

Energy, Utilities, Oil, and Gas ALERT

9/19/16

Ohio Supreme Court Rules in Ohio Dormant Mineral Act Cases

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In a long awaited ruling issued last week, the Supreme Court of Ohio held that a surface owner could only bring a claim for abandonment of a severed mineral interest under the 1989 version of the Ohio Dormant Mineral Act (“1989 DMA”) before June 30, 2006.

In *Corban v. Chesapeake Exploration, L.L.C., et al.*, the Supreme Court of Ohio ruled that the language contained in the 1989 DMA created a conclusive presumption of abandonment in the event that the surface owner showed, in a court action, that no savings event applied in the twenty years preceding the filing of his action for abandonment of minerals. Instead of finding that the 1989 DMA automatically vested mineral rights to surface owners upon the occurrence of certain conditions listed in the Act (as some Courts had previously indicated), the Court stated that the 1989 DMA “was only an evidentiary device that applied to litigation seeking to quiet title to a mineral interest” and did “not automatically transfer the interest from the mineral rights holder to the surface owner by operation of law.” Since the 1989 DMA was only an evidentiary device, when the 2006 version of the Ohio Dormant Mineral Act (“2006 DMA”) became effective on June 30, 2006, surface owners lost their ability to rely on this evidentiary mechanism when bringing an action to quiet title against severed mineral interest holders. The Court also held that payment of delay rentals is not a title transaction under the 2006 DMA.

When coupled with the Court’s prior ruling in *Dodd v. Croskey*¹, the ruling in *Corban*, essentially guts Ohio’s DMA, which will generally favor the claims of severed mineral owners over the competing claims of surface owners. *Dodd* held that even if there is no savings event in the chain of title, a mineral holder’s claim to preserve a mineral interest filed in compliance with R.C. 5301.56(H)(1)(a) is sufficient to prevent the mineral interest from being deemed abandoned to the surface owner. Now, if a surface owner follows the notice provisions of the 2006 DMA and any mineral interest holder files a Notice of Preservation, that Notice “preserves the rights of all holders of a mineral interest” from being deemed abandoned. R.C. 5301.56(C)(2).

Going forward, it will be very difficult, if not practically impossible, for a surface owner to achieve an abandonment under the 2006 Act since (1) a Notice of Preservation cures the lack of a prior savings event and (2) a Notice of Preservation is effective as to all severed mineral owners, even if the mineral interest holder filing the Notice owns only a fractional interest in the severed mineral rights. While *Corban* and the other 1989 DMA decisions finally clarify this previously murky area of the law, the holding severely restricts the ability of a surface owner to achieve an abandonment of a mineral interest in most circumstances. Conversely, severed mineral owners have gained important rights to claim title to mineral interests that were previously thought to be abandoned.

While *Corban* was only one in a series of opinions, the subsequent decisions relating to the Ohio Dormant Mineral Act on Thursday were rendered almost exclusive on the reasoning contained in *Corban*. From the producer’s perspective, the *Corban* decision clarifies many open title issues that prevented them, in many cases, from proceeding with development. Producers now will be able to ensure that they have valid lease rights from the true owner of the minerals, as the 2006 Act contains a notice procedure that will enable the true owners of the mineral rights to be determined. Producers may now also take steps to cure title deficiency questions that were unanswered prior to the *Corban* ruling. Also, while producers may have claims that they have adversely possessed minerals by producing them for over 21-years, many producers may find themselves facing claims filed by severed mineral interest holders who may now own rights to minerals that were previously believed to be abandoned.

¹ 143 Ohio St.3d 293.

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