenty years.”

It is hardly unusual for the General Assembly to pass legislation incorporating language nearly identical to the critical phrase from the 1989 DMA that is at issue here -- “within the preceding twenty years.” The manner in which the Seventh District has interpreted that phrase here in *Eisenbarth*, when applied to the other contexts in which the General Assembly has utilized the phrase, readily reveals the absurdity of the decision below.

For example, in 1976, the General Assembly enacted legislation precluding Ohio’s Public Employees Retirement System (“PERS”) from doing business with any person who “within the preceding three years” was employed by, a board member of, or an officer of PERS. R.C. 145.112 (Effective Aug. 20, 1976). It is beyond peradventure that the General Assembly intended this statute to apply on a rolling basis, and that the legislature did not mean to preclude PERS from engaging in only the small class of tainted business relationships with those who

happened to serve PERS in the single three-year span dating from August 20, 1973, to August 20, 1976 (the three-year span before the statute's effective date). Yet, if the Seventh District applied its *Eisenbarth* approach to interpreting R.C. 145.112, it would mean exactly that -- PERS would now have *carte blanche* to engage in inappropriate business transactions with any number of former PERS employees, board members, or officers -- so long as their service with PERS post-dated the 1976 effective date of the statute.

In another example, R.C. 2919.225(A)(2), the General Assembly imposed certain disclosure requirements upon day-care home owners, providers, or administrators. Under the statute, if a child suffered injuries at the day-care home "within the preceding ten years," then that information must be disclosed to the parent, guardian, or custodian of any child accepted into that home. R.C. 2919.225(A)(2) became effective on May 18, 2005. Under the Seventh District's erroneous interpretation of the phrase "within the preceding *** years," the statute would only require a disclosure to be made if the injuries occurred between May 18, 1995, and May 18, 2005, which is the ten-year period immediately preceding the effective date of the statute. Under such a "fixed" look-back interpretation (like the one applied here by the Seventh District), therefore, R.C. 2929.225(A)(2) would cease to provide any child-protective purpose for a child about to enter a day-care home in the summer of 2015, even if serious injuries had occurred there as recently as a year, a month, a week, or even a day before the child enrolled. That simply cannot be the law. Thankfully, the General Assembly expressly instructs courts to avoid these kinds of absurdities. R.C. 1.49(E) (instructing courts to consider "[t]he consequences of a particular construction" when determining the intention of the legislature. Just as the General Assembly intended the look-back period in R.C. 2929.225(A)(2) to apply on

a rolling basis, the General Assembly intended the nearly identically-worded look-back period in the 1989 DMA to do so as well.

In light of the General Assembly's use of the "within the preceding *** years" construction in these and other contexts sprinkled throughout the Revised Code, one would expect that the proponents and drafters of the 1989 DMA, if they intended the phrase to mean something entirely different, would have said so at some point while the bill was being debated in the legislature. But key pieces of legislative history confirm that the proponents and drafters of the 1989 DMA never intended to change the way courts routinely interpret or apply numerous statutes in the Revised Code containing phrases akin to "within the preceding twenty years."

For example, on February 5, 1988, Robert Bash, then Director of Public Affairs, Natural and Environmental Resources and Utilities for the Ohio Farm Bureau (one of the primary proponents of the 1989 DMA), sent a letter to former Senator (and now Senior Justice) Paul Pfeifer, who at the time chaired the Senate Judiciary Committee. In his letter, Mr. Bash solicited Senator Pfeifer's support for the bill that would become the 1989 DMA, noting that it "would go a long way in solving some of the problems that farmers have in trying to clear land titles and resolve their differences with oil and gas producers and to reduce the problems that oil and gas producers have with misunderstandings when the surface owner doesn't own the mineral rights." Letter from Robert E. Bash to Senator Paul Pfeifer (Feb. 5, 1988) (Appx. A-13.) In his letter, Mr. Bash provided what he called an "outline [of] what we are trying to do with this legislation." *Id.* But nowhere in that outline did Mr. Bash bother to inform Senator Pfeifer that the 20-year look-back period in the 1989 DMA was "fixed" to the period immediately preceding its enactment, as the Seventh District has now held. On the contrary, at two points in the letter

where such an explanation would have fit perfectly within the logical sequence of Mr. Bash's outline, Mr. Bash suggested that a rolling -- not fixed -- look-back period would apply:

To outline what we are trying to do with this legislation:

A. Return the mineral rights that have been separated from the surface either by reservation during the sale of a property or by outright purchase of mineral rights sometime in the past to the surface owner providing there has not been any activity **and the mineral rights have remained dormant for 20 years.**

B. Any mineral right owner can preserve his right by:

1. Transferring the title of the mineral rights and recording such transfer in the County Recorder's office;
2. Having actual production or withdraw of minerals by the holder of the mineral rights;
3. Being used in underground storage of gas by the holder;
4. A drilling or mining permit being issued to the holder and recorded in the County Recorder's Office;
5. A claim to preserve the mineral interest has been filed and recorded in the notice index that is in the Recorder's Office.

Any of the above will begin **a new 20 year period** at any time the transaction is recorded.

Id., Appx. A-13 – A-14 (emphasis added). If the Farm Bureau believed that a fixed look-back period applied to the 1989 DMA, then surely Mr. Bash (in the first emphasized text above) would have informed Senator Pfeifer in his outline that the bill would return severed interests “providing there has not been any activity and the mineral rights have remained dormant for 20 years **before the Act's effective date.**” And if the Farm Bureau believed that a fixed look-back period applied to the 1989 DMA, then Mr. Bash's later reference to “**a new 20 year period**” beginning at any time one of the listed transactions is recorded would have made little sense.

Mr. Bash's letter is not the only piece of legislative history supporting a rolling interpretation of the look-back period in the 1989 DMA. As *amici curiae* Charles, Wilma, & Teresa Schuct (and the Schuct Family Trust) explained in their Memorandum in Support of Jurisdiction, the Legislative Service Commission's analysis of the 1989 DMA provides:

Under the act, an interest could be preserved indefinitely from deemed abandonment by the occurrence of any of the four listed categories of exceptional circumstances **within each preceding 20-year period.**

See Schuct Amici's Mem. in Supp. of Jurisdiction at 5 (emphasis in original), citing Ohio Legislative Service Commission, Summary of Enactments, December, 1988, p. 38 (Appx. A-15 – A-17.) “The [Legislative Service Commission's] description ‘each preceding 20-year period’ clearly understood and expressed that more than one period of time was to be examined, for determining the abandonment of a mineral interest for non-use or non-preservation.” Schuct Mem. in Supp. of Jurisdiction at 5. Because the Legislative Service Commission is the nonpartisan agency that drafts and summarizes bill language when tasked to do so by members of the General Assembly, this Court has in numerous prior cases accorded weight to the Commission's interpretations.² It should do so again here and confirm that there are multiple, rolling look-back periods to consider under the 1989 DMA, for every day that Act was effective.

C. The drafters of the 1989 DMA looked to Michigan as a model, and Michigan applies a rolling look-back to its dormant mineral act.

The legislative history of the 1989 DMA contains still other helpful clues regarding the General Assembly's intent. In his testimony before the General Assembly in support of the 1989

² *Meeks v. Papadopulos*, 62 Ohio St.2d 187, 191, 404 N.E.2d 159 (1980) (“we may refer to [LSC analyses] when we find them helpful and objective.”) See also *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 92, 2008-Ohio-1770, n.2; *R.K.E. Trucking, Inc. v. Zaino*, 98 Ohio St.3d 495, 2003-Ohio-2149, ¶ 25; *State v. Am. Dynamic Agency, Inc.*, 70 Ohio St.2d 41, 43, 434 N.E.2d 735, n.3 (1982).

DMA, Mr. Taylor described at some length how the drafters of Ohio's Marketable Title Act (R.C. 5301.47 *et seq.*), as well as the drafters of the 1989 DMA, looked to the State of Michigan for precedent and guidance concerning how to appropriately legislate the reunification of long-abandoned mineral interests with the surface and thereby promote mineral development in a manner consistent with due process. As Mr. Taylor explained in his testimony:

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.

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.

Proponent Testimony on Behalf of Senate Bill 223 and House Bill 521, an Ohio Dormant Mineral Act, by William J. Taylor (Appx. A-10 – A-11).

The 1989 DMA proponents' focus on Michigan is notable, because multiple Michigan courts have interpreted Michigan's dormant minerals act as providing for a *rolling*, not fixed,

look-back period. See *Van Slooten v. Larsen*, 410 Mich. 21, 299 N.W.2d 704 (Mich. 1980) (recognizing that the Michigan dormant minerals act requires a mineral interest holder to take undertake one of the acts specified in the statute at least “every 20 years” (emphasis added) in order to preserve the interest, and explaining the policy rationales for that requirement); *Kerzka v. Farr*, 2013 Mich. App. LEXIS 1487, *17, *appeal not accepted*, 495 Mich. 918, 840 N.W.2d 349 (Mich. Ct. App. Sept. 10, 2013) (applying the Michigan DMA look-back to a mineral interest severed in 1990, and concluding that the mineral interest holders’ 2009 recordation of notice of intent to retain mineral rights preserved those rights through 2029); *Oberlin v. Wolverine Gas & Oil Co.*, 181 Mich. App. 506, 509 (1989) (“Under the [Michigan dormant minerals] act mineral rights are abandoned and revert to the owner of the surface land unless those rights have been sold, leased, mortgaged or transferred or a claim of interest filed with the register of deeds, or other specified action taken, within the twenty-year period since the last transaction or recording.”) (emphasis added). Just as the drafters of Ohio’s 1989 DMA followed Michigan’s lead in enacting dormant mineral legislation in the first place, this Court should follow Michigan’s lead in applying a *rolling* look-back period to the statute that will promote, rather than undercut, the General Assembly’s intended reunification of long-dormant mineral interests with the surface estate.

D. The Seventh District’s application of the maxim “the law abhors a forfeiture” to support its interpretation of the 1989 DMA as having a fixed look-back period is misplaced.

In the decision below, and in subsequent decisions, the Seventh District has repeatedly cited the hoary maxim “the law abhors a forfeiture” to support its erroneous interpretation of the 1989 DMA as having a fixed look-back period. *Eisenbarth v. Reusser*, 7 Dist. No. 13 MO 10, 2014-Ohio-3792, ¶ 49, *appeal accepted*, 141 Ohio St.3d 1488, 2015-Ohio-842 (“As forfeitures

are abhorred in the law, we refuse to extend the look-back period from fixed to rolling.”) (citing *State ex rel. Falke, Pros. Atty. v. Montgomery Cty. Resid. Dev., Inc.*, 40 Ohio St.3d 71, 73, 531 N.E.2d 688 (1988) for the proposition that “the law abhors a forfeiture.”); *see also Farnsworth v. Burkhart*, 7th Dist. No. 13 MO 14, 2014-Ohio-4184, ¶ 46 (again citing *Falke*); *Tribett v. Shepherd*, 7th Dist. No. 13 BE 22, 2014-Ohio-4320, ¶ 59, *appeal accepted*, 2015-Ohio-966 (quoting *Eisenbarth* and its citation to *Falke*). The Seventh District’s application of this old maxim, and its repeated reliance on this Court’s decision in *Falke*, are misguided.

As commentators have explained, the maxim about the law abhorring forfeitures developed in equity, and is “a maxim under which equity courts might relieve a party from the consequences of some limited and technical default,” such as a late payment on a mortgage. Dobbs, *Law of Remedies, Vol. I: Damages-Equity-Restitution*, § 2.3(4) (2d ed. 1993) (emphasis added). “Equity courts would often prevent the forfeiture of the mortgaged land or the tenancy by allowing the debtor or tenant to make a late payment if they felt circumstances warranted such compassion.” *Id.* (Emphasis added). As such, the maxim is not properly understood as a canon of statutory interpretation, as the Seventh District seems to believe. *Accord* National Conference of Commissioners on Uniform State Laws, *Uniform Statute and Rule Construction Act*, Sections 18 & 20 (1995) (including no reference to the maxim among the “Principles of Construction” or “Other Aids to Construction”).³ The maxim is not listed among the General Assembly’s express instructions for determining legislative intent, R.C. 1.49. The maxim should thus have no bearing on how this Court interprets the phrase “within the preceding twenty years” in the 1989 DMA, which is the critical issue in this appeal.

³ Available at:

http://www.uniformlaws.org/shared/docs/statute%20and%20rule%20construction/usrca_final_95.pdf.

Moreover, the Seventh District's repeated citation to this Court's decision in *Falke* betrays the majority's misunderstanding of the maxim about the law abhorring a forfeiture. *Falke* concerned a company that filed articles of incorporation reflecting its intention to form a nonprofit corporation to operate facilities for mentally disabled adults. *Falke*, 40 Ohio St.3d at 71. Pursuant to this purpose, the company obtained group home licenses and service contracts from the Ohio Department of Mental Retardation and Developmental Disabilities. But the company then filed an action in federal court against the Montgomery County Board of Mental Retardation and Developmental Disabilities, alleging that the County Board had interfered with the company's efforts to open group homes. In discovery in the federal case, the county prosecutor learned of certain irregularities relating to the company's articles of incorporation. So, the prosecutor commenced (and won) a *quo warranto* action against the company, to formally oust the company from its rights, privileges, and franchises in the State of Ohio. The two issues that this Court addressed in *Falke* were: (1) whether the company, having offended against a law providing for its creation, should be "ousted in entirety from its franchise"; and (2) whether the company, having been so ousted, could nonetheless maintain its federal lawsuit. *Id.* at 72.

This Court answered both questions in the affirmative. What is notable here, given the Seventh District's repeated reliance on *Falke*, is that in resolving the first question, this Court expressly declined to apply the maxim "the law abhors a forfeiture" as any defense to the elimination of the company's corporate privileges and franchises. Specifically, this Court reasoned that:

while it is generally true that the law abhors a forfeiture, "[i]t must not be assumed that the courts are always free to exercise a discretion in the matter of forfeiture or dissolution. Such is not the case, for relevant provisions of the statutes or corporate charters must be given effect. Where such provisions are

mandatory in character and designate certain acts or omissions as grounds for terminating the corporate franchise, the state upon proving one or more of such grounds is entitled, as a matter of law, to a decree of forfeiture, and the court has no discretion to refuse the same.”

Id. at 73, quoting 16A Fletcher, Cyclopedic of the Law of Private Corporations (Perm. Ed. 1988) 193, Section 8035 (other citations omitted). Thus, the *Falke* case from this Court, upon which the Seventh District has relied over and over again to invoke the doctrine that “the law abhors a forfeiture,” reflects not the application – but instead the rejection – of that very doctrine in circumstances where a statute controls the outcome and thus precludes judges from exercising discretion. The 1989 DMA is just such a statute, and the maxim that “the law abhors a forfeiture” has no more application in this case than it did in *Falke*. A statute requiring severed mineral interests to be deemed abandoned after a specified period of nonuse would not be worth the paper it is printed on if judges could use their equitable discretion to simply ignore it.

Finally, there is another fundamental and compelling reason why the doctrine that “the law abhors a forfeiture” does not excuse the Seventh District’s erroneous interpretation of the 1989 DMA. Simply put, you cannot “forfeit” what you do not possess. And as Mr. Taylor explained in his testimony to the General Assembly nearly thirty years ago:

Ohio is in the majority of jurisdictions which hold that a severed interest in undeveloped minerals does not constitute possession.

Proponent Testimony, *supra*, Appx. A-11 (emphasis added). As *amici curiae* Jeffco Resources, Inc., *et al.*, explained in their Memorandum in Support of Jurisdiction, the 1989 DMA is “not a forfeiture statute. It is an abandonment statute.” (Jeffco Mem. in Supp. at 6.) Both the 1989 DMA and the Marketable Title Act of which it is a part operate to automatically abandon -- not forfeit -- old, dormant real estate interests that have never been truly possessed by their holders.

As such, the Seventh District's characterization of the 1989 DMA as implicating a "forfeiture" is wrong on multiple levels and must be reversed.

E. The Seventh District's dismissive interpretation of the right of mineral holders to make "successive filings of claims to preserve" under the 1989 DMA contradicts the plain language of the statute.

One of the most clear and compelling indications that the 1989 DMA was intended to apply on a rolling basis, and not just on a single day in 1992, is the provision in the statute that allows holders of severed mineral interests to file "successive claims to preserve." The relevant subdivision of the statute provides:

(D)(1) A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any of the circumstances described in division (B)(1)(c) of this section, including, but not limited to, **successive filings of claims to preserve mineral interests under division (C) of this section.**

R.C. 5301.56, Sub.S.B. No. 223, 142 Ohio Laws 981, 985-988 (emphasis added). The implications of this language as signaling a rolling look-back period have been discussed *ad nauseum* in numerous briefs filed with this Court. However, it is important for this Court to understand not only those implications, but also why the Seventh District's analysis of this subdivision was flawed.

In short, the Seventh District's analysis was flawed because it ignored, and failed to give effect to, the plain language of the statute. The Seventh District circumvented subdivision (D)(1) with a dismissive explanation that, "[t]he mention of successive claims to preserve and indefinite preservation in R.C. 5301.56(D)(1) could merely be a reference to any preservations that were filed under the [Ohio Marketable Title Act] as existed prior to the 1989 DMA in order to show that a new claim to preserve can still be filed if the old one was filed outside of the new twenty-year look-back." *Eisenbarth v. Reusser*, 2014-Ohio-3792, ¶49. Although a section of the

OMTA does, in fact, allow a landowner to maintain an interest in land by filing a notice of intent to preserve that interest (*see* R.C. 5301.51), the Seventh District’s general reference to that section of the OMTA in this case is contrary to the plain language of subdivision (D)(1) of the 1989 DMA.

As indicated by the emphasized language in the block quote above, subdivision (D)(1) of the 1989 DMA does not just vaguely or generally reference any claim to preserve that might be available under any law or statute, as the Seventh District would seem to suggest. To the contrary, subdivision (D)(1) of the 1989 DMA specifically authorizes only “successive filings of claims to preserve mineral interests under division (C) of this section” (*i.e.*, division (C) of former R.C. 5301.56 -- the 1989 DMA). Thus, the Seventh District’s speculation that the right to make successive filings “could merely be a reference to any preservations that were filed under the OMTA *** ” is erroneous. *Id.* at ¶ 49.

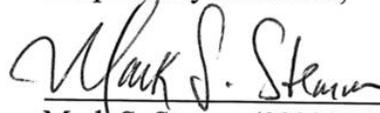
The plain language of subdivision (D)(1) of the 1989 DMA can only be reasonably understood to authorize the filing of successive claims to preserve under the 1989 DMA -- not a filing under the OMTA (or other statutes) and a filing under the OMTA, as the Seventh District apparently believes. As such, the plain language of the 1989 DMA demonstrates that the legislature intended for the 1989 DMA to apply on a rolling basis from its operative date of March 22, 1992.

CONCLUSION

For the foregoing reasons, *amicus curiae* Murray Energy Corporation joins Appellants in respectfully asking this Court to reverse the erroneous judgment of the court of appeals. Confirming that the 1989 DMA incorporates a rolling, twenty-year look-back period would be consistent with the General Assembly’s intent to reunify long-dormant mineral interests with the

surface so that they may be developed appropriately for the economic benefit of the State of Ohio and its citizens.

Respectfully submitted,



Mark S. Stemm (0023146)
(COUNSEL OF RECORD)
L. Bradfield Hughes (0070997)
Christopher J. Baronzzi (0078109)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street, Suite 3000
Columbus, Ohio 43215
(614) 227-2092 (telephone)
(614) 227-2100 (facsimile)
mstemm@porterwright.com
bhughes@porterwright.com
cbaronzzi@porterwright.com

*Counsel for Amicus Curiae
Murray Energy Corporation*

CERTIFICATE OF SERVICE

The undersigned counsel certifies that a copy of the foregoing Brief of Murray Energy Corporation, *Amicus Curiae* in Support of Appellants, was served by First-Class U.S. Mail, postage pre-paid on the following counsel of record this 28th day of April, 2015:

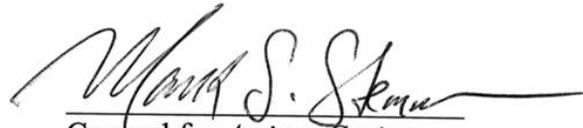
Richard Yoss
Craig E. Sweeney
YOSS LAW OFFICE
122 N. Main Street
Woodsfield, OH 43793

Matthew W. Warnock
Daniel E. Gerken
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215

James F. Matthews
BAKER, DUBLIKAR, BECK, WILEY &
MATTHEWS
400 South Main Street
North Canton, Ohio 44720

Gregory W. Watts
Matthew W. Onest
David E. Butz
William G. Williams
KRUGLIAK, WILKINS, GRIFFITHS,
& DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W.
P.O. Box 36963
Canton, Ohio 44735-6963

Robert J. Tscholl
400 South Main Street
North Canton, Ohio 44720


Counsel for *Amicus Curiae*
Murray Energy Corporation

APPENDIX

(Substitute Senate Bill Number 223)

AN ACT

To amend sections 317.08, 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 interests and the vesting of their title in surface owners, in the absence of certain occurrences within the preceding 20 years, including the filing by the holder of a mineral interest of a preserving claim.

Be it enacted by the General Assembly of the State of Ohio:

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

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

(A) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices, as provided for in sections 5301.47 to 5301.56 of the Revised Code; all judgments or decrees in actions brought under section 5303.01 of the Revised Code; all declarations and bylaws as provided for in ~~sections 5311.01 to 5311.23~~ CHAPTER 5311. of the Revised Code; affidavits as provided for in section 5301.252 of the Revised Code; all certificates as provided for in section 5311.17 of the Revised Code; all articles dedicating archaeological preserves accepted by the director of the Ohio historical society under section 149.52 of the Revised Code; all articles dedicating nature preserves accepted by the director of natural resources under section 1517.05 of the Revised Code; all agreements for the registration of lands as archaeological or historic landmarks under section 149.51 or 149.55 of the Revised Code; ~~and~~ all conveyances of conservation easements under section 5301.68 of the Revised Code; **AND ALL INSTRUMENTS OR ORDERS DESCRIBED IN DIVISION (B)(1)(c)(ii) OF SECTION 5301.56 OF THE REVISED CODE;**

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

[Signature]

Governor.

and permanent nature is
le.

[Signature]

Service Commission.

Columbus, Ohio, on the
37

Secretary of State.

October 20, 1987

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

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

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

(C) A record of powers of attorney;

(D) A record of plats, in which shall be recorded all plats and maps of town lots, of the subdivision thereof, and of other divisions or surveys of lands, and any center line survey of a highway located within the county, the plat of which shall be furnished by the director of transportation or county engineer, and all drawings as provided for in sections 5211.01 to 5311.22 CHAPTER 5311. of the Revised Code;

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

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

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

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

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

Sec. 317.18. At the beginning of each day's business, the county recorder shall make and keep up general alphabetical indexes, direct and

nts, supplements, modifica-
 IES, or other instruments of
 aments are or may be mort-
 id, affected, or encumbered;
 or the sale of land executed
 EIR terms thereof are not
 e of the parties thereto TO
 acts;

cluding supplements, modi-
 OPTIONS, but no such in-
 e a specific day and year of

orded all plats and maps of
 her divisions or surveys of
 located within the county,
 rector of transportation or
 l for in sections 5311.01 to

recorded all leases, memo-
 s, and amendments thereof
 ES.

nts entitled to record shall
 which they are presented
 and record in one volume
 liens, personal tax liens,
 certificates of satisfaction
 s of recognizances, excise
 as provided for in sections
 vised Code.

real estate, including any
 reof OF THE OPTION,
 urchaser of an interest in
 the period of the validity

ts of records required in
 required in division (G) of
 e instruments required to
 of record books. One set
 ain the instruments listed
 action. The second set of
 ision (D) of this section.

this section, the county
 aining all corrupt activity
 o section 2923.36 of the

r's business, the county
 ctical indexes, direct and

reverse, of all the names of both parties to all instruments ~~theretofore~~
 PREVIOUSLY received for record by him. The volume and page where
 EACH such instrument is recorded may be omitted until it is actually
 recorded if the file number is entered in place of the volume or page, but
 such file number may be omitted from any index volume in use on April 21,
 1896, if the form of the index volume is not adapted to entering the file
 number. The indexes shall show the kind of instrument, the range, town-
 ship, 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 in-
 strument of writing. The name of each grantor shall be entered in the
 direct index under the appropriate letter, followed on the same line by the
 name of the grantee, or, if there is more than one grantee, by the name of
 the first grantee followed by "and others" or their ITS equivalent. The
 name of each grantee shall be entered in the reverse index under the
 appropriate letter, followed on the same line by the name of the grantor,
 or, if there is more than one grantor, by the name of the first grantor
 followed by "and others" or their ITS equivalent.

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

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

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

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

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

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

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

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

- (A) The name of the grantor;
- (B) Next to the right, the name of the grantee;
- (C) The number and page of the record where the instrument is found recorded;
- (D) The character of the instrument, to be followed by a pertinent description of the property conveyed by the deed, 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~~ IF 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~~ AUDITOR OF STATE 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,

ed after June 7, 1911, shall
 ion, and whenever, in the
 s, it becomes necessary to
 plete condition, any volume
 l be revised and transcribed
 counties having a sectional
 e Revised Code, such tran-

oard of county commission-
 directs, in addition to the
 17.18 of the Revised Code,
 prepared for that purpose,
 ite in the county, beginning
 ough such period of years as
 riginal surveyed sections or
 uares, subdivisions, or the
 r section 319.28 of the Re-
 in the upper portion of such

tee;
 here the instrument is found

be followed by a pertinent
 ed, lease, or assignment of

r portion of the same page,
 mortgages, liens, notices as
 AND 5301.56 of the Revised
 al estate.

red under this section shall
 untly, and no additional levy
 s. In the event that IF the
 nade, it shall advertise for
 f general circulation in the
 provided in this section, and
 er, and shall require him to
 ontract, in such sum as the
 acceptance of the bureau of
 UDITOR OF STATE upon
 ect any and all bids for the
 all be paid for each entry of

ounty recorder shall keep up

maintain a book to be known
 book shall be headed by the
 ts 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 Re-
 vised Code. In designated columns, there shall be entered on the left-hand
 page:

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

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

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

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

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

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

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

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

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

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

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

(1) "HOLDER" MEANS THE RECORD HOLDER OF A MIN-
 ERAL INTEREST, AND ANY PERSON WHO DERIVES HIS
 RIGHTS FROM, OR HAS A COMMON SOURCE WITH, THE

DOES NOT INDICATE,
TION, THAT IT IS AD-
RD HOLDER.

" MEANS A PERMIT IS-
1514. OF THE REVISED
IL OR GAS WELL OR TO

ELD BY ANY PERSON,
RFACE OF THE LANDS
BE DEEMED ABAN-
OF THE SURFACE, IF

DOAL, OR IN MINING OR
XERCISABLE IN CON-
AL, AS DESCRIBED IN
E REVISED CODE;
IELD BY THE UNITED
AL SUBDIVISION, BODY
TATES OR THIS STATE,
ECTION 5301.53 OF THE

ENTY YEARS, ONE OR
RED:

3EEN THE SUBJECT OF
EN FILED OR RECORD-
Y RECORDER OF THE
)CATED;

RODUCTION OR WITH-
ER FROM THE LANDS,
) WHICH THE MINERAL
E OF OIL OR GAS, FROM
LUDED IN UNIT OP-
.26 TO 1509.28 OF THE
RAL INTEREST IS PAR-
STRUMENT OR ORDER
POOLING OR UNITIZA-
S BEEN FILED OR RE-
TY RECORDER OF THE
ARE SUBJECT TO THE
ED;

AS BEEN USED IN UN-
NS BY THE HOLDER;
IT HAS BEEN ISSUED TO
FIDAVIT THAT STATES
THE PERMIT NUMBER,
, DESCRIPTION OF THE
AS BEEN FILED OR RE-
CTION 5301.252 OF THE

REVISED CODE, IN THE OFFICE OF THE COUNTY RECORDER
OF THE COUNTY IN WHICH THE LANDS ARE LOCATED;

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

(vi) IN THE CASE OF A SEPARATED MINERAL INTEREST, A
SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CRE-
ATED FOR THE MINERAL INTEREST IN THE COUNTY AUDI-
TOR'S TAX LIST AND THE COUNTY TREASURER'S DUPLICATE
TAX LIST IN THE COUNTY IN WHICH THE LANDS ARE LO-
CATED.

(2) A MINERAL INTEREST SHALL NOT BE DEEMED ABAN-
DONED UNDER DIVISION (B)(1) OF THIS SECTION BECAUSE
NONE OF THE CIRCUMSTANCES DESCRIBED IN THAT DIVI-
SION APPLY, UNTIL THREE YEARS FROM THE EFFECTIVE
DATE OF THIS SECTION.

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

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

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

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

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

(3) ANY HOLDER OF AN INTEREST FOR USE IN UN-
DERGROUND GAS STORAGE OPERATIONS MAY PRESERVE
HIS INTEREST, AND THOSE OF ANY LESSOR OF THE IN-
TEREST, BY A SINGLE CLAIM, THAT DEFINES THE BOUND-
ARIES OF THE STORAGE FIELD OR POOL AND ITS FOR-
MATIONS, WITHOUT DESCRIBING EACH SEPARATE IN-
TEREST CLAIMED. THE CLAIM IS PRIMA-FACIE EVIDENCE
OF THE USE OF EACH SEPARATE INTEREST IN UN-
DERGROUND GAS STORAGE OPERATIONS.

(D)(1) A MINERAL INTEREST MAY BE PRESERVED IN-
DEFINITELY FROM BEING DEEMED ABANDONED UNDER DI-
VISION (B)(1) OF THIS SECTION BY THE OCCURRENCE OF ANY
OF THE CIRCUMSTANCES DESCRIBED IN DIVISION (B)(1)(c) OF
THIS SECTION, INCLUDING, BUT NOT LIMITED TO, SUCCES-

SIVE FILINGS OF CLAIMS TO PRESERVE MINERAL INTERESTS UNDER DIVISION (C) OF THIS SECTION.

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

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

Vernon D. Riffe, Jr.
Speaker _____ of the House of Representatives.

Paul E. Gillmor
President _____ of the Senate.

Passed November 18, 1988

Approved December 21, 1988
11:23 AM

Richard J. Celeste
Governor.

'RESERVE MINERAL IN-
HIS SECTION.
TO PRESERVE A MINERAL
F THIS SECTION DOES NOT
IF AN OIL OR GAS LEASE TO
SECTION 5801.332 OF THE

317.08, 317.18, 317.20, 317.201,
ised Code are hereby repealed.

[Signature]
House of Representatives.

[Signature]
of the Senate.

[Signature]
Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

[Signature]
Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
21st day of *December*, A. D. 19 *88*
[Signature]
Secretary of State.

File No. *314*

Effective Date *March 22, 1989*

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.

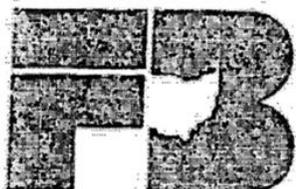
The proposed bill also contains the essential elements recommended by the National Conference of Commissioners on Uniform State Laws at its annual conference in Boston in August, 1986. I have enclosed a copy of the Uniform Dormant Mineral Interests Act with prefatory notes and comments for your review.

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.



OHIO FARM BUREAU

35 East Chestnut Street • P.O. Box 479 • Columbus, Ohio 43216 • (614) 249-2400

February 5, 1988

Senator Paul Pfeifer, Chairman
Senate Judiciary Committee
State House
Columbus, Ohio 43215

Dear Paul:

Your support for Senate Bill 223 would go a long way in solving some of the problems that farmers have in trying to clear land titles and resolve their differences with oil and gas producers and to reduce the problems that oil and gas producers have with misunderstandings when the surface owner doesn't own the mineral rights. It reduces the problems that title attorneys and others have when they have no way to provide a clear title and the mineral rights have been separated from the surface and not properly transferred to successors or heirs.

You will recall in testimony last week that Bill Taylor of the Natural Resources Committee of the Bar Association explained the need to have a way of clearing titles and the need to have a companion piece of legislation to go with the marketable titles act. A copy of Taylor's testimony was provided for you. Included was the fact that 15 states have a dormant mineral rights act including Michigan, Indiana, Illinois, Pennsylvania, Virginia, and Tennessee. All but Pennsylvania, Virginia and Tennessee have a marketable titles act. The amendments that were recommended by the Bar Association, we wholeheartedly support with the exception of the amendment that was proposed by Mr. Sider which would have included the lease hold interests. Therefore, we are recommending that the 5 amendments proposed by Mr. Taylor be incorporated in the Bill.

To outline what we are trying to do with this legislation:

- A. Return the mineral rights that have been separated from the surface either by reservation during the sale of a property or by outright purchase of mineral rights sometime in the past to the surface owner providing there has not been any activity and the mineral rights have remained dormant for 20 years.

- B. Any mineral right owner can preserve his right by:
1. Transferring the title of the mineral rights and recording such transfer in the County Recorder's Office;
 2. Having actual production or withdraw of minerals by the holder of the mineral rights;
 3. Being used in underground storage of gas by the holder;
 4. A drilling or mining permit being issued to the holder and recorded in the County Recorder's Office;
 5. A claim to preserve the mineral interest has been filed and recorded in the notice index that is in the Recorder's Office.

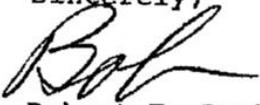
Any of the above will begin a new 20 year period at any time the transaction is recorded.

The 5 amendments that have been proposed by the Ohio Bar Association Natural Resources Committee are to make sure that the action taken by a person to preserve their interest is recorded in the Recorder's Office. This appropriate filing will permit anyone who traces a title to find that record and know the mineral rights are preserved by the mineral rights owner.

While the bill is not easily read, I hope that this summary clarifies any questions that you may have. In the event you have additional questions, please feel free to call either myself at 249-2414, Bill Taylor (614) 454-2591, or Bob Fletcher 221-6983.

We hope that at the next hearing held by the committee that the amendments could be adopted and the bill recommended for passage. Your help in doing this would be very much appreciated.

Sincerely,



Robert E. Bash
Director of Public Affairs, Natural and
Environmental Resources and Utilities

cc: Bill Taylor
Bob Fletcher

2025 RELEASE UNDER E.O. 14176

OHIO LEGISLATIVE SERVICE COMMISSION
Columbus, Ohio

December 1988

SUMMARY OF ENACTMENTS

July-December 1988

117th General Assembly

Under the act, persons who own land on which caves are located and lessees of such land are not liable for injuries, death, or loss sustained by any permittee on their land if no charge for entering the land has been made. The act states that by granting permission for entry, the owner or lessee does not extend any assurances about the safety of the premises; confer on the permittee the legal status of an invitee or licensee to whom a duty of care is owed; or assume responsibility or incur liability for any injury, death, or loss to persons or property caused by an act or omission of a permittee. It also states that these provisions do not limit liability that otherwise exists for injury, death, or loss to persons or property caused either by the owner's or lessee's negligent failure to warn the permittee against a hazard of which the owner or lessee had actual knowledge prior to the permittee's entry on the land or by the owner's or lessee's willful or wanton misconduct or intentionally tortious conduct.

Secs. 1517.04, 1517.21, 1517.22, 1517.23, 1517.24, 1517.25, 1517.26, and 1517.99.

* * *

Sub. S.B. 223

Sens. Cupp, Schafrath, Nettle, Drake, Burch.

Provides that, in the absence of certain specified occurrences within the preceding 20-year period, a subsurface mineral interest that is not in coal or not of a governmental entity is deemed to be abandoned and its title vested in the surface owner. (Effective: March 22, 1989)

The act modifies the Marketable Title Law to prescribe when the holder of a subsurface mineral interest, who is not also the surface owner, is deemed to have abandoned the interest. If deemed abandonment occurs, the act provides that the interest will vest in the surface owner.

Deemed abandonment and vesting will occur if none of the act's specified exceptions applies to a particular subsurface mineral interest. However, the act states that deemed abandonment cannot so occur until three years from its effective date.

A subsurface mineral interest in coal or one held by the United States, Ohio, or their political subdivisions cannot be the subject of deemed abandonment and vesting. Additionally, deemed abandonment and vesting will not occur under the act if any of the following exceptional circumstances occurred within the preceding 20-year period:

(1) The interest was the subject of a filed or recorded title transaction in the county;

(2) Its holder actually produced or withdrew minerals from specified lands, used the interest in underground gas storage operations, or filed or recorded a specified affidavit with the county recorder in connection with a drilling or mining permit relating to the interest;

(3) Its holder filed a claim to preserve the interest with the county recorder in the form specified in the act and the claim then was filed and recorded in accordance with the County Recorder and Marketable Title Laws. If such a claim complies with the act's form, filing, and recording requirements, it will preserve the rights of all holders of a mineral interest in the same lands. However, such a claim does not affect the right of a lessor to obtain a forfeiture and cancellation of an oil or gas lease.

(4) A separately listed tax parcel number was created for a separated mineral interest in the county auditor's tax list and treasurer's duplicate.

Under the act, an interest could be preserved indefinitely from deemed abandonment by the occurrence of any of the four listed categories of exceptional circumstances within each preceding 20-year period.

Secs. 317.08, 317.18, 317.20, 317.201, 5301.53, and 5301.56.

* * *

Sub. S.B. 254

Sens. Gaeth, Burch, Oelslager, Ray, Ney.

Rep. Blessing.

Provides for expedited review of oil and gas well permit applications and requires operators of gas storage reservoirs to file with the Division of Oil and Gas in the Department of Natural Resources copies of the maps they formerly filed only with the Division of Mines of the Department of Industrial Relations; authorizes an oil or gas well to be relocated without prior approval of the Chief of the Division of Oil and Gas if an emergency drilling permit is requested because of a lost hole and certain requirements are met; allows the owner or lessee of a mine in a coal bearing township to object to any proposed site for relocation of a well that is within 50 feet of its original location; and authorizes the Chief of the Division of Mines to