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**MERIT BRIEF OF RESPONDENT NORTH AMERICAN COAL ROYALTY  
COMPANY ON CERTIFIED QUESTIONS OF STATE LAW**

**I. INTRODUCTION**

**A. Question One**

The first certified question asks whether the 1989 or 2006 version of the Dormant Mineral Act (“DMA”) applies to claims asserted after 2006:

Does the 2006 version or the 1989 version of the ODMA apply to claims asserted after 2006 alleging that the rights to oil, gas and other minerals automatically vested in the surface land holder prior to the 2006 amendments as a result of abandonment?

(District Court Opinion and Order, Pet. App. Ex. 1.)<sup>1</sup>

It is hornbook law that “a court “should apply the law in effect at the time it renders its decision.”” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 273 (1994), quoting *Bradley v. Richmond Sch. Bd.*, 416 U.S. 696, 711 (1974). For claims asserted after 2006, that law is the 2006 DMA.

To avoid this basic principle, petitioner contends that mineral rights vested in his predecessor “automatically” under the 1989 Act, and cannot be “retroactively destroy[ed]” by the 2006 Act. (Merit Br. of Pet. at 8.)

The 1989 Act did not provide for “automatic” vesting – that is, a secret transfer or forfeiture of mineral rights without notice, without any court involvement, and without any activity on the title record. Such automatic vesting would be squarely inconsistent with the basic purpose of the Ohio Marketable Title Act (“MTA”), of which the DMA is a part.

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

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<sup>1</sup> Petitioners’ Merit Brief, at pages 2 through 6, accurately reflects the stipulated facts before the District Court.

(Emphasis added.) R.C. 5301.55 (App. at 1). Any “automatic” vesting would occur outside the chain of title, and would be unrecorded, defeating this express legislative purpose. Several lower courts have therefore properly concluded that vesting could occur only if there was some “implementation or enforcement of claimed abandonment rights” through a court proceeding. *Dahlgren v. Brown Farm Properties*, Carroll C.P. No. 13 CVH 27445 at 14 (Nov. 13, 2013) (App. at 2), *rev’d*, 7th Dist. Carroll No. 13 CA 896, 2014-Ohio-4001; *M&H Partnership v. Hines*, Harrison C.P. No. CVH-2012-0059 (Jan. 14, 2014) (App. at 24); *Eisenbarth v. Reusser*, 7th Dist. Monroe No. 13 MO 10, 2014-Ohio-3792 (concurring opinion of Judge DeGenaro). Nothing in the Act provided that a mineral interest would be vested without such action and a resulting change in the record chain of title.

The language of the 1989 DMA is very different from that of the truly “self-executing” statutes that petitioner cites. Indiana’s statute, for example, unambiguously provides that if the mineral interest is unused for 20 years, it “is *extinguished* and the ownership *reverts*” to the surface owner. (Emphasis added.) Ind. Code 32-23-10-2 (App. at 40). The MTA likewise provides that certain unclaimed interests are “extinguished” or “null and void.” R.C. 5301.49, 5301.50 (App. at 41, 42). There is nothing like that in the 1989 DMA. And the proponent stated that the “proposed bill also contains the essential elements” of the Uniform Dormant Mineral Interests Act (“UDMIA”), S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA, p. 3 (App. at 45), – one of which, as petitioners note, was that “the surface owner take affirmative action for vesting to occur.” (Merit Br. of Pet. at 13.)

The legislature thus did not intend automatic vesting. At the very least, the DMA is ambiguous in that regard. The language of the DMA, as an act that is in derogation of the common law and authorizes the forfeiture of private property, must be strictly construed. “No forfeiture may be ordered unless the expression of the law is clear.” *State v. Lilliock*, 70 Ohio

St.2d 23, 26, 434 N.E.2d 723 (1982). There is no “clear” statement in the 1989 DMA that mineral rights were “automatically” to be forfeited or to vest in the surface owner; indeed, since then the legislature has expressly recognized the “*ambiguity* of the existing [1989] statute,” and noted that it “*did not clearly define* when a mineral interest became abandoned and exactly how the process to reunite the mineral interest with the surface ownership was to be accomplished.” (Emphasis added.) H.B. 288, Sponsor Testimony, 2006 DMA at 1, Representative Mark Wagoner (App. at 68). Given that ambiguity, there is no basis for “automatic” vesting under the 1989 Act.

Petitioner argues that once an interest is “deemed vested” under the 1989 Act, the 2006 Act cannot apply, because the DMA applies only where “the mineral interest [is] held by any person, other than the owner of the surface,” and “different entities own the surface and the mineral rights.” (Merit Br. of Pet. at 21.) This ignores the plain language of the statute. It is true that the DMA applies only when a mineral interest is “held by any person, other than the owner of the surface.” R.C. 5301.56(B) (App. at 71). But the Act specifically defines what it means to “hold” a mineral interest. The “holder” of a mineral interest is the “*record holder*” of the interest. (Emphasis added.) R.C. 5301.56(A). “Automatic” vesting under the 1989 Act would not change the “*record holder*” of the mineral interest or affect the title record in any way. Thus here, assuming there were some “automatic” vesting in 1992, North American and/or its lessee remained, and still remains today, the “*record holder*” of the mineral interest. The DMA still applies.

As for petitioner's claim of “retroactivity” – there is nothing “retroactive” about applying a 2006 statute to a 2013 lawsuit. A “retroactive” statute is one that is applied to actions already pending when the statute becomes law. *See, e.g., Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100, 103, 106, 522 N.E.2d 489 (1988). Respondents do not argue for that here.

Respondents' position is just that petitioner should be required to follow procedures that the General Assembly put in place seven years before petitioner filed suit or made any claim of any kind. That is a prospective application of the 2006 DMA.

Assuming, for the sake of argument, that an automatic vesting of mineral rights occurred before 2006, those rights could be lost if the surface owner failed to comply with the requirements of a new procedural or remedial law. If that is a "retroactive" application of the 2006 DMA, it is not an unconstitutional one. The MTA is a remedial law that can eliminate vested property rights and divest the owners of those rights. *See Pinkney v. Southwick Invests., LLC*, 8th Dist. Cuyahoga Nos. 85074 & 85075, 2005-Ohio-4167. The 2006 DMA, part of the MTA, is also such a law. Petitioner's argument that the 2006 Act cannot have any "retroactive" effect is incorrect. Both versions of the DMA were clearly intended to have retroactive as well as prospective effect; if the original Act were prospective only, for example, it would not have had any effect on mineral ownership until a 20-year period of nonuse after the statute was enacted, and there would have been no need for the three-year grace period in R.C. 5301.56(B)(2). Instead, both statutes expressly provide for a 20-year "look-back" period, and both are expressly and necessarily retroactive.

But there is nothing "*unconstitutionally* retroactive" about the 2006 Act. (Emphasis sic.) *Bielat v. Bielat*, 87 Ohio St.3d 350, 353, 721 N.E.2d 28 (2000). The 2006 amendments to the DMA did not change or take away any substantive rights whatsoever; they merely clarified the *procedures* that must be followed before any allowable vesting of mineral rights can occur. Procedural or remedial changes can be applied retroactively even if they have a "substantive effect" in some cases, *Pinkney* at ¶ 37, or are "outcome-determinative for some claimants." *Combs v. Commr. of Social Sec.*, 459 F.3d 640, 647 (6th Cir. 2006); *see also Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d at 107-108 ("Remedial laws . . . include laws which

merely substitute a new or more appropriate remedy for the enforcement of an existing right. While we recognize the occasional substantive effect, it is yet generally true that laws which relate to procedures are ordinarily remedial in nature. . . .”).

Importantly, the 2006 amendments did not themselves have any necessary effect on anyone’s rights. This is very different from unconstitutional legislative enactments that extinguish vested claims or rights. A statute that eliminates an accrued common law damages claim and replaces it with a statutory compensation claim, for example, “deal[s] with rights and not remedies,” and is unconstitutional. *Weil v. Taxicabs of Cincinnati, Inc.*, 139 Ohio St. 198, 204 (1942). But the 2006 DMA did not itself eliminate any rights, or change any of the substantive elements of abandonment and vesting in the surface owner. Only the procedures changed. Petitioner could have tried to follow the new procedures, but did not. Thus, he could have filed and served a notice under the 2006 DMA; and if North American did not respond, he could successfully have claimed the mineral interest. The result, in that event, would be no different from the result that he claims under the 1989 DMA.

Of course, in fact, the result would almost certainly have been different – but not because the legislature “destroyed” petitioner’s supposed rights, only because North American would have followed the new procedures and reasserted its rights to the oil and gas by filing a claim to preserve them under R.C. 5301.56(H)(1)(a). The new statute itself took away nothing. Petitioner did not lose any vested substantive right in 2006, but only a procedural argument; he lost his ability to argue that he should receive, or be able to preserve, a windfall of mineral rights without giving notice to the record holder. But petitioner could have sought that windfall at any time between 1999, when he acquired the surface rights, and 2006. Instead, he waited until 2013 – fourteen years after he obtained the surface rights, seven years after the DMA was amended to require notice, and three years after respondent Chesapeake commenced production from a well

drilled under its Harrison County lease with North American. By then, the legislature had clarified the procedures to be followed, and that clarification was a purely remedial change that does not in any way run afoul of the Ohio Constitution.

This Court's recent decision in *Longbottom v. Mercy Hosp. Clermont*, 137 Ohio St.3d 103, 2013-Ohio-4068, 998 N.E.2d 419, rejected a similar challenge under Ohio's Retroactivity Clause. The Court held that a 2004 amendment to the prejudgment interest statute, imposing a new notice requirement, applied to any case filed after 2004 – even if the claim accrued, or vested, before 2004. The Court held that the amendment was remedial and can be applied retroactively, because it merely changes the “methods and procedure” for a prejudgment interest claim by adding a notice requirement, but neither “destroys nor eliminates the right to prejudgment interest.” The 2006 DMA amendments likewise did not destroy the right to claim that a mineral interest had been abandoned. They, too, merely changed the “methods and procedure” by which such a claim is recognized and enforced – precisely as in *Longbottom*, by adding notice requirements.

Moreover, as the Eighth District noted in *Pinkney, supra*, this Court “implicitly rejected” the argument that the MTA is unconstitutionally retroactive in *Heifner v. Bradford*, 4 Ohio St.3d 49, 449 N.E.2d 440 (1983). Although the MTA clearly does “extinguish” and render “null and void” vested rights, that is a consequence of the Act's “procedural requirements,” and the MTA is a “merely remedial” statute. *Pinkney*, 2005-Ohio-4167, at ¶ 37. The same is true of the DMA. There is no constitutional infirmity here.

## **B. Question Two**

The second certified question asks:

“Is the payment of a delay rental during the primary term of an oil and gas lease a title transaction and ‘savings event’ under the ODMA?”

(District Court Opinion and Order, Pet. App. Ex. 1.)

Petitioner devotes only three sentences to this question, choosing instead to reargue a separate and related question already thoroughly briefed and argued in this Court in *Chesapeake Exploration, L.L.C., et al. v. Buell, et al.*, No. 2014-0067, *i.e.*, whether an oil and gas lease is a “title transaction” and therefore a savings event.

North American will not repeat the arguments that it and the other petitioners made in that case. Petitioner’s sole argument here with respect to delay rental payments is that they are not “publicly recorded.” This overlooks that the dates and amounts of any necessary delay rental payments are specifically set forth in a recorded oil and gas lease, and are thus available to any interested member of the public. There is no requirement in the DMA that every title transaction be separately recorded in its own individual document. The only requirement is that the transaction be “filed or recorded.” R.C. 5301.56(B)(3). The delay rental payments are “recorded” through the lease, which puts the world on notice of them.

Assuming that a lease is a title transaction, there can be no doubt that a payment that perpetuates the lease, causing fee simple determinable title to the oil and gas to remain with the lessee instead of reverting to the lessor, is also a title transaction. It “affects” title to the oil and gas no less than the original execution of the lease. Moreover, these payments are clear evidence that the owner has not “abandoned” anything, but is instead actively maintaining and exercising its rights. They should therefore be recognized as savings events.

## II. THE DORMANT MINERAL ACT

### A. The Purpose of the Dormant Mineral Act

The DMA is part of the MTA, which was enacted in 1961 “to simplify land title transactions by making it possible to determine marketability through limited title searches over some reasonable period . . . .” S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA at 1. The purpose of the MTA is expressly set forth in the statute:

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

(Emphasis added.) R.C. 5301.55.

The DMA was modeled partly on the UDMIA, recommended for enactment by the National Conference of Commissioners on Uniform State Laws in 1986. *See, e.g.*, S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA at 3 (App. at 45). The basic purpose of dormant mineral legislation is “to remedy uncertainties in titles and to facilitate the exploitation of energy sources and other valuable mineral resources.” *Texaco, Inc. v. Short*, 454 U.S. 516, 524 fn.15 (1982). The aim is not just to eliminate severed mineral interests, but to identify truly dormant mineral interests and bring them back into use; the drafters of the UDMIA thus explained that the clearing of title “should not be an end in itself and should not be achieved at the expense of a mineral owner who wishes to retain the mineral interests.” UDMIA, Prefatory Note, at 4 (App. at 81). Rather, the “objective is to clear title of worthless mineral interests and mineral interests about which no one cares,” *id.*, and to “facilitate the development of those subsurface properties by reducing the problems presented by fragmented and unknown ownership.” *Van Slooten v. Larsen*, 410 Mich. 21, 299 N.W.2d 704, 710 (1980); *see also Oberlin v. Wolverine Gas & Oil Co.*, 181 Mich.App. 506, 450 N.W.2d 68, 71 (1989) (“[t]he purpose of the dormant minerals act was not to abolish severed mineral interests, but to promote the development of mineral interests

by reducing the difficulty in locating the owners of severed mineral interests where there has been no recent recording of those interests.”).

In Ohio, too, “[t]he intended purpose of the 1989 ODMA was to create and maintain a *clear, current and reliable record chain of title* with respect to ownership of severed mineral rights. The ODMA was not enacted to force holders to ‘use their mineral rights or lose them.’” (Emphasis added.) *Eisenbarth v. Reusser*, 2014-Ohio-3792, at ¶ 96 (concurring opinion of Judge DeGenaro). The legislature expected that such a clear record would “encourage the development of minerals in Ohio which have been previously ignored due to defects in title,” S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA at 3 (App. at 45), and would promote “new production sites.” H.B. 288, Sponsor Testimony, 2006 DMA, p. 1 (App. at 68) (testimony of Representative Mark Wagoner). That was consistent with the general public policy of Ohio that “it is an essential government function and public purpose of the state to . . . encourage the increased utilization of the state’s indigenous energy resources . . . .” R.C. 1551.18; *see Newbury Twp. Bd. of Trustees v. Lomak Petroleum (Ohio), Inc.*, 62 Ohio St.3d 387, 389, 583 N.E.2d 302 (1992).

#### **B. The Purpose of the 2006 Amendments to the DMA**

The legislature amended the DMA in 2006 to “fix perceived problems” in the 1989 version of the statute: namely, that the original version “did not clearly define when a mineral interest became abandoned, and exactly how the process to reunite the mineral ownership with the surface ownership was to be accomplished.” H.B. 288, Sponsor Testimony, 2006 DMA at 1. The amendments specified that “for any allowable vesting to occur, the landowner must notify the holder of the mineral interest and file an affidavit of abandonment as specified in the act.” Ohio Legislative Service Comm’n, Bill Analysis, Sub. H.B. 288 at 1 (App. at 93). They also clarified that the relevant twenty-year period “is the 20 years immediately preceding the date” of

the notice to the mineral interest holder. *Id.* at 3. The amendments thus “remove[d] the ambiguity of the [1989] statute.” H.B. 288, Sponsor Testimony, 2006 DMA at 1.

As reported by the Ohio Bar Association’s Natural Resources Committee, the 2006 DMA amendments, including the “procedure for a landowner to follow to obtain the mineral interest,” were a “necessary clarification of the existing statute.”<sup>2</sup>

### III. LAW AND ARGUMENT

#### A. Question One

It is fundamental that “a court should ‘apply the law in effect at the time it renders its decision’ . . . even though that law was enacted after the events that gave rise to the suit.” *Landgraf v. USI Film Prods.*, 511 U.S. at 273, quoting *Bradley*, 416 U.S. at 711. The 2006 DMA was the law in effect when petitioner first chose to claim that the mineral rights were abandoned. Petitioner did not make a claim to the oil and gas below his property until 2013, seven years after the statute had been amended. His claim should accordingly be adjudicated under that law.

Petitioner tries to avoid this basic rule by contending that the mineral rights “automatically” vested in his predecessor under the 1989 Act, and cannot be “retroactively destroy[ed]” by the 2006 Act. (Merit Br. of Pet. at 8.) Both contentions are incorrect. The 1989 Act did not provide for “automatic” vesting. And the 2006 Act is not impermissibly or unconstitutionally retroactive.

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<sup>2</sup> Report of the Natural Resources Committee to Council of Delegates, at <https://www.ohiobar.org/NewsAndPublications/SpecialReports/Pages/StaticPage-313.aspx> (accessed Sept. 30, 2014).

**1. The 1989 DMA Did Not Clearly Provide for “Automatic” Vesting and Was Not Self-Executing**

**a. “Automatic” vesting would conflict with the purpose of the statute**

The legislature has clearly stated a basic purpose of the DMA and of the MTA, of which the DMA is an integral part: “Sections 5301.47 to 5301.56, inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of *simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title . . .*” (Emphasis added.) R.C. 5301.55.

“Automatic” vesting – an unrecorded transfer of property *outside* the chain of title – would be inconsistent with this express legislative purpose. Vesting under the 1989 DMA could accordingly occur only if there were some “implementation or enforcement of claimed abandonment rights” that changed the record chain of title. *Dahlgren v. Brown Farm Properties*, Carroll C.P. No. 13 CVH 27445 at 4 (Nov. 5, 2013), *rev’d*, 7th Dist. Carroll No. 13 CA 896, 2014-Ohio-4001; *see also M&H Partnership v. Hines*, Harrison C.P. No. CVH-2012-0059 (Jan. 14, 2014); *Eisenbarth v. Reusser*, 7th Dist. Monroe No. 13 MO 10, 2014-Ohio-3792 (concurring opinion of Judge DeGenaro).

In *Dahlgren, supra*, the Carroll County Court of Common Pleas held that the 2006 version of the Act controls a claim of abandonment that is first made after enactment of the 2006 amendments. The court based its decision on a thorough analysis of the history and purpose of the DMA and MTA, and found that “the surface owners’ interpretation of the 1989 version” – one that allowed for “automatic” vesting – “conflicts with ‘the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title.’” *Id.* at 14-15, quoting R.C. 5301.55. This is so because “[a] title examiner might well find the recorded Dahlgren deed with its reservation of mineral rights, without any record that shows whether the Dahlgrens or their descendants preserved or abandoned those rights.” *Id.* at 15.

Moreover, “interested parties could dispute compliance with disqualifying conditions without filing anything in the recorder’s office.” *Id.*

The court accordingly found that any right to have minerals “deemed abandoned and vested” under the 1989 Act was merely “inchoate” and did not “transfer ownership” automatically; the Act “impliedly required implementation before it finally settled the parties’ rights, at least by a recorded abandonment claim that permitted the adverse party to challenge its validity, if not by an appropriate court proceeding to confirm that abandonment.” *Id.* at 14. If the surface owner did not take steps before 2006 to implement his alleged rights, he “must comply with the procedures which the 2006 amendment requires.” *Id.* The court based this decision in part on the principle that forfeitures are disfavored, and that “[t]he law requires that we favor individual property rights when interpreting forfeiture statutes” like the DMA. *Id.* at 15.

Petitioner’s criticisms of *Dahlgren* are unsound. He argues that a surface owner’s rights cannot be “inchoate” because *Dahlgren* did not “identify any other occurrence upon which the vesting of the ownership of the subsurface oil, gas and other minerals in the surface owner depends.” (Merit Br. of Pet. at 22.) But *Dahlgren* did exactly that: it found that the 1989 Act “required implementation . . . at least by a recorded abandonment claim that permitted the adverse party to challenge its validity, if not by an appropriate court proceeding to confirm that abandonment.” *Dahlgren*, Carroll C.P. No. 13CV27445, at 14. Petitioner did not make any such claim or initiate any court proceeding when the 1989 Act was still in force. His rights, if any, remained inchoate.

Petitioner accuses the *Dahlgren* court of “amending” the 1989 DMA “on the basis of what [it] think[s] the public policy ought to be.” (Merit Br. of Pet. at 23.) In fact, the court’s decision was based not on policy preferences, but on the plainly stated purpose of the DMA and the MTA.

And petitioner completely misreads the *Dahlgren* court's discussion of *Texaco v. Short*, 454 U.S. 516 (1982). He claims that the *Dahlgren* court was "confused" and "mistakenly indicated" that the United States Supreme Court held that "the subsurface owner was entitled to advance notice that its mineral interest was subject to statutory abandonment." (Merit Br. of Pet. at 25.) But that is not at all what *Dahlgren* said. To the contrary, *Dahlgren* recognized quite plainly that under *Texaco*, mineral interest owners have no constitutional right to advance notice that "their 20-year period of nonuse [is] about to expire." *Dahlgren*, Carroll C.P. No. 13CV27445 at 16, quoting *Texaco*, 454 U.S. at 533.<sup>3</sup> The *Dahlgren* court emphasized, rather, a very different point: the Supreme Court's admonition that due process – notice and an opportunity to be heard – must precede any "determination . . . that a mineral interest has reverted to the surface owner." *Id.* at 16, quoting *Texaco*, 454 U.S. at 534. *Dahlgren* properly concluded from this that the mere absence of a savings event alone "could not and did not transfer ownership" – for that, there must be, in addition, some "judicial confirmation or at least an opportunity for the disowned party to contest" the matter. *Id.* at 17. By the time plaintiff gave defendants such an opportunity here, the DMA had been amended.<sup>4</sup>

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<sup>3</sup> *Texaco* upheld Indiana's "self-executing" Dormant Mineral Interests Act on the ground that advance notice of this kind is not required. There is a key difference between *Texaco* and this case: the Indiana statute had not been amended, like Ohio's statute, to require notice by the surface owner. The mineral rights owner therefore did not argue in *Texaco*, and the Supreme Court had no occasion to consider, the enforceability of notice requirements adopted by amendment after an alleged "self-executing" reversion.

<sup>4</sup> Petitioner also says that "the *Dahlgren* court also placed great weight on the fact that the Ohio Marketable Title Act uses the words 'null and void,' while the DMA uses the word 'abandoned,'" and then argues that there is no difference between these two. (Merit Br. of Pet. at 27.) But that is incorrect and misleading. In fact, *Dahlgren* notes that the DMA uses not just the word "abandoned" but the phrase "deemed abandoned," *Dahlgren*, Carroll C.P. No. 13CV27445, at 15; that this phrase is "less conclusive" than "null and void" or "extinguished"; and that use of this phrase "strongly suggests" that the Act "provides standards but does not resolve the issue." *Id.* Petitioner has no answer for these points.

More recently, in a concurring opinion in *Eisenbarth v. Reusser*, 2014-Ohio-3792, Judge DeGenaro of the Seventh District Court of Appeals came to the same conclusion as the trial court in *Dahlgren*, largely for the same reason: that the legislature never intended “automatic” vesting, because that is so clearly inconsistent with stated legislative purposes.

To interpret the 1989 ODMA as self-executing would confound the purpose of the OMTA, as well as the ODMA: to engender reliance upon publicly recorded documents rather than private ones for transactions affecting title to real property, such as ownership of severed mineral rights.

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To construe the 1989 version as automatically self-executing, as well as controlling despite being replaced by the 2006 version, thwarts the General Assembly’s express intention to require recordation of all interests to facilitate a searchable chain of title for real property in general and for mineral rights specifically. In addition it flies in the face of the General Assembly’s stated purpose of encouraging economic mineral production. The 2006 ODMA corrected omissions and clarified ambiguities in the 1989 version to bring it in line with the rest of the OMTA to facilitate the creation and maintenance of a current and accurate chain of title of mineral rights. Because of the 1989 ODMA’s lack of a clearly defined process to place and maintain severed mineral rights within a chain of title, mineral rights in Ohio could not be easily accounted for or gathered for mineral production, an especially acute problem when as now, it has become economically viable to develop those interests.

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Construed as an automatic self-executing statute, the 1989 ODMA operates as a forfeiture which is disfavored as a matter of Ohio law. Instead, the 1989 ODMA must be strictly construed to avoid forfeiture because to do otherwise would be in derogation of private property rights. With respect to the caveat that forfeiture can only be ordered where the legislative intent to do so is manifestly clear, we have the inverse here. By virtue of the 2006 ODMA, the General Assembly has made manifest that it did not intend for the 1989 ODMA to be self-executing.

*Eisenbarth*, 2014-Ohio-3792, at ¶ 85, 93, 106. (DeGenaro, concurring.)

Judge DeGenaro's concurring opinion, and that of the trial court in *Dahlgren*, are soundly reasoned.<sup>5</sup> The Seventh District's recent reversal of the trial court in *Dahlgren* is not. The Court of Appeals based its decision partly on a misunderstanding of the trial court's reasoning and its reliance on statutory purpose and context:

The statement in the MTA, that the statutes are to be liberally construed to facilitate and simplify land transactions by allowing reliance on the record chain of title, does not mandate a holding that the 1989 DMA can no longer be utilized after the 2006 amendment. As they state that the 1989 DMA could have been utilized prior to the 2006 DMA, until that point and prior to official confirmation, the title records on an abandoned mineral interest would have been just as unclear then as they are said to be now. In other words, if there was not an irreconcilable conflict during the time of the 1989 DMA, we cannot say such conflict is created as to a prior statute due to the mere enactment of a new version.

*Dahlgren*, 2014-Ohio-4001, at ¶ 20. The court seems to be saying that since there was automatic vesting under the 1989 DMA, which left "unclear" title records, there is no room for an argument now against automatic vesting based on the statutory purpose of allowing reliance on a clear chain of title. This begs the question whether automatic vesting was ever intended or allowed, and it completely avoids the key point that there was in 1989, still is, and always will be a necessary conflict between "automatic" vesting and the General Assembly's stated purpose of allowing reliance on a record chain of title, because "automatic" vesting *leaves no trace on the record*. This shows that the General Assembly never intended automatic vesting. The Seventh District got this wrong and erred in reversing the trial court.

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<sup>5</sup> The Harrison County Court of Common Pleas likewise ruled, in *M & H Partnership v. Hines*, No. CVH-2012-0059 (Jan. 14, 2014) that "the application of an 'automatic' vesting clause of the 1989 [DMA] is contrary to simplifying and facilitating land title transactions by allowing persons to [rely] on a record chain of title," *id.* at 8, and that the 2006 Act applies to all claims made after 2006. The court reasoned that "[t]he terms automatic vesting, terminated, null and void, or extinguished were not used in the [DMA]," but the terms "null and void and extinguished are used in other parts of the marketable title act," indicating a purposeful legislative choice to require that a DMA plaintiff "at the minimum must have filed a quiet title action prior to 2006 to have the 1989 law apply." *Id.*

Petitioner argues that automatic vesting would not “frustrate” the purpose of the MTA, as stated in section 5301.55, because the MTA itself “extinguishes” claims due to lapse of time (and thus is automatic). (Merit Brief of Pet. at 24-25.) This overlooks key differences between the MTA and the DMA.

The MTA can accomplish the purpose of “allowing persons to rely on a record chain of title” by automatically “extinguishing” or making “null and void” certain unclaimed interests, because those interests appear in the chain of title; anyone examining the chain of title can readily determine whether the interests have been extinguished under the MTA's provisions. The same is not true for the DMA. Any “automatic” vesting of a mineral interest in the surface owner would not be ascertainable from the chain of title alone, because many savings events are matters that do not appear in a chain of title – such as production, creating a separate tax parcel, and storing gas, for example. Thus an automatic extinguishing of property rights, while consistent with section 5301.55’s statement of purpose when it occurs under the MTA, would plainly be inconsistent with that statement of purpose if it occurred under the DMA.

**b. The plain language of the DMA does not provide for “automatic” vesting**

The language of the 1989 DMA is very different from that of the truly “self-executing” statutes that petitioner and the State of Ohio<sup>6</sup> cite. Indiana statute’s unambiguously provides that if the mineral interest is unused for 20 years, it “is *extinguished* and the ownership *reverts*” to the surface owner. (Emphasis added.) Ind. Code 32-23-10-2. The State claims that Ohio’s legislature was “aware” of this statute (Amicus Br. of State of Ohio, at 4), and made the

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<sup>6</sup> The State of Ohio, appearing as an amicus, is not a disinterested advocate of public policy, but a highly interested land owner – in fact, it has specifically laid claim, in correspondence with North American here that it does not disclose, to oil and gas rights in Harrison County that were covered by the very same lease at issue in this case. (See correspondence, App. at 34-39.) Thus, the State is seeking the same windfall as the respondents, and shares their private interest.

“intentional choice” of a self-executing law like Indiana’s, rather than a law that would require notice, like the UDMIA. (*Id.*; *see also* Merit Br. of Pet., at 13 (asserting that the General Assembly “rejected” a requirement of any action by the surface owner).) The DMA’s legislative history does not support this; the sponsor merely referred to a list of 15 states with existing dormant mineral laws that included Indiana, but did not specifically mention any provision or aspect of the Indiana law, much less the “self-executing” or “automatic” part. S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA at 1.

In fact, the legislative history shows that the drafters believed their statute had the same “essential elements” as the UDMIA, *id.*, – one of which, as petitioners point out, was that “the surface owner *take affirmative action for vesting to occur.*” (Emphasis added.) (Merit Br. of Pet. at 13.) The General Assembly thus neither embraced “automatic” vesting, nor “rejected” a requirement of action by the claimant that would appear on the title record.

The only individual state statute that the drafters cited as a model was Michigan’s DMA. S.B. 223, H.B. 521, Proponent Testimony, 1989 DMA at 2 (App. at 44). Although the Ohio statute ended up closely resembling Michigan’s, it was very different in a key respect: it excised the language that made Michigan’s law unambiguously self-executing. The Michigan statute thus provided that any abandoned oil and gas interest “*shall vest as of the date of such abandonment* in the owner or owners of the surface.” (Emphasis added.) Mich.Comp.Laws Ann. 554.291(2) (App. at 98). The drafters of Ohio’s DMA did not include any language of the sort. Thus, while Michigan and Indiana clearly provided for “automatic” vesting, Ohio did not.

Moreover, the MTA itself has clear self-executing language; it provides that certain unclaimed interests are “extinguished” or “null and void.” R.C. 5301.49, 5301.50. The legislature could have used the same or similar language in the 1989 DMA, but did not. *See Eisenbarth*, 2014-Ohio-3792, at ¶ 94 (DeGenaro, concurring.) (“Had the 1989 ODMA provided

for automatic vesting, the General Assembly could have used more definitive terms such as ‘extinguished’ or ‘null and void’ as found in other sections of the OMTA, rather than the more equivocal term ‘deemed.’”) When the legislature uses “certain language in the one instance and wholly different language in the other, it will . . . be *presumed* that different results were intended.” (Emphasis added.) *Metropolitan Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927); *see also City of Columbus v. Air Columbus, Inc.*, 10th Dist. Franklin No. 78AP-261, 1978 Ohio App. LEXIS 8073, \*7 (Aug. 15, 1978) (“different language . . . in another part of the same chapter is an indication that a different meaning was intended”).

It is apparent from all this that the legislature did not intend to allow “automatic” vesting. At the very least, the 1989 DMA is ambiguous in this regard. And it must be strictly construed. The DMA is in derogation of the common law rule that mineral rights cannot be abandoned or forfeited by nonuse. “Ordinarily, it is the rule that statutes in derogation of the common law are to be strictly construed.” *Armstrong v. Marathon Oil Co.*, 32 Ohio St.3d 397, 414, 513 N.E.2d 776 (1987). The same is true of “statutes imposing restrictions upon the use of private property” or “in derogation of private property rights” – “[w]henver possible, such statutes must be construed so as to avoid a forfeiture of property. No forfeiture may be ordered unless the expression of the law is clear and the intent of the legislature manifest.” *Lilloock*, 70 Ohio St.2d at 26, 434 N.E.2d 723. “Automatic” vesting under the 1989 DMA would clearly be a forfeiture of the record owner’s interests.<sup>7</sup>

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<sup>7</sup> Amici's contention that automatic vesting under the 1989 DMA would “not work a forfeiture” is simply incorrect, as shown by the very definition they cite from Black’s Law Dictionary: a forfeiture is “the divestiture of property without compensation.” (Merit Br. of Amici Gulfport et al. at 14.) There can be no serious doubt that if a mineral interest “deemed abandoned” is automatically vested in the surface owner, with no notice to the owner of record, the owner’s property has been divested without compensation and therefore forfeited. *See, e.g., Energetics, Ltd. v. Whitmill*, 442 Mich. 38, 497 N.W.2d 497, 503 (1993) (describing the vesting of title in the surface owner under Michigan's Dormant Mineral Act as a “title forfeiture”).

The Legislature later expressly recognized the “*ambiguity* of the existing [1989] statute,” and noted that it “*did not clearly define* when a mineral interest became abandoned and exactly how the process to reunite the mineral interest with the surface ownership was to be accomplished.” (Emphasis added.) H.B. 288, Sponsor Testimony, 2006 DMA, at 1. Given that ambiguity, acknowledged by the legislature itself, there is no basis for “automatic” vesting under the 1989 Act.

**2. The 2006 DMA Necessarily Applies to Any Claim Filed After 2006 Because Any Supposed “Automatic” Vesting Before 2006 Did Not Change the “Record Holder” of the Mineral Interest**

Petitioner further argues that once an interest is “deemed vested” under the 1989 Act, the 2006 Act cannot apply, because the DMA applies only where “the mineral interest [is] held by any person, other than the owner of the surface,” and “different entities own the surface and the mineral rights.” (Merit Br. of Pet. at 21.)<sup>8</sup>

It is true that the DMA applies only when a mineral interest is “held by any person, other than the owner of the surface.” R.C. 5301.56(B). But the Act specifically defines what it means to “hold” a mineral interest. The “holder” of a mineral interest is the “*record holder*” of the interest. (Emphasis added.) R.C. 5301.56(A). “Automatic” vesting under the 1989 Act would not change the “*record holder*” of the mineral interest or affect the title record in any way. Thus here, assuming there were some “automatic” vesting in 1992, North American and/or its lessee remained, and still remains today, the “record holder” of the mineral interest. The DMA still applies, because the record owners of the minerals and of the surface are different, and the only way the oil and gas held by North American could be “deemed abandoned and vested” under the DMA is under the *current* DMA.

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<sup>8</sup>Amicus State of Ohio likewise mistakenly argues, “If ownership of abandoned mineral interests had already vested in a surface owner before 2006, there is nothing that will trigger the notice requirements [of the 2006 Act].” (State of Ohio Amicus Br. at 9.)

Indeed, the language of R.C. 5301.56(A) and (B) underscores that the legislature never intended “automatic” vesting to occur. After “automatic” vesting, the mineral interest would still be “held” by a person other than the surface owner; under the plain language of the Act, the rights would appear still to be subject to a future determination of abandonment, and there would be no finality or closure. Only a claim or court proceeding that resulted in a reuniting, on the record, of the mineral and surface rights, could provide the clarity of title that the legislature intended all along.

### **3. The 2006 DMA Is Remedial and Can Be Applied Retroactively**

Petitioner argues that the 2006 DMA “may not be applied retroactively.” (Merit Br. of Pet. at 17.) But respondents do not seek to apply it retroactively; there is nothing retroactive about applying a 2006 law to a 2013 claim. Respondents do not argue for applying a new law to claims that are already pending; they argue only for applying the law that the General Assembly put into place seven years before this case.

Assuming for the sake of argument that an automatic vesting of mineral rights occurred under the 1989 Act, those rights could later be made contingent on the surface owner’s compliance with the requirements of the 2006 Act. To the extent that is “retroactive,” there is nothing *impermissibly* retroactive about it, because the 2006 amendments are procedural or remedial.

Petitioner and amici correctly describe, but misapply, this Court’s test for unconstitutional retroactivity. That test “requires the court first to determine whether the General Assembly expressly intended the statute to apply retroactively.” *Bielat*, 87 Ohio St.3d at 353, 721 N.E.2d 28. This intent can be determined from any “clear indication of retroactive application.” *Van Fossen*, 36 Ohio St.3d at 106, 522 N.E.2d 489. Where that is present, “the

court moves on to the question of whether the statute is substantive, rendering it *unconstitutionally* retroactive, as opposed to merely remedial.” *Bielat* at 353.

Both the 1989 and the 2006 DMA clearly indicate that the legislature intended them to have retroactive, as well as prospective, effect. Both provide for a 20-year “look-back” period, with the result that property rights can be determined by acts or omissions that occurred long before the statute was enacted. If the 1989 DMA were only prospective, there would have been no reason for the three-year grace period that the General Assembly included; the Act would have had no effect on mineral ownership until 2009 at the earliest, after a 20-year period of nonuse that began when the statute was enacted. Likewise, if the 2006 DMA were only prospective, there could be no claim under the Act until 2026, a result that no legislator intended and no court has suggested. Both statutes were thus intended to be partly retroactive.

The 2006 amendments were not substantive but remedial, and are therefore not “*unconstitutionally* retroactive.” (Emphasis sic.) *Bielat* at 353 (“We emphasize the phrase ‘*unconstitutionally* retroactive’ to confirm that retroactivity itself is not always forbidden by Ohio law.”). It is undisputed that the legislature sought to “fix perceived problems” with the 1989 version of the statute, which “did not clearly define when a mineral interest became abandoned[,] and exactly how the process to reunite the mineral ownership with the surface ownership was to be accomplished.” H.B. 288, Sponsor Testimony, 2006 DMA, at 1-2. The legislature did that by specifying a new *procedure*: “for any allowable vesting to occur, the landowner must notify the holder of the mineral interest and file an affidavit of abandonment as specified in the act.” Ohio Legislative Service Comm’n, Bill Analysis, Sub. H.B. 288 at 1. The amendments “remove[d] the ambiguity of the [1989] statute,” H.B. 288, Sponsor Testimony, 2006 DMA at 1, by setting forth a “*vesting process*” that includes “specified notification and

affidavit requirements for allowable vesting to occur.” (Emphasis added.) Ohio Legislative Service Comm’n, Bill Analysis, Sub. H.B. 288 at 2, 3 (App. at 94, 95).

The 2006 amendments did not change or take away any substantive rights whatsoever; they merely addressed the procedures that must be followed before any allowable vesting of mineral rights can occur. The General Assembly left the substantive elements of a claim of abandonment completely unchanged. The sponsor’s testimony was thus clear that the amendments “will [not] alter the balance between surface owners and mineral rights owners” H.B. 288, Sponsor Testimony, 2006 DMA, at 2 — testimony that confirms the statute “is clearly not substantive in nature, rather it is remedial.” *Eisenbarth*, 2014-Ohio-3792, at ¶ 111 (DeGenaro, concurring).

Such “[c]hanges in procedural rules may often be applied [even] in suits arising before their enactment without raising concerns about retroactivity.” *State v. Ayala*, 10th Dist. Franklin Nos. 98AP-349 & 98AP-350, 1998 Ohio App. LEXIS 5416, at \*6-7 (Nov. 10, 1998), quoting *Landgraf*, 511 U.S. at 275. “A statute does not operate ‘retrospectively’ merely because it is applied in a case arising from conduct antedating the statute’s enactment . . . .” *Landgraf*, 511 U.S. at 269 (internal citations omitted). Instead:

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

(Alterations in original.) *M&F Supermarket, Inc. v. Owens*, 997 F. Supp. 908, 912-13 (S.D. Ohio 1997), quoting *Landgraf*, 511 U.S. at 269-70. These “familiar considerations” show that, even assuming for the sake of argument that the oil and gas could be “deemed vested” in plaintiff under the original DMA, there is nothing that precludes application of the amended DMA here.

The pertinent amendments to the DMA were remedial insofar as they changed the “process to reunite the mineral ownership with the surface ownership,” but not the substantive law — not the elements of a claim of abandonment. Such procedural or remedial changes do not violate any proscription against retroactive legislation, even if they have a “substantive effect” in some cases, *Pinkney*, 2005-Ohio-4167, at ¶ 37, or are “outcome-determinative for some claimants.” *Combs*, 459 F.3d at 647.<sup>9</sup>

It has, however, been decided in numerous cases that retroactive laws refer to those which create and define substantive rights, and which either give rise to, or take away, the right to sue or to defend actions at law. It has been further declared at numerous times that a statute which is [“]remedial[”] in its operation on rights, obligations, duties, and interests already existing is not within the mischiefs against which that clause of the Constitution was intended to safeguard, and the remedial statutes do not even come within a just construction of its terms.

*Smith v. New York Cent. RR. Co.*, 122 Ohio St. 45, 48-49, 170 N.E. 637 (1930).<sup>10</sup>

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<sup>9</sup> In *Combs*, for example, an amendment to the social security disability statute removed “obesity” from the list of conditions that would make a claimant “conclusively presumed” to be disabled. *Id.* at 642. The claimant had originally filed her disability claims, which included obesity, before the amendment, and thus arguably had a vested right in the claim. *Id.* But as a result of the amendment, she no longer was entitled to a conclusive presumption, and had to provide proof of the disability. *Id.* at 642-43. The court found that applying the amendment was not precluded by the Landgraf factors of “fair notice, reasonable reliance, and settled expectations.” *Id.* at 646. The court held that the amendment was a procedural change, and was accordingly not unlawfully retroactive. *Id.* at 647. The court also noted, “[d]oubtless there are situations in which a procedural rule will have such substantive effects . . . .” *Id.* See also *Quiros v. Engineers Architects & Surveyors Examining Bd.*, 2005 U.S. Dist. LEXIS 19518, at \*16 (D.P.R. Aug. 31, 2005), in which the court found that additional burdens imposed by statutory amendment upon the plaintiff in order to keep a state-issued professional license were not unlawfully retroactive. The court reasoned that because the amended statute provided a process for obtaining and keeping licenses, the statute was prospective, and not retroactive. *Id.* at \*15-16. The court added that “retroactive application would have occurred if [the plaintiff’s] license was revoked” outright without providing him the chance to keep it. *Id.* at \*16.

<sup>10</sup> In *Smith*, the legislature shortened the statute of limitations for personal injury claims from four to two years, after plaintiff’s claim had already accrued. Plaintiff brought suit more than two years after his claim accrued. *Id.* at 50-51. The court held that the claim was time-barred under the amended statute, even though plaintiff had a “vested right” in his cause of action and lost that right. *Id.* at 51.

Petitioner's argument that the 2006 Act would "retroactively destroy" his rights is simply wrong; the amendments do not have any necessary effect on anyone's rights. They merely set forth a new procedure; if petitioner had followed that procedure, by filing the required notice, and respondents had then failed to take action under § 5301.56(H), the mineral rights would have vested in petitioner under the 2006 Act just as he claims they vested under the 1989 Act. Any rights that petitioner had could be lost only by noncompliance with the amended Act; the Act itself did not cause petitioner to lose anything.

That is very different from unconstitutional legislative enactments that by themselves extinguish vested claims or rights. A statute that eliminates an accrued common law damages claim and replaces it with a statutory compensation claim, for example, "deal[s] with rights and not remedies," and is unconstitutional if retroactive. *Weil v. Taxicabs of Cincinnati, Inc.*, 139 Ohio St. 198, 204 (1942). A statute changing the heirs to an intestate person's estate is likewise unconstitutional if retroactive because "the Legislature is without authority to enlarge or lessen a vested estate by passing subsequent laws," and "property acquired under existing laws should not and cannot be divested at the pleasure of the Legislature." *Jackson v. Rutherford*, 23 Ohio App. 506, 511-512, 155 N.E. 813 (5th App. Dist. 1926). Here, by contrast, no mineral interest was "divested at the pleasure of the Legislature." The new DMA did not change the substantive elements of abandonment under the Act, but only the procedure, and did not "divest" anyone.

Petitioner cites *Scamman v. Scamman*, 90 N.E.2d 617 (Montgomery C.P. 1950), for the proposition that "failure to exercise a vested right before the passage of a subsequent statute, which seeks to divest it, in no way affects or lessens the right." (Merit Br. of Pet. at 20.) But *Scamman* involved rights of succession to property, and is based on the general rule that there "is a right to a succession to an ancestor's property after his death according to the law as it existed at the time of his death," and that "any statute depriving an heir or distributee" of that right is

unconstitutional. *Id.* at 619. That rule is irrelevant here; again, the 2006 amendments to the DMA, unlike the statute in *Scamman*, did not *by themselves* deprive anyone of any mineral interest. They merely established procedures that had to be followed by any surface owner claiming, for the first time, that a forfeiture had occurred and that minerals should be deemed abandoned and vested in him or her.

Remedial laws can extinguish property rights without being improperly retroactive. The MTA, for example, which the DMA is a part, extinguishes vested property rights; indeed, its very purpose is “to improve the marketability of title by extinguishing certain outstanding claims due to a lapse of time.” *Pinkney*, 2005-Ohio-4167, at ¶ 31; *see Mobbs v. City of Lehigh*, 655 P.2d 547, 551 (Okla. 1982) (purpose of marketable title acts is to “extinguish any claim, . . . *vested* or contingent . . . unless the claimant preserves his claim”) (Emphasis added). And it applies retroactively. But it is not impermissibly retroactive, because it is a “merely remedial” law. *Pinkney* at ¶ 37. “[A]lthough [the MTA] requires specific notice requirements to preserve a party’s future claim or interest in land, these are *procedural* requirements necessary to simplify land transactions for the mutual benefit of the purchaser and the seller.” (Emphasis added.) *Id.*

The 2006 DMA is likewise a “merely remedial” law. It did not change any of the substantive elements of abandonment and vesting in the surface owner. Petitioner did not lose any vested substantive right by the enactment of the amendments in 2006; he lost only a procedural argument that he should receive a windfall of mineral rights without giving notice to the record holder. *See Eisenbarth*, 2014-Ohio-3792, at ¶ 84 (DeGenaro, concurring) (“The extent of the right the Eisenbarths held under both the 1989 and 2006 ODMA was the *potential* for abandonment and vesting, this right was not lost when the ODMA was amended. Instead, the procedure surface owners had to follow to reunite the severed mineral rights with the surface fee

was clarified.”) Petitioner could have advanced that argument at any time between 1999, when he acquired the surface rights, and 2006.

If the legislature did not intend the 2006 amendments to have any possible retroactive effect, it could have made that clear with language stating that the amendments do not affect any mineral rights deemed vested under the Act before June 30, 2006, the effective date of the amendments. “In other words, the General Assembly could have stated that the 2006 ODMA applies only to severed mineral rights which had not reverted to the surface fee owner by operation of the 1989 ODMA, or that it applied only to mineral rights which were severed after the effective date of the 2006 version.” *Eisenbarth* at ¶ 113 (DeGenaro, concurring).

That is exactly what the legislature has done in other legislation concerning land rights. For example, § 5301.01(B)(1) provides that deeds and other instruments executed before February 1, 2002 that were not acknowledged by two witnesses as then required are nevertheless presumed valid and that their recording is constructive notice. The legislature added that this amendment “does not affect any accrued substantive rights or vested rights that came into existence prior to February 1, 2002.” R.C. 5301.01(B)(2) (App. at 99). Likewise, in § 5301.07, the legislature provided that if an instrument with certain defects has been of record for more than 21 years, the instrument and the record thereof shall be cured of the defects. But the legislature made clear that this could not be applied retroactively: “This section does not affect any suit brought prior to November 9, 1959 in which the validity of the acknowledgment of any such instrument is drawn in question.” R.C. 5301.07 (App. at 100). And in § 5301.071(E)(1), the legislature provided that recorded instruments conveying property interests shall not be considered defective or invalid because the named grantor or grantee is a trust rather than the trustee or trustees, and added that this provision “shall not be given retroactive . . . effect if to do so would invalidate or supersede any instrument . . . recorded . . . prior to the date of recording of

a curative memorandum of trust or the effective date of this section, whichever event occurs later.” R.C. 5301.071(E)(2) (App. at 101).

Here the General Assembly could similarly have stated with no difficulty that the amendments would not be given any effect if to do so would invalidate a mineral interest that was deemed abandoned and vested before June 30, 2006. “Had the Legislature intended a different result this provision of the statute could easily have been worded by the use of appropriate language to cover a situation of this kind.” *Cornell v. Bailey*, 163 Ohio St. 50, 58, 125 N.E.2d 323 (1955).

There is no unfairness in applying the 2006 DMA here. There is no evidence that petitioner relied on any “automatic vesting” under the original DMA, or had any “settled expectation” of ownership before the 2006 DMA was passed. *M&F Supermarket Inc.*, 997 F. Supp. at 913, quoting *Landgraf*, 511 U.S. at 270. To the contrary, plaintiff took no action at all with regard to the mineral rights until 2013 – seven years after the DMA was amended, fourteen years after petitioner first obtained the surface rights to the property in the 1999 deed, and twenty years after petitioner claims the mineral rights vested in 1992. During all that time, petitioner did nothing, making no claim until after respondents had drilled a productive well. It is well-settled that a legislature can condition the retention of even vested property rights on the performance of certain obligations, and such rights can accordingly be forfeited or extinguished:

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

(Emphasis added.) *United States v. Locke*, 471 U.S. 84, 104 (1984) (vested mining claims forfeited because owners failed properly to file certain forms with the Bureau of Land

Management). The Ohio legislature determined that it was unfair to deprive a severed mineral owner of his property without notice and an opportunity to maintain his claim to the minerals, and accordingly imposed duties on any surface owner who wishes to claim that the minerals were abandoned. These duties are reasonable requirements “designed to further legitimate legislative objectives.”

Petitioner and amici also claim that Ohio Revised Code §§ 1.48 and 1.58 support their “retroactivity” argument. (*See, e.g.*, Merit Br. of Pet. at 17-20.) Those sections, however, merely codify the basic principles of retroactivity. Section 1.48 presumes prospective application of a statute unless “expressly made retrospective.” Both the original and the amended DMA were expressly made retroactive. Section 1.58 provides that an amendment to a statute does not “affect the prior operation of the statute or any prior action taken thereunder.” There was no “prior operation” of or “prior action” under the 1989 statute – that is, no judicial or official act under the law, nor any reliance, action or change of position by petitioner. All that happened was that the legislature passed the law, and the legislature changed that law when it decided that the original version was unclear. *See, e.g., Cook v. Matvejs*, 9th Dist. Summit No. 8626, 1977 Ohio App. LEXIS 8880 (Dec. 29, 1977) (holding that changes in the statute of limitations for claims by minors were not impermissibly retroactive under § 1.58, even though plaintiff’s claims, which had accrued and vested before the amendments, were time-barred under the new law.)

Petitioner’s argument that the 2006 DMA cannot be applied to affect rights that “vested” under the 1989 DMA is notably inconsistent with his own position that the 1989 DMA divested North American’s predecessor of mineral rights that it held under common law. “Logic dictates that if the 2006 ODMA changes cannot be retroactively applied to divest an owner of an interest deemed vested under the 1989 version, then the 1989 ODMA similarly cannot be used to

retroactively divest an owner of an interest deemed vested under common law. The 2006 version is no more retroactive than the 1989 version.” *Eisenbarth*, 2014-Ohio-3792, at ¶ 82 (DeGenaro, concurring).

This Court last year rejected a very similar “retroactivity” challenge to statutory amendments, in *Longbottom v. Mercy Hosp. Clermont, supra*. The plaintiff in *Longbottom* was injured in 2002 and his claim accrued at that time. In 2004, the Ohio legislature amended the statute on prejudgment interest, R.C. 1343.03. The amendments imposed a new notice requirement for prejudgment interest: a person claiming such interest now must give “written notice in person or by certified mail that the cause of action has accrued,” R.C. 1343.03(C)(1)(c)(i), and unless and until he gives such notice, no prejudgment interest accrues. The amendments also completely eliminated prejudgment interest on future damages.

This Court held that these 2004 amendments applied to any case filed after the effective date of the amendments, *even if the claim had accrued before 2004*. The Court rejected plaintiff’s challenge under the Retroactivity Clause:

Although the Retroactivity Clause bars statutes that extinguish preexisting rights, *id.*, it does not prohibit legislation that “merely affect[s] ‘the methods and procedure by which *rights are recognized, protected, and enforced, [and] not . . . the rights themselves.*’ (Emphasis added.)” . . . . The 2004 amendment to R.C. 1343.03(C) neither destroys nor eliminates the right to prejudgment interest . . . ; rather, the amended statute affects only the method by which prejudgment interest is calculated. . . . R.C. 1343.03(C) applies to tort actions filed on or after June 2, 2004, regardless of when the cause of action accrued.

(Emphasis sic.) *Longbottom*, 137 Ohio St.3d at 109-110. The amendments were not unconstitutional, even though they resulted in the loss of plaintiff’s claim for interest that accrued before any notice was given (as well as the loss of any claim for interest on future damages). And even though the amendments were “not expressly made retrospective,” *id.* at

109, they could be applied to a claim that accrued before, but was not filed until after, the amendments were adopted.

By the same reasoning, the 2006 amendments to the DMA apply to any quiet title action filed on or after June 30, 2006. Those amendments likewise did not destroy the right to claim that mineral interests have been abandoned; they merely changed the “methods and procedure by which” that right is recognized and enforced, while the substantive elements of an abandonment claim were not changed at all. Like the new notice requirements for a claim of prejudgment interest, the new notice requirements for a claim of abandonment apply to any claim filed after the amendments, even if it accrued before 2006, and do not violate any constitutional prohibition.

This Court also “implicitly rejected” a retroactivity challenge to the MTA in *Heifner v. Bradford*, 4 Ohio St.3d 49, 446 N.E.2d 440 (1983).

In regard to the Pinkney Group’s claim that the MTA operates as unconstitutional retroactive legislation, the Ohio Supreme Court implicitly rejected this argument in *Heifner v. Bradford* (1983), 4 Ohio St.3d 49, 4 Ohio B. 140, 446 N.E.2d 440. In *Heifner*, the court reversed the lower court’s decision and found that a transfer under a will was a “title transaction” within the meaning of the MTA. However, in so doing, the court applied and upheld the MTA, thereby agreeing with the lower court’s analysis and rejection of alleged retroactivity and due process infirmities.

\* \* \*

The statute is both prospective and retrospective. Insofar as it is prospective, no one would question its constitutionality. Insofar as it is retroactive, its constitutionality is justified on the grounds hereafter stated.

*Pinkney, supra.*, at ¶ 36, quoting *Heifner v. Bradford*, 5th Dist. Muskingum No. CA-81-10, 1982 Ohio App. LEXIS 14859, rev’d on different grounds, quoting L. Simes and C. Taylor, *supra*, at 271-272). The MTA clearly does “extinguish” and render “null and void” vested rights, but that is a consequence of the Act’s “procedural requirements.” *Pinkney* at ¶ 37. The Court of Appeals

for the Eighth District thus found that “[t]o the extent that the MTA operates retrospectively, . . . it is merely remedial.” *Id.*

The same is true of the DMA. There is simply no constitutional impediment to applying the 2006 DMA’s procedural requirements to petitioner’s claims.

**B. Question Two**

No Ohio court has addressed whether the payment of a delay rental during the primary term of an oil and gas lease is a title transaction and “savings event” under the DMA. Petitioner and amici argue that delay rental payments cannot be title transactions because they are not “publicly recorded.” That is incorrect, and ignores the plain language of the statute. A savings event under the DMA occurs when the mineral interest is the “subject of a title transaction that has been filed or recorded.” R.C. 5301.56(B)(3)(a). The dates and amounts of any necessary delay rental payments are explicitly stated in a recorded oil and gas lease, and are available to any interested member of the public. The delay rental payments are thus “recorded” in and through the lease, which puts the world on notice of them.<sup>11</sup> There is no further filing or recording requirement under the DMA.

Delay rental payments were made in this case under the 1984 oil and gas lease in 1985, 1986, 1987, and in 1988. Had those payments not been made – and nothing obligated the lessee to make them – the 1984 lease would have terminated, and fee simple determinable title to the oil and gas would have reverted back to North American’s predecessor. Instead, the lease and therefore the lessee’s title to the oil and gas was perpetuated each time. Each payment thus necessarily “affect[ed] title to any interest in land.” R.C. 5301.47(F) (App. at 102). If an oil and

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<sup>11</sup> Moreover, because any expiration of an oil and gas lease should appear on the record, in the form of a release under R.C. 5301.09 (App. at 103), a person searching the title records could ordinarily determine from the absence of such a release whether delay rental payments have been made and thus whether the lease remains in force.

gas lease is a title transaction, a transaction that perpetuates that lease is also a title transaction, because it “affects title” in the same way.

In a case that arose under Michigan’s Dormant Minerals Act – a model for Ohio’s DMA in certain respects, as noted above – the Michigan Supreme Court provided instructive reasoning. *Energetics, Ltd. v. Whitmill*, 442 Mich. 38, 497 N.W.2d 497 (1993). The relevant facts were much like the facts here: the owner of severed oil and gas interests leased those interests for a primary term of ten years, and the lease provided that it would terminate after the first year or any year thereafter in which drilling or production did not occur, unless “delay rental” payments were made. The lessee made all of those payments as required, and the lease then terminated. *Energetics* at 500-501.

The court relied on the payments in concluding that the purpose of the statute was best served “by avoiding abandonment of a severed interest under circumstances where it is being actively maintained,” and that the dormancy period did not start running until the lease expired. *Id.* at 503.

That is the situation here. The 1984 lease from North American’s predecessor to C.E. Beck had an essentially identical structure to the Michigan lease. It had a primary term of five years, and provided that it would terminate unless annual delay rental payments were made. Under the terms of the lease, the lessees made delay rental payments, perpetuating or extending the lease until 1989, when ownership of the oil and gas reverted to the lessor. For five years, the lessor was thus collecting rent to maintain the lease of the oil and gas under petitioner’s property. Each rental payment “actively maintained” that lease and perpetuated title in the lessee – causing fee simple determinable title to the oil and gas to remain with the lessee instead of reverting to the lessor. As such, it “affected” title to the oil and gas no less than the original execution of the lease. It would make no sense, and would contravene the purpose of the DMA, to hold that the

lessor had begun to “abandon” its oil and gas at the same time the lessee was paying the lessor for the oil and gas.

The payments were not *separately* recorded, but did not have to be, because the lease itself was recorded and specifically recited the timing and amount of the necessary payments.<sup>12</sup> There is no requirement anywhere in the DMA or MTA that every title transaction be separately recorded in its own individual document. It is sufficient that “[t]he terms of the lease indicate whether further inquiry may be required to determine if the lease continues in force,” and the delay rental payment schedule does that. *Id.* at 504. Anyone searching the record is put on notice of the date and amount of each of the required payments, and of the effect of each payment. Each payment occurs pursuant to a recorded document, and is therefore a recorded transaction that qualifies as a savings event under R.C. 5301.56(B).

#### IV. CONCLUSION

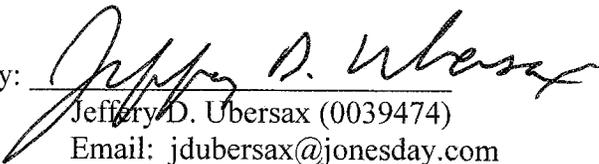
For the foregoing reasons, the Court should answer the certified questions as follows:

1. The 2006 version of the Ohio Dormant Mineral Act applies to claims asserted after 2006 alleging that the rights to oil, gas, and other minerals automatically vested in the surface land holder prior to the 2006 amendments as a result of abandonment.
2. The payment of a delay rental during the primary term of an oil and gas lease is a title transaction and “savings event” under the Ohio Dormant Mineral Act.

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<sup>12</sup> In holding that the termination of an oil and gas lease is a savings event (a “transfer . . . by instrument recorded” under the Michigan statute), the Michigan Supreme Court rejected the argument that a separate recording of the termination was necessary. Since both the execution or commencement of the lease and its termination -- two separate “transfers of interest” -- “were evidenced in the recorded lease,” a “*separate act of recording would not have been necessary* to put the world on notice of” the termination. (Emphasis added.) *Energetics, Ltd. v. Whitmill*, 497 N.W.2d at 502 (quoting trial court's opinion). “Anyone checking the status of the . . . property would have to be on notice of the recorded lease and its expiration date.” *Id.* The same is true of delay rental payments.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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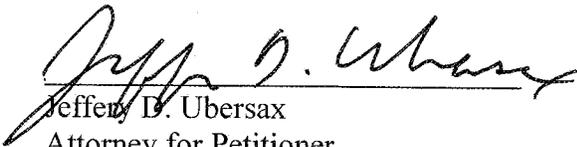
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# APPENDIX

Page's Ohio Revised Code Annotated:  
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Current through Legislation passed by the 130th General Assembly  
and filed with the Secretary of State through File 140 (SB 143)

TITLE 53. REAL PROPERTY  
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES  
MARKETABLE TITLE ACT

**Go to the Ohio Code Archive Directory**

ORC Ann. 5301.55 (2014)

§ 5301.55. Liberal construction

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

**HISTORY:**

129 v 1040, Eff 9-29-61.

FILED

2013 NOV 13 AM 9:53

CARROLL COMMON PLEAS  
WILLIAM R. WOHLWEND

IN THE COURT OF COMMON PLEAS  
FOR CARROLL COUNTY

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

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

*Richard M. Markus*

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

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

FILED

2013 NOV 13 AM 9:58

CARROLL COMMON PLEAS  
WILLIAM R. WOHLWEND

IN THE COURT OF COMMON PLEAS  
FOR CARROLL COUNTY

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

FACTUAL AND PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### THE UNDERLYING MARKETABLE TITLE ACT

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

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

possibility of fraudulent use of the marketable record title rules to oust true owners of property.

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

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

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

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

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

significantly, R.C. 5301.55 directs:

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

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

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

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

As used in sections 5301.47 to 5301.56, inclusive of the Revised Code:

\* \* \* \*

(B) "Records" includes probate and other official public records, as well as records in the office of the recorder of the county in which all or part of the land is situate.

(C) "Recording," when applied to the official public records of the probate or other court, includes filing.

\* \* \* \*

(F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

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

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

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

#### TWO VERSIONS OF THE DORMANT MINERALS ACT

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

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

Transactions involving mineral interests may take several different forms. A *lease* permits the lessee to enter the land and remove minerals for a specified period of time; . . . . A fee title or other interests in minerals may be created by *severance*.

A severance of mineral interests occurs where all or a portion of mineral interests are owned apart from the ownership of the surface. A severance may occur in one of two ways. First, a surface owner who also owns a mineral interest may *reserve* all or a portion of the mineral interest upon transfer of the surface. In the deed conveying the surface of the land to the buyer, the seller reserves a mineral interest in some or all of the minerals beneath the surface. . . .

Second, a person who owns both the surface of the land and a mineral interest may *convey* all or a portion of the mineral interest to another person. . . . Severed mineral interests may be owned in the same manner as the surface of the land, that is, in fee simple.

Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown. Under the common law, a fee simple interest in land cannot be extinguished or abandoned by nonuse, and it is not necessary to rerecord or to maintain current property records in order to preserve an ownership interest in minerals. Thus, it is possible that the only document appearing in the public record may be the document initially creating the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned about an apparently valueless mineral interest and may not even be aware of it; hence their interests may not appear of record. If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.

\* \* \* \*

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

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

\* \* \* \*

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

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

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

\* \* \* \*

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

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

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

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

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

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

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

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

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

the lands are located.

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

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

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

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

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

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

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

implementation.

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

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

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

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

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

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

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

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

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

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

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

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

descendents preserved or abandoned those rights.

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

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

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

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

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

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

The question then presented is whether, given that knowledge, appellants had a constitutional right to be advised -- presumably by the surface owner -- that their 20-year period of nonuse was about to expire.

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

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

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

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

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

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

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

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

NO ABANDONMENT UNDER THE CURRENT LAW

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

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

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

FINAL JUDGMENT

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

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

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

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

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

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

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

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

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

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

*Richard M. Markus*

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

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



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

14 JAN 14 PM 12:17  
LESLIE G. ...  
CLERK OF COURT'S  
HARRISON COUNTY, OHIO

**M & H PARTNERSHIP**  
Plaintiff

Case No. CVH-2012-0059

vs.

**WALTER VANCE HINES, ET AL.**  
Defendants

**JUDGMENT ENTRY**

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

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

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

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

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

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

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

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

#### **O.R.C. §5301.56 (1989 version)**

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

- (i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located;
- (ii) There has been actual production or withdrawal of minerals by the holder.
- (iii) The mineral interest has been used in underground gas storage operations by the holder;
- (iv) A drilling or mining permit has been issued to the holder.

- (v) A claim to preserve the interest has been filed in accordance with division (c) of this section.
- (vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

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

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

A brief discussion on transfers of interest is necessary

1. Surface Rights.

- A.) The surface rights were severed from the mineral rights by deed on June 1, 1961. The surface rights passed to Selway Coal Company with Vance and Eleanor Hines reserving the oil and gas rights.
- B.) Selway Coal Company passed the surface rights to Robert Fleagane on February 29, 1975.
- C.) Robert Fleagane to Shell Mining Company January 1, 1989.
- D.) Shell Mining to R. & F Coal Company November 12, 1991.

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

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

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

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

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

## 2. Oil and Gas Rights.

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

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

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

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

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

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

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

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

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

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

#### 2006 Dormant Mineral Act.

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

The additional steps germane to this case are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

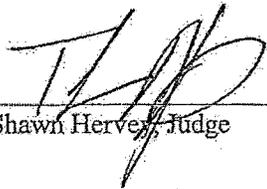
WHEREFORE, it is the ORDER of the Court that:

Plaintiff's Motion For Summary Judgment is denied.

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

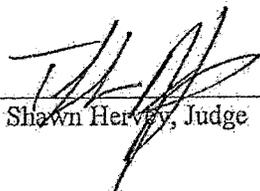
Defendants, Hines Family, is the lawful owner of the oil and gas interest at issue in this matter. Plaintiff's claim of ownership fails under the 1989 and 2006 Dormant Mineral Act. The Court holds the 2006 Dormant Mineral Act to be controlling.

**SO ORDERED.**

  
\_\_\_\_\_  
T. Shawn Herve, Judge

NOTICE: FINAL APPEALABLE ORDER

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

  
\_\_\_\_\_  
T. Shawn Hervey, Judge

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



## Ohio Department of Natural Resources

OHIO DEPARTMENT OF NATURAL RESOURCES

JAMES ZEHRINGER, DIRECTOR

June 8, 2012

Jody C. Jones  
Chesapeake Energy  
P.O. Box 6070  
Charleston, WV 25362

**Re: Basis of Ohio Division of Forestry's Claim to the Oil and Gas Mineral Interests for Harrison State Forest, Harrison County, Ohio**

Dear Mr. Jones:

This is in follow-up to your request for information regarding the Ohio Division of Forestry's belief that the previously severed oil and gas mineral interests under the Harrison State Forest were abandoned and became vested in the Division of Forestry as the surface owner prior to Chesapeake Exploration, LLC. entering into a lease agreement with North American Coal Royalty Company in 2011. Please be advised that, after consultation with members of the Ohio Department of Natural Resources' legal staff, the basis of this belief, as discussed below, is the application of the 1989 version of Ohio's Dormant Mineral Act (Ohio Revised Code 5301.56) to the facts of this case.

In a January 31, 2012 letter, a copy of which is attached hereto as Attachment A, Chesapeake Energy, in support of its application for an oil and gas drilling permit for the Kenneth Buell 8H Well, submitted to the Division of Oil and Gas Resources Management a Certificate of Title prepared by Attorney William Taylor. In addition to reviewing that Certificate of Title, ODNR staff conducted an independent courthouse search for the acreage referenced in Mr. Taylor's title report as well as the additional acreage of Harrison State Forest. That review found the same relevant documents discussed in Mr. Taylor's title report and that these documents appear relevant to both the Buell 8H Well acreage and the other acreage at Harrison State Forest.

Ohio's Dormant Mineral Act was originally enacted in 1989 and was amended effective June 30, 2006. A copy of the 1989 Version of that statute is attached hereto as Attachment B. Subsection (B)(1) of that statute states that any mineral interest of a non-surface owner of the applicable lands "...shall be deemed abandoned and vested in the owner of the surface..." if certain events did not take place within the preceding twenty (20) years.

Office of the Director • 2045 Morse Rd • Columbus, OH 43229-6693 • [ohiodnr.com](http://ohiodnr.com)

REPLY APPENDIX I

APPENDIX PAGE 34

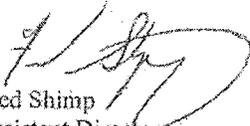
Jody C. Jones  
June 8, 2012  
Page two

One of the actions that would avoid the automatic abandonment under Subsection (B)(1) was if the mineral interest was the subject of a title transaction filed with the appropriate county recorder. It is unclear if an assignment of an oil and gas lease meets the definition of a title transaction. Even if an oil and gas assignment meets this definition, Mr. Taylor's Certificate of Title does not reflect a filing regarding the subject oil and gas interest between the May 30, 1985 assignment of lease from C.E. Beck to Carless Resources filed in Lease Volume 70, Page 312 and a December 16, 2008 filing, in Volume 178, Page 1138 of the Harrison County Recorder's Office, of the Quitclaim Deed from Bellaire Corp. to North American Coal Royalty Company. This was a gap of over twenty three (23) years. In addition, this was a gap of over twenty one (21) years between the assignment of the oil and gas lease from C.E. Beck to Carless Resources and the June 30, 2006 amendment to Ohio's Dormant Mineral Act.

It appears that, based on a review of the records of Harrison County Recorder's Office and the records of the Division of Oil and Gas Resources Management, the other criteria set forth in the Dormant Mineral Act were not met during the time periods discussed above. Therefore, the severed oil and gas interests below Harrison State Forest, pursuant to Ohio's 1989 Dormant Mineral Act, were abandoned under the mandatory "shall" language set forth above on or about May 31, 2005 and these oil and gas rights reverted to the Division of Forestry at that time.

The above, is a short synopsis of the Division of Forestry's position and, of course, it reserves the right to present additional facts in support of its position if it becomes necessary. If you have reason to believe that the previously severed oil and gas interests for the Harrison State Forest acreage have not been abandoned and vested in the Ohio Division of Forestry as surface owner, please provide specific information with supporting documentation upon which that belief is based. Otherwise, please advise the undersigned regarding any proposal you may have as to how to resolve this matter.

Sincerely,

  
Fred Shimp  
Assistant Director

REPLY APPENDIX 2

APPENDIX PAGE 35



January 31, 2012

Rick Simmers, Chief  
Division of Oil and Gas Resource Management  
3575 Forest Lake Drive, Suite 150  
Uniontown, OH 44685

Re: Kenneth Buell 8H Well

Dear Chief Simmers:

At your request, attached is a copy of the Certificate of Title obtained by Chesapeake Energy Corporation ("Chesapeake") for the North American Coal Royalty Company lease. This Certificate of Title covers land located in the unit for the Kenneth Buell 8H Well. As you will note, the rendering attorney, William Taylor, certifies that record title to all oil, gas and other minerals, and all drilling rights, are vested in North American Coal Royalty Company. Mr. Taylor is a well-respected oil and gas attorney with extensive experience in Ohio land titles.

As you have indicated, the Division of Forestry for the State of Ohio (the surface owner of the property where the well is located) has questioned whether the minerals have reverted to it under the Dormant Mineral Act. While Mr. Taylor's Certificate of Title does not specifically reference the Dormant Mineral Act, we did speak with him regarding this matter and he remains firm in his opinion that North American Coal Royalty Company owns the oil and gas.

After you have had an opportunity to review this letter and the enclosed Certificate of Title, please call me so that we can arrange for a meeting to address any questions or comments you may have. I look forward to hearing from you.

Very truly yours,

Jody C. Jones

Enclosure(s)

RECEIVED

FEB 1 2012

ODN/LL/MLM  
UNIONTOWN FIELD OFFICE

Chesapeake Energy Corporation  
P.O. Box 6070 • Charleston, WV 25362 • 414 Summers St. • Charleston, WV 25301  
304-353-5016 • fax 304-353-5231 • Jody.C.Jones@chk.com

REPLY APPENDIX 3

APPENDIX PAGE 36



JOHN D. NEUMANN  
Secretary

Telephone: 972-448-5400  
E-Mail: john.neumann@nacoal.com

NORTH AMERICAN COAL ROYALTY COMPANY

June 22, 2012

Fred Shimp  
Assistant Director  
Ohio Department of Natural Resources  
2045 Morse Road  
Columbus, Ohio 43229-6693

Re: Ohio Division of Forestry's Claim to the Oil and Gas Mineral  
Interests for Harrison State Forest

Dear Mr. Shimp:

On June 11, 2012, North American Coal Royalty Company ("NACoal") (successor in interest to The North American Coal Corporation) received from its lessee, Chesapeake Exploration, L.L.C., a copy of your June 8, 2012 letter to Jody C. Jones setting forth the basis for the Division of Forestry's "belief" that NACoal's oil and gas interests under the Harrison State Forest were abandoned and became vested in the Division under the 1989 version of Ohio's Dormant Mineral Act ("DMA"). NACoal had not previously been aware of the Division's "belief." I write to explain that the Division's belief is unfounded.<sup>1</sup>

On January 16, 1984, The North American Coal Corporation entered into an oil and gas lease with C.E. Beck Associates, Inc. ("Beck"), which was duly recorded in its entirety. The lease had a primary term of five years, provided that Beck either drilled for oil or gas, or made annual delay rental payments of \$3,033.12. Beck assigned the lease to Carless Resources Inc. ("Carless") in May 1985. NACoal's records reflect that Beck and Carless made the delay rental payments required by the lease in January of each year from 1985 to and including 1988, and that the lease accordingly continued in force for the full five-year term, until January 15, 1989. Attached are the following documents that, among others, confirm this:

(1) a copy of a January 17, 1986 check from Carless to NACoal, in the amount of \$3,033.12, with an accompanying "Delay Rental Payment Remittance Advice and Transmittal" from Carless;

(2) a summary of the lease dated August 16, 1989, reflecting that delay rental payments were made "1-31-85 — 1-31-88"; and

---

<sup>1</sup> Please understand that this letter is not intended to address due process issues and the right of a severed mineral interest owner to be given notice and an opportunity to be heard before it can be determined that a mineral interest has reverted to the surface owner under the 1989 version of DMA.

Mr. Fred Shimp  
June 22, 2012  
Page 2

(3) a letter dated December 19, 1989 from Beck to NACoal, stating that the lease "expired January 16 [sic], 1989."

Since NACoal was actively charging and collecting rent for its oil and gas interests until 1989, NACoal clearly did not "abandon" those interests in 1985, as your letter suggests. The oil and gas interests remained the "subject of a title transaction that has been filed or recorded" under the DMA until January 1989 at the earliest. The lease continued to "affect [the Division's] title" to the surface under Ohio R.C. 5301.47(F) until then; indeed, "an outstanding oil and gas right renders the title to the surface land defective." 68 Oh. Jur. (3d ed.), *Mines and Minerals* § 29.

In addition, oil and gas interests covered by a lease which is being maintained in effect by production are not subject to abandonment. The same result should apply if the lease is, instead, being held by the payment of delay rentals. Delay rental payments, like production, perpetuate an oil and gas lease and keep it in full force and effect. The important point is that the severed oil and gas interests are subject to a valid and operative lease. The manner in which the lease is being held in effect is immaterial.

Although our research indicates that no Ohio court has considered the application of the DMA to similar facts, the Michigan Supreme Court has. The court held that the 20-year abandonment period under Michigan's Dormant Minerals Act began to run when an oil and gas lease reached the end of its primary term in 1961 after the lessee had made the last required delay rental payment — *not* when the lease was recorded in 1951. *Energetics Ltd. v. Whitmill*, 442 Mich. 38, 497 N.W.2d 497 (1993). The court cited with approval an appellate court decision involving similar facts:

Were this not so and defendants' contention accepted, termination of plaintiffs' interests by running of the 20-year period would have the effect of treating as abandoned those interests which were being actively maintained for nearly a 10-year period of time from 1944 to 1954. This cannot be so.

497 N.W.2d at 503 (quoting *Mask v. Shell Oil Co.*, 77 Mich App. 25, 31-32, 267 N.W.2d 256 (1977)). The court also noted: "When a lease is recorded, the provisions of the lease are available to anyone who conducts a title search. The terms of the lease indicate whether further inquiry may be required to determine if the lease continues in force." *Id.* at 504; *see also id.* at 502 (quoting trial court's opinion that "[a]nyone checking the status of the title of the subject matter property would have to be on notice of the recorded lease and its expiration date, that being the expiring of the lease at the end of its term").

The same result would obtain under Ohio's DMA, for the same reasons. Since the 20-year abandonment period did not begin until 1989 at the earliest, NACoal's oil and gas interests could not revert to the surface owner under the DMA before 2009.

Mt. Fred Shimp  
June 22, 2012  
Page 3

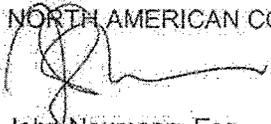
By that time, of course, the DMA had been amended to add "new, specified notification and affidavit requirements for allowable vesting to occur." (Bill Analysis, Sub. H.B. 288, Ohio Leg. Service Comm'n, at 2.) The Division has not attempted to satisfy, and could not satisfy, those requirements. Accordingly, NACoal continues to own the oil and gas interests. NACoal has never abandoned those interests, and will vigorously defend and protect its ownership of them.

Although the Division has not filed a notice under Ohio R.C. 5301.56(E)(1), NACoal intends to file a claim to preserve its oil and gas interests under R.C. 5301.56(C), so that there is no room for doubt about its intentions with regard to this property.

We assume that the Division was not previously aware of the facts set forth above, and expect that, with this additional information, the Division will recognize that there is no basis for any claim of abandonment under the DMA.<sup>2</sup> Please share this letter with the Division's counsel and feel free to contact me to discuss this matter. We very much wish to avoid any dispute with the Division, and hope that it will not be necessary to pursue any legal remedies to protect our property interests.

Sincerely,

NORTH AMERICAN COAL ROYALTY COMPANY



John Neumann, Esq.  
Secretary

JDN/ikb

Enclosures

cc: James F. Melchior, President of NACRC  
Thomas A. Koza, Esq., Vice President of NACRC  
Keith F. Moffatt, Esq., Counsel, Chesapeake Exploration, L.L.C.

<sup>2</sup> We note that the Division's belief is incorrect for other reasons as well. In *Riddell v. Layman*, No. 94CA114, 1995 WL 498812 (Ohio Ct. App., 5th Dist., July 10, 1995) the Court of Appeals stated that under the original DMA, a "title transaction must have occurred within the preceding twenty years from the enactment of the statute, which occurred on March 22, 1989." If a savings event, such as the recording of a lease, occurred in this 20-year "look back" period, there was no abandonment. Here, of course, two NACoal leases were recorded during that 20-year period.

In addition, a Certificate of Amendment was filed in Harrison County on July 7, 1992 (copy attached), changing the name of The North American Coal Corporation to Bellaire Corporation — another "title transaction" that was inconsistent with any abandonment of the oil and gas interests.

BURNS INDIANA STATUTES ANNOTATED  
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\*\*\* Current through the 2014 Second Regular Session and Technical Session of the 118th General Assembly, P.L. 1  
through P.L. 226 \*\*\*

Title 32 Property  
Article 23 Conveyance of Property Interests Less Than Fee Simple  
Chapter 10 Lapse of Mineral Interest

**Go to the Indiana Code Archive Directory**

Burns Ind. Code Ann. § 32-23-10-2 (2014)

**32-23-10-2. Time period -- Consequence of lapse.**

An interest in coal, oil and gas, and other minerals, if unused for a period of twenty (20) years, is extinguished and the ownership reverts to the owner of the interest out of which the interest in coal, oil and gas, and other minerals was carved. However, if a statement of claim is filed in accordance with this chapter, the reversion does not occur.

**HISTORY:** P.L.2-2002, § 8.

Page's Ohio Revised Code Annotated:  
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Current through Legislation passed by the 130th General Assembly  
and filed with the Secretary of State through File 140 (SB 143)

TITLE 53. REAL PROPERTY  
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES  
MARKETABLE TITLE ACT

**Go to the Ohio Code Archive Directory**

ORC Ann. 5301.49 (2014)

§ 5301.49. Record marketable title; exceptions

Such record marketable title shall be subject to:

(A) All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided that a general reference in such muniments, or any of them, to easements, use restrictions, or other interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such easement, use restriction, or other interest; and provided that possibilities of reverter, and rights of entry or powers of termination for breach of condition subsequent, which interests are inherent in the muniments of which such chain of record title is formed and which have existed for forty years or more, shall be preserved and kept effective only in the manner provided in section 5301.51 of the Revised Code;

(B) All interests preserved by the filing of proper notice or by possession by the same owner continuously for a period of forty years or more, in accordance with section 5301.51 of the Revised Code;

(C) The rights of any person arising from a period of adverse possession or user, which was in whole or in part subsequent to the effective date of the root of title;

(D) Any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title or record is started; provided that such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of section 5301.50 of the Revised Code;

(E) The exceptions stated in section 5301.53 of the Revised Code.

**HISTORY:**

129 v 1040 (Eff 9-29-61); 130 v 1246. Eff 1-23-63.

Page's Ohio Revised Code Annotated:  
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Current through Legislation passed by the 130th General Assembly  
and filed with the Secretary of State through File 140 (SB 143)

TITLE 53. REAL PROPERTY  
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES  
MARKETABLE TITLE ACT

**Go to the Ohio Code Archive Directory**

ORC Ann. 5301.50 (2014)

§ 5301.50. Prior interests

Subject to the matters stated in section 5301.49 of the Revised Code, such record marketable title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims, or charges whatsoever, the existence of which depends upon any act, transaction, event, or omission that occurred prior to the effective date of the root of title. All such interests, claims, or charges, however denominated, whether legal or equitable, present or future, whether such interests, claims, or charges are asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void.

**HISTORY:**

129 v 1040. Eff 9-29-61.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNIFORM DORMANT MINERAL INTERESTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

Approved and Recommended for Enactment  
in All the States

At its

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

With Prefatory Note and Comments

## UNIFORM DORMANT MINERAL INTERESTS ACT

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

W. JOEL BLASS, P.O. Box 160, Gulfport, MS 39501, Chairman  
JOHN H. DeMOULLY, Law Revision Commission, Suite D-2, 4000 Middlefield Road, Palo Alto, CA 94303, Drafting Liaison  
OWEN L. ANDERSON, University of North Dakota, School of Law, Grand Forks, ND 58202  
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GLEE S. SMITH, P.O. Box 360, Larned, KS 67550  
NATHANIEL STERLING, Law Revision Commission, Suite D-2, 4000 Middlefield Road, Palo Alto, CA 94303, Reporter  
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ON UNIFORM STATE LAWS  
645 North Michigan Avenue, Suite 510  
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## UNIFORM DORMANT MINERAL INTERESTS ACT

### PREFATORY NOTE

#### Nature of Mineral Interests

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

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

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

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

#### Potential Problems Relating to Dormant Mineral Interests

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

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

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

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

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

#### Approaches to the Dormant Mineral Problem

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

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

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

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

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

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

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

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

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

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

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

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

#### Draft Statute

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

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

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

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

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

UNIFORM DORMANT MINERAL INTERESTS ACT

SECTION 1. STATEMENT OF POLICY.

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

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

COMMENT

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

SECTION 2. DEFINITIONS.

As used in this [Act]:

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

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

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

#### COMMENT

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

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

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

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

#### SECTION 3. EXCLUSIONS.

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

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

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

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

#### COMMENT

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

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

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

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

#### SECTION 4. TERMINATION OF DORMANT MINERAL INTEREST.

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

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

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

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

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

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

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

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

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

#### COMMENT

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

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

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

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

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

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

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

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

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

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

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

**SECTION 5. PRESERVATION OF MINERAL INTEREST BY NOTICE.**

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

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

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

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

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

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

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

#### COMMENT

This section is broadly drawn to permit a mineral owner to preserve his or her own interest but also any or all interests of one or more other persons. This section permits the mineral owner to preserve the interests of the co-owners by specifying the interests to be preserved. In addition, the mineral interest being preserved may be overriding royalty or sublease or executive lease. In this situation, the mineral owner may elect also to preserve any or all of the interests subject to it, by specifying them in the notice of intent to preserve. The mineral owner may also elect to preserve the interest as to some or all of the minerals included in the interest.

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

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

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

#### SECTION 6. LATE RECORDING BY MINERAL OWNER.

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

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

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

#### COMMENT

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

#### SECTION 7. EFFECT OF TERMINATION.

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

#### COMMENT

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

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

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

It is possible under this section for a surface owner to acquire greater mineral interests than the surface owner started with. Assume, for example, there are equal co-owners of the surface, one of whom conveys his or her undivided 50% share of minerals. Upon termination of the conveyed mineral interest under this Act, the interest would merge with the surface estate in proportion to the ownership of the surface estate, so that each owner would acquire one-half of the mineral interest. The end result is that the conveying surface owner would hold an undivided one-fourth of the minerals and the nonconveying surface owner would hold an undivided three-fourths of the minerals. This result is proper since the reversion represents a windfall to the surface estate in general and to the conveying owner in particular, who has previously received the value of the mineral interest.

In the example above, assume that the conveyed mineral interest is not terminated, but instead the owner of the mineral interest executes a 30-year mineral lease. If the lease is terminated under this Act after 20 years have run, the interest in the remaining 10 years of the lease would merge with the surface estate in proportionate shares, at the end of which time it would expire, leaving the interest of the mineral owner unencumbered.

**SECTION 8. SAVINGS AND TRANSITIONAL PROVISIONS.**

(a) Except as otherwise provided in this section, this [Act] applies to all mineral interests, whether created before, on, or after its effective date.

(b) An action may not be maintained to terminate a mineral interest pursuant to this [Act] until [two] years after the effective date of the [Act].

(c) This [Act] does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

(d) This [Act] does not affect the validity of the termination of any mineral interest made pursuant to any predecessor statute on dormant mineral interests. The repeal by this [Act] of any statute on dormant mineral interests takes effect [two] years after the effective date of this [Act].

**COMMENT**

The [two]-year grace period provided by this section is to enable a mineral owner to take steps to record a notice of intent to preserve an interest that would otherwise be subject to termination immediately upon the effective date because of the application of the Act to existing mineral interests. Thus, a mineral owner may record a notice of intent to preserve an interest during the [two]-year period even though no action may be brought during the [two]-year period. Subsection (d) is intended for those states that repeal an existing dormant mineral statute upon enactment of this Act.

**SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

**SECTION 10. SHORT TITLE.**

This [Act] may be cited as the Uniform Dormant Mineral Interests Act.

**SECTION 11. SEVERABILITY CLAUSE.**

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

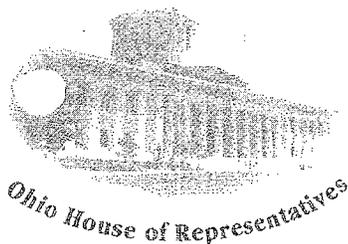
**SECTION 12. EFFECTIVE DATE.**

This [Act] takes effect \_\_\_\_\_.

**SECTION 13. REPEALS.**

The following acts and parts of acts are repealed:

- (1) \_\_\_\_\_.
- (2) \_\_\_\_\_.
- (3) \_\_\_\_\_.



**John P. Hagan**  
*State Representative*  
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Ohio Steel Industry  
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**COMMITTEE NOTICE**  
**HOUSE PUBLIC UTILITIES AND ENERGY**  
**COMMITTEE**  
**REP. JOHN P. HAGAN – CHAIRMAN**

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

**\*\*REVISION\*\***

**BILLS SCHEDULED TO BE HEARD**

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

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

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

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

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

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

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

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

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

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

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

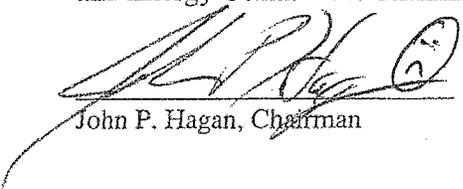
Kevin Schmidt testified on behalf of Public Policy Sources as a proponent of HB 251 and questions were asked by Representative Buehrer.

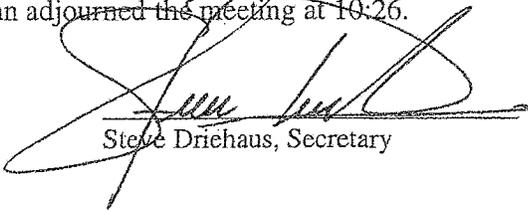
James Nargang testified on behalf of the Board of Regents as an interested party of HB 251 and questions were asked by Representatives Daniels, Blessing and Stewart.

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

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

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

  
John P. Hagan, Chairman

  
Steve Driehaus, Secretary



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

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

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

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

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

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

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

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

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

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

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

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

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

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

Current through Legislation passed by the 130th General Assembly  
and filed with the Secretary of State through File 140 (SB 143)

TITLE 53. REAL PROPERTY  
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES  
MARKETABLE TITLE ACT

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ORC Ann. 5301.56 (2014)

§ 5301.56. Abandonment of mineral interest and vesting in owner of surface of lands

(A) As used in this section:

(1) "Holder" means the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) "Drilling or mining permit" means a permit issued under Chapter 1509., 1513., or 1514. of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(3) "Mineral interest" means a fee interest in at least one mineral regardless of how the interest is created and of the form of the interest, which may be absolute or fractional or divided or undivided.

(4) "Mineral" means gas, oil, coal, coalbed methane gas, other gaseous, liquid, and solid hydrocarbons, sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or another material or substance of commercial value that is excavated in a solid state from natural deposits on or in the earth.

(5) "Owner of the surface of the lands subject to the interest" includes the owner's successors and assignees.

(B) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface of the lands subject to the interest if the requirements established in division (E) of this section are satisfied and none of the following applies:

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

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

(3) Within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section, one or more of the following has occurred:

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

(b) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to

1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

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

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

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

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

(C) (1) A claim to preserve a mineral interest from being deemed abandoned under division (B) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be recorded in accordance with division (H) of this section and sections 317.18 to 317.20 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, the holder's 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 underground gas storage operations may preserve the holder's interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

(D) (1) A mineral interest may be preserved indefinitely from being deemed abandoned under division (B) of this section by the occurrence of any of the circumstances described in division (B)(3) of this section, including, but not limited to, successive 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.

(E) Before a mineral interest becomes vested under division (B) of this section in the owner of the surface of the lands subject to the interest, the owner of the surface of the lands subject to the interest shall do both of the following:

(1) Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned. If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each county in which the land that is subject to the interest is located. The notice shall contain all of the information specified in division (F) of this section.

(2) At least thirty, but not later than sixty days after the date on which the notice required under division (E)(1) of this section is served or published, as applicable, file in the office of the county recorder of each county in which the surface of the land that is subject to the interest is located an affidavit of abandonment that contains all of the information specified in division (G) of this section.

(F) The notice required under division (E)(1) of this section shall contain all of the following:

(1) The name of each holder and the holder's successors and assignees, as applicable;

(2) A description of the surface of the land that is subject to the mineral interest. The description shall include the volume and page number of the recorded deed or other recorded instrument under which the owner of the surface of the lands claims title or otherwise satisfies the requirements established in division (A)(3) of section 5301.52 of the Revised Code.

(3) A description of the mineral interest to be abandoned. The description shall include the volume and page number of the recorded instrument on which the mineral interest is based.

(4) A statement attesting that nothing specified in division (B)(3) of this section has occurred within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section;

(5) A statement of the intent of the owner of the surface of the lands subject to the mineral interest to file in the office of the county recorder an affidavit of abandonment at least thirty, but not later than sixty days after the date on which notice is served or published, as applicable.

(G) An affidavit of abandonment shall contain all of the following:

(1) A statement that the person filing the affidavit is the owner of the surface of the lands subject to the interest;

(2) The volume and page number of the recorded instrument on which the mineral interest is based;

(3) A statement that the mineral interest has been abandoned pursuant to division (B) of this section;

(4) A recitation of the facts constituting the abandonment;

(5) A statement that notice was served on each holder or each holder's successors or assignees or published in accordance with division (E) of this section.

(H) (1) If a holder or a holder's successors or assignees claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned, the holder or the holder's successors or assignees, not later than sixty days after the date on which the notice was served or published, as applicable, shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located one of the following:

(a) A claim to preserve the mineral interest in accordance with division (C) of this section;

(b) An affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section.

The holder or the holder's successors or assignees shall notify the person who served or published the notice under division (E) of this section of the filing under this division.

(2) If a holder or a holder's successors or assignees who claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned fails to file a claim to preserve the mineral interest, files such a claim more than sixty days after the date on which the notice was served or published under division (E) of this section, fails to file an affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section, or files such an affidavit more than sixty days after the date on which the notice was served or published under that division, the owner of the surface of the lands subject to the interest who is seeking to have the interest deemed abandoned and vested in the owner shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located a notice of failure to file. The notice shall contain all of the following:

(a) A statement that the person filing the notice is the owner of the surface of the lands subject to the mineral interest;

(b) A description of the surface of the land that is subject to the mineral interest;

(c) The statement: "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ....., page ....."

Immediately after the notice of failure to file a mineral interest is recorded, the mineral interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder or the former holder's successors or as-

signees against the owner of the surface of the lands formerly subject to the interest. However, the abandonment and vesting of a mineral interest pursuant to divisions (E) to (I) of this section only shall be effective as to the property of the owner that filed the affidavit of abandonment under division (E) of this section.

(I) For purposes of a recording under this section, a county recorder shall charge the fee established under section 317.32 of the Revised Code.

**HISTORY:**

142 v S 223. Eff 3-22-89; 151 v H 288, § 1, eff. 6-30-06; 2013 HB 72, § 1, eff. Jan. 30, 2014.

# UNIFORM DORMANT MINERAL INTERESTS ACT\*

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS NINETY-FIFTH YEAR  
IN BOSTON, MASSACHUSETTS

August 1-8, 1986

*WITH PREFATORY NOTE AND COMMENTS*

Approved by the American Bar Association  
New Orleans, Louisiana, February 16, 1987

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\* The Conference changed the designation of the Dormant Mineral Interests Act from Uniform to Model as approved by the Executive Committee on January 17, 1999.

## UNIFORM DORMANT MINERAL INTERESTS ACT

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

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Final, approved copies of this Act are available on 8-inch IBM Displaywriter diskettes, and copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
645 North Michigan Avenue, Suite 510  
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## UNIFORM DORMANT MINERAL INTERESTS ACT

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# UNIFORM DORMANT MINERAL INTERESTS ACT

## Prefatory Note

### *Nature of Mineral Interests*

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

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

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

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

### *Potential Problems Relating to Dormant Mineral Interests*

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

If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of

reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.

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

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

#### *Approaches to the Dormant Mineral Problem*

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

*Abandonment.* The common law concept of abandonment of mineral interests provides useful relief in some situations. As a general rule, severed mineral interests that are regarded as separate possessory estates are not subject to abandonment. But less than fee interests in the nature of a lease or profit may be subject to abandonment. In some jurisdictions the scope of the abandonment remedy has been broadened to extend to oil and gas rights on the basis that these minerals, being fugacious, are owned in the form of an incorporeal hereditament, and hence are subject to abandonment.

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

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

The nonuse scheme has advantages and disadvantages. Its major attraction is that it enables extinguishment of dormant interests solely on the basis of nonuse; proof of intent to abandon is unnecessary. Its major drawbacks are that it requires resort to facts outside the record

and it requires a judicial proceeding to determine the fact of nonuse. It also precludes long-term holding of mineral rights for such purposes as future development, future price increases that will make development feasible, or assurance by a conservation organization or subdivider that the mineral rights will not be exploited.

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

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

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

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

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

A combination nonuse/recording scheme thus satisfies federal due process requirements. Whether such a scheme would satisfy the due process requirements of the various states is not

clear. Comparable dormant mineral legislation has been voided by several state courts for failure to satisfy state due process requirements. Uniform legislation, if it is to succeed in all states where it is enacted, will need to be clearly constitutional under various state standards. This means that some sort of prior notice to the mineral owner is most likely necessary.

### *Draft Statute*

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

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

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

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

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

## UNIFORM DORMANT MINERAL INTERESTS ACT

### SECTION 1. STATEMENT OF POLICY.

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

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

#### Comment

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

### SECTION 2. DEFINITIONS.

As used in this [Act]:

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

(2) "Minerals" includes gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable, and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, and any other substance defined as a mineral by the law of this State.

## Comment

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

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

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

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

### SECTION 3. EXCLUSIONS.

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

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

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

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

## Comment

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

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

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

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

### **SECTION 4. TERMINATION OF DORMANT MINERAL INTEREST.**

(a) The surface owner of real property subject to a mineral interest may maintain an action to terminate a dormant mineral interest. A mineral interest is dormant for the purpose of this [Act] if the interest is unused within the meaning of subsection (b) for a period of 20 or more years next preceding commencement of the action and has not been preserved pursuant to Section 5. The action must be in the nature of and requires the same notice as is required in an action to quiet title. The action may be maintained whether or not the owner of the mineral interest or the owner's whereabouts is known or unknown. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the 20-year period.

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

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

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

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

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

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

#### **Comment**

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

Subsection (a) provides for a court proceeding in the nature of a quiet title action to

terminate a dormant mineral interest. The device of a court proceeding ensures notice to the mineral owner personally or by publication as may be appropriate to the circumstances and a reliable determination of dormancy.

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

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

Paragraph (b)(1) is intended to preserve in its entirety a mineral interest where there are active operations directed toward any mineral that is included within the interest. Thus, if there are fractional owners of a mineral interest, activity by one owner is considered activity by all owners. Other interests owned by other persons in the minerals that are the object of the operations are also preserved by the operations. For example, oil and gas operations by a fractional oil, gas, and coal owner would save not only the interests of other fractional oil and gas owners but also the interests of oil and gas lessees and royalty owners holding under either the oil and gas owner or any fractional owner, as well as the interests of holders of any other mineral interest in the oil and gas that is the object of the operations. The oil and gas operations suffice to save the coal interest of the oil, gas, and coal owner, as well as other minerals included in any of the affected mineral interests, not just the interest in oil and gas that is the subject of the particular operations. This is the case regardless whether the mineral interest was acquired in one instrument or by several instruments. However, oil and gas operations by a fractional oil, gas, and coal owner would not save the mineral interest of a fractional coal owner if the interest does not include oil and gas.

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

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

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

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

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

#### **SECTION 5. PRESERVATION OF MINERAL INTEREST BY NOTICE.**

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

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

(c) The notice must contain the name of the owner of the mineral interest or the co-owners or other persons for whom the mineral interest is to be preserved or, if the identity of the owner cannot be established or is uncertain, the name of the class of which the owner is a

member, and must identify the mineral interest or part thereof to be preserved by one of the following means:

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

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

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

#### **Comment**

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

to preserve. The mineral owner may also elect to preserve the interest as to some or all of the minerals included in the interest.

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

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

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

#### **SECTION 6. LATE RECORDING BY MINERAL OWNER.**

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

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

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

### **Comment**

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

### **SECTION 7. EFFECT OF TERMINATION.**

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

### **Comment**

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

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

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

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

undivided three-fourths of the minerals. This result is proper since the reversion represents a windfall to the surface estate in general and to the conveying owner in particular, who has previously received the value of the mineral interest.

In the example above, assume that the conveyed mineral interest is not terminated, but instead the owner of the mineral interest executes a 30-year mineral lease. If the lease is terminated under this Act after 20 years have run, the interest in the remaining 10 years of the lease would merge with the surface estate in proportionate shares, at the end of which time it would expire, leaving the interest of the mineral owner unencumbered.

## **SECTION 8. SAVINGS AND TRANSITIONAL PROVISIONS.**

(a) Except as otherwise provided in this section, this [Act] applies to all mineral interests, whether created before, on, or after its effective date.

(b) An action may not be maintained to terminate a mineral interest pursuant to this [Act] until [two] years after the effective date of the [Act].

(c) This [Act] does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

(d) This [Act] does not affect the validity of the termination of any mineral interest made pursuant to any predecessor statute on dormant mineral interests. The repeal by this [Act] of any statute on dormant mineral interests takes effect [two] years after the effective date of this [Act].

### **Comment**

The [two]-year grace period provided by this section is to enable a mineral owner to take steps to record a notice of intent to preserve an interest that would otherwise be subject to termination immediately upon the effective date because of the application of the Act to existing mineral interests. Thus, a mineral owner may record a notice of intent to preserve an interest during the [two]-year period even though no action may be brought during the [two]-year period. Subsection (d) is intended for those states that repeal an existing dormant mineral statute upon enactment of this Act.

**SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

**SECTION 10. SHORT TITLE.**

This [Act] may be cited as the Uniform Dormant Mineral Interests Act.

**SECTION 11. SEVERABILITY CLAUSE.**

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**SECTION 12. EFFECTIVE DATE.**

This [Act] takes effect \_\_\_\_\_.

**SECTION 13. REPEALS.**

The following acts and parts of acts are repealed:

(1) \_\_\_\_\_.

(2) \_\_\_\_\_.

(3) \_\_\_\_\_.

Ohio Bill Analysis, 2006 H.B. 288

Ohio Final Bill Analysis, 2006 House Bill 288

2006

Ohio Legislative Service Commission  
2005-2006 Regular Session

**Sub. H.B. 288**

126th General Assembly

(As Passed by the General Assembly)

**Reps. Wagoner, Combs, Cassell, Latta, Stewart, J., Hartnett, Garrison, Coley, Collier, DeGeeter, Distel, Dolan, Domenick, Flowers, Gibbs, Hood, Hughes, Martin, McGregor J., Reidelbach, Seitz, Willamowski**  
**Sens. Schuler, Niehaus, Mumper**  
**Effective date: [FN1]**

#### **ACT SUMMARY**

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

#### **CONTENT AND OPERATION**

##### **Vesting of abandoned mineral interests**

(R.C. 5301.56)

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

The act also adds definitions for “mineral” and “mineral interest.” A “mineral interest” is any fee interest in at least one mineral regardless of how the interest is created and of the form of the interest, which may be absolute or fractional or divided or undivided. “Mineral” means gas, oil, coal, coalbed methane gas, other gaseous, liquid, and solid hydrocarbons, sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or another material or substance of commercial value that is excavated in a solid state from natural deposits on or in the earth. Under the act, “owner” includes the owner's successors and assignees. (R.C. 5301.56(A).)

### **Circumstances that prohibit vesting**

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

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

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

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

### **Holder notification and affidavit of abandonment**

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

**Holder notification.** The owner must serve the notice by certified mail, return receipt requested, to the last known address of each holder or holder's successors or assignees. If such service cannot be completed, the owner must publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in

each county in which the land is located. (R.C. 5301.56(E)(1).)

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

**Affidavit of abandonment.** The affidavit of abandonment must be filed in the Office of the County Recorder of each county in which the surface of the land that is subject to the interest is located, and must contain all of the following: (1) a statement that the person filing the affidavit is the owner of the surface of the lands subject to the mineral interest, (2) the volume and page number of the recorded instrument on which the mineral interest is based, (3) a statement that the mineral interest has been abandoned pursuant to the act, (4) a recitation of the facts constituting the abandonment, and (5) a statement that holder notification was served or published as required by the act (R.C. 5301.56(E)(2) and (G)).

**Claim to preclude abandonment**

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

**Vesting process**

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

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

5301.56(H).)

County recorder authority

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

Oil and Gas Commission quorum

(R.C. 1509.35 and 1509.38)

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

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

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

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

**HISTORY**

ACTION

DATE

Introduced

06-01-05

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

[FN1]. *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

[FN1]. *The five other, 20-year circumstances that prohibit vesting are as follows: (1) the mineral interest has been the subject of a title transaction filed or recorded in the Office of the County Recorder of the county in which the lands are located, (2) the mineral interest has been used in underground gas storage operations by the holder, (3) a drilling or mining permit has been issued to the holder and an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded in the Office of the County Recorder of the county in which the lands are located, (4) a claim to preserve the mineral interest has been filed in accordance with the mineral interests law, and (5) in the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the County Auditor's tax list and the County Treasurer's duplicate tax list in the county in which the lands are located (R.C. 5301.56(B)(3)(a) to (f)).*

[FN2]. *Under continuing law, a "holder" is the record holder of a mineral interest, and any person who derives rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder (R.C. 5301.56(A)).*

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

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

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\*\*\* This document is current through 2014 P.A. 195, 197-216, 218-266, 268-270, 272-279 \*\*\*

Chapter 554 Real And Personal Property  
Act 42 of 1963 Termination of Oil Or Gas Interests In Land

**Go to the Michigan Code Archive Directory**

MCLS § 554.291 (2014)

**§ 554.291. Oil or gas interest in land; abandonment; claim of interest; vesting in surface owner; preservation from disclosure.**

Sec. 1. (1) Any interest in oil or gas in any land owned by any person other than the owner of the surface, which has not been sold, leased, mortgaged, or transferred by instrument recorded in the register of deeds office for the county where that interest in oil or gas is located for a period of 20 years shall, in the absence of the issuance of a permit to drill an oil or gas well issued by the department of environmental quality, or its predecessor or successor, as to that interest in oil or gas or the actual production or withdrawal of oil or gas from said lands, or from lands covered by a lease to which that interest in oil or gas is subject, or from lands pooled, unitized, or included in unit operations therewith, or the use of that interest in underground gas storage operations, during such period of 20 years, be deemed abandoned, unless the owner thereof shall, within 3 years after September 6, 1963 or within 20 years after the last sale, lease, mortgage, or transfer of record of that interest in oil or gas or within 20 years after the last issuance of a drilling permit as to that interest in oil or gas or actual production or withdrawal of oil or gas, from said lands, or from lands covered by a lease to which that interest in oil or gas is subject, or from lands pooled, unitized, or included in unit operations therewith, or the use of that interest in oil or gas in underground gas storage operations, whichever is later, record a claim of interest as provided in section 2.

(2) Any interest in oil or gas deemed abandoned as provided in subsection (1) shall vest as of the date of such abandonment in the owner or owners of the surface in keeping with the character of the surface ownership.

(3) Notwithstanding any other provision of this act to the contrary, if a judgment of foreclosure is entered under section 78k of the general property tax act, 1893 PA 206, MCL 211.78k, for the nonpayment of delinquent taxes levied on property, an oil or gas interest in the property owned by a person other than the owner of the surface shall not be preserved from foreclosure under section 78k of the general property tax act, 1893 PA 206, MCL 211.78k, unless that interest is sold, leased, mortgaged, transferred, reserved, or subject to a claim of interest under section 2 and an instrument evidencing the sale, lease, mortgage, transfer, reservation, or claim of interest is recorded in the office of the register of deeds in the county in which the property is located during the 20-year period immediately preceding the date of filing a petition for foreclosure under section 78h of the general property tax act, 1893 PA 206, MCL 211.78h.

**HISTORY:** Pub Acts 1963, No. 42, § 1, eff September 6, 1963; amended by Pub Acts 2006, No. 519, imd eff December 29, 2006.

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Current through Legislation passed by the 130th General Assembly  
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TITLE 53. REAL PROPERTY  
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES

**Go to the Ohio Code Archive Directory**

ORC Ann. 5301.01 (2014)

§ 5301.01. Acknowledgment of deed, mortgage, land contract, lease or memorandum of trust

(A) A deed, mortgage, land contract as referred to in division (A)(21) of section 317.08 of the Revised Code, or lease of any interest in real property and a memorandum of trust as described in division (A) of section 5301.255 of the Revised Code shall be signed by the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or shall be signed by the trustee in the case of a memorandum of trust. The signing shall be acknowledged by the grantor, mortgagor, vendor, or lessor, or by the trustee, before a judge or clerk of a court of record in this state, or a county auditor, county engineer, notary public, or mayor, who shall certify the acknowledgement and subscribe the official's name to the certificate of the acknowledgement.

(B) (1) If a deed, mortgage, land contract as referred to in division (A)(21) of section 317.08 of the Revised Code, lease of any interest in real property, or a memorandum of trust as described in division (A) of section 5301.255 of the Revised Code was executed prior to February 1, 2002, and was not acknowledged in the presence of, or was not attested by, two witnesses as required by this section prior to that date, both of the following apply:

(a) The instrument is deemed properly executed and is presumed to be valid unless the signature of the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or of the settlor and trustee in the case of a memorandum of trust was obtained by fraud.

(b) The recording of the instrument in the office of the county recorder of the county in which the subject property is situated is constructive notice of the instrument to all persons, including without limitation, a subsequent purchaser in good faith or any other subsequent holder of an interest in the property, regardless of whether the instrument was recorded prior to, on, or after February 1, 2002.

(2) Division (B)(1) of this section does not affect any accrued substantive rights or vested rights that came into existence prior to February 1, 2002.

**HISTORY:**

RS § 4106; S&C 458, 694; 29 v 346; 32 v 10; 80 v 79; 84 v 132; GC § 8510; 120 v 229; Bureau of Code Revision, 10-1-53; 127 v 1039 (1108) (Eff 1-1-58); 129 v 999 (Eff 8-11-61); 145 v S 114 (Eff 8-10-94); 149 v H 279. Eff 2-1-2002; 150 v H 135, § 1, eff. 7-20-04; 152 v S 134, § 1, eff. 1-17-08; 2013 HB 72, § 1, eff. Jan. 30, 2014.

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TITLE 53. REAL PROPERTY  
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES

**Go to the Ohio Code Archive Directory**

ORC Ann. 5301.07 (2014)

§ 5301.07. Validating certain deeds; limitations

When any instrument conveying real estate, or any interest therein, is of record for more than twenty-one years in the office of the county recorder of the county within this state in which such real estate is situated, and the record shows that there is a defect in such instrument, such instrument and the record thereof shall be cured of such defect and be effective in all respects as if such instrument had been legally made, executed, and acknowledged, if such defect is due to any one or more of the following:

- (A) Such instrument was not properly witnessed.
- (B) Such instrument contained no certificate of acknowledgment.
- (C) The certificate of acknowledgment was defective in any respect.

Any person claiming adversely to such instrument, if not already barred by limitation or otherwise, may, at any time within twenty-one years after the time of recording such instrument, bring proceedings to contest the effect of such instrument.

This section does not affect any suit brought prior to November 9, 1959 in which the validity of the acknowledgment of any such instrument is drawn in question.

**HISTORY:**

111 v 41; GC § 8516-1; Bureau of Code Revision, 10-1-53; 128 v 120 (Eff 11-9-59); 129 v 582 (941). Eff 1-10-61.

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TITLE 53. REAL PROPERTY  
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES

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ORC Ann. 5301.071 (2014)

§ 5301.071. Validity of instruments

No instrument conveying real property, or any interest in real property, and of record in the office of the county recorder of the county within this state in which that real property is situated shall be considered defective nor shall the validity of that conveyance be affected because of any of the following:

(A) The dower interest of the spouse of any grantor was not specifically released, but that spouse executed the instrument in the manner provided in section 5301.01 of the Revised Code.

(B) The officer taking the acknowledgment of the instrument having an official seal did not affix that seal to the certificate of acknowledgment.

(C) The certificate of acknowledgment is not on the same sheet of paper as the instrument.

(D) The executor, administrator, guardian, assignee, or trustee making the instrument signed or acknowledged the same individually instead of in a representative or official capacity.

(E) (1) The grantor or grantee of the instrument is a trust rather than the trustee or trustees of the trust if the trust named as grantor or grantee has been duly created under the laws of the state of its existence at the time of the conveyance and a memorandum of trust that complies with section 5301.255 of the Revised Code and contains a description of the real property conveyed by that instrument is recorded in the office of the county recorder in which the instrument of conveyance is recorded. Upon compliance with division (E)(1) of this section, a conveyance to a trust shall be considered to be a conveyance to the trustee or trustees of the trust in furtherance of the manifest intention of the parties.

(2) Except as otherwise provided in division (E)(2) of this section, division (E)(1) of this section shall be given retroactive effect to the fullest extent permitted under section 28 of Article II, Ohio Constitution. Division (E) of this section shall not be given retroactive or curative effect if to do so would invalidate or supersede any instrument that conveys real property, or any interest in the real property, recorded in the office of the county recorder in which that real property is situated prior to the date of recording of a curative memorandum of trust or the effective date of this section, whichever event occurs later.

**HISTORY:**

128 v 120. Eff 11-9-59; 2011 SB 117, § 1, eff. Mar. 22, 2012.

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TITLE 53. REAL PROPERTY  
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES  
MARKETABLE TITLE ACT

**Go to the Ohio Code Archive Directory**

ORC Ann. 5301.47 (2014)

§ 5301.47. Definitions

As used in sections 5301.47 to 5301.56, inclusive, of the Revised Code:

(A) "Marketable record title" means a title of record, as indicated in section 5301.48 of the Revised Code, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in section 5301.50 of the Revised Code.

(B) "Records" includes probate and other official public records, as well as records in the office of the recorder of the county in which all or part of the land is situate.

(C) "Recording," when applied to the official public records of the probate or other court, includes filing.

(D) "Person dealing with land" includes a purchaser of any estate or interest therein, a mortgagee, a levying or attaching creditor, a land contract vendee, or any other person seeking to acquire an estate or interest therein, or impose a lien thereon.

(E) "Root of title" means that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.

(F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

**HISTORY:**

129 v 1040. Eff 9-29-61.

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TITLE 53. REAL PROPERTY  
CHAPTER 5301. CONVEYANCES; ENCUMBRANCES

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ORC Ann. 5301.09 (2014)

§ 5301.09. Leases of natural gas and oil lands to be recorded; address of lessor and lessee; release

All leases, licenses, and assignments thereof, or of any interest therein, given or made concerning lands or tenements in this state, by which any right is granted to operate or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record and recorded in such lease record without delay, and shall not be removed until recorded. No such lease or assignment thereof shall be accepted for record after September 24, 1963 unless it contains the mailing address of both the lessor and lessee or assignee. If the county in which the land subject to any such lease is located maintains permanent parcel numbers or sectional indexes pursuant to section 317.20 of the Revised Code, no such lease shall be accepted for record after December 31, 1984, unless it contains the applicable permanent parcel number and the information required by section 317.20 of the Revised Code to index such lease in the sectional indexes; and, in the event any such lease recorded after December 31, 1984, is subsequently assigned in whole or in part, and the county in which the land subject thereto is located maintains records by microfilm or other microphotographic process, the assignment shall contain the same descriptive information required to be included in the original lease by this sentence, but the omission of the information required by this section does not affect the validity of any lease. Whenever any such lease is forfeited for failure of the lessee, his successors or assigns to abide by specifically described covenants provided for in the lease, or because the term of the lease has expired, the lessee, his successors or assigns, shall have such lease released of record in the county where such land is situated without cost to the owner thereof.

No such lease or license is valid until it is filed for record, except as between the parties thereto, unless the person claiming thereunder is in actual and open possession.

**HISTORY:**

RS § 4112a; 85 v 179; GC §§ 8518, 8519; Bureau of Code Revision, 10-1-53; 125 v 903 (Eff 10-1-53); 130 v 1241 (Eff 9-24-63); 130 v Pt2, 258 (Eff 12-16-64); 140 v H 186. Eff 9-20-84.