

Ohio Supreme Court Rules on Beck Energy Lease Validity Cases

On January 21, 2016, the Ohio Supreme Court issued a decision affecting the minerals rights of hundreds of landowners in Monroe County who leased with Beck Energy: *State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*. The decision actually resolved two cases that the Ohio Supreme Court consolidated on appeal, *Hustack v. Beck Energy Corp.*, an appeal from the holding of the Seventh District Court of Appeals, and *State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*, a mandamus action suing the Seventh District Court of Appeals for issuing a tolling order the Seventh District granted in the *Hustack* case while it was on appeal.

In the *Hustack* case, the Court, as expected, held that Beck's Form G&T (83) lease was not a perpetual lease since the provision stating that the lease would last for a term of ten years "and so much longer thereafter as oil and gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee" required the Lessee to drill a producing well within the primary lease term in order to hold the lease.

The Court also denied the relief sought in the mandamus action, *State ex rel. Claugus Family Farm, L.P. v. Seventh Dist. Court of Appeals*, in which Claugus Family Farm was asking for an injunction against the Seventh District Court of Appeals from enforcing an order it issued which tolled the primary term of all Beck Energy undrilled leases in Monroe County as of October 1, 2012 (the date that the *Hustack* appeal was first filed). The Court held that such an injunction was not warranted because Claugus Family Farm could have intervened in the appeal of the *Hustack* case after the tolling order was issued, but chose not to. As a result of this failure, Claugus had failed to meet the burden of establishing that it had no other remedy at law.

Finally, and significantly, the Ohio Supreme Court refused to toll the primary term of undrilled Beck Energy leases in Monroe County from January 28, 2015, to the date of the Court's decision, meaning that the ten-year primary term of these leases began to run again on January 28, 2015, the date the Seventh District's tolling order expired.

While these two cases are incredibly complex in their underlying procedural actions, the effect of this decision is pretty straightforward: Landowners who signed Form G&T (83) leases with Beck Energy in Monroe County are still bound to those leases. However, if the primary term of these leases expired on or after October 1, 2012, that primary term has now been automatically extended for an additional 849 days (nearly two years and four months). Affected Monroe County landowners should review their undrilled Beck Energy leases and make note of the new expiration date. Once that date passes without drilling operations being conducted, these landowners likely will have claims against Beck Energy to invalidate their undrilled lease and may pursue more lucrative leases with other producers.

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