

Court rulings could impact Dormant Mineral Act

By David J. Wigham | Attorney Published: May 11, 2016 12:52 PM



1 of 1 Photos |

Over the recent years, I have written several articles regarding the ongoing litigation over the Ohio Dormant Mineral Act ("DMA"). The legislature enacted the original version of the DMA in 1989 (referred to as the "1989 DMA") to allow for the abandonment of old unused severed mineral interests (other than coal) and to automatically vest them in the owner of the surface of the property.

For most surface owners, the filing of a quiet title action based on the 1989 DMA is the only reliable method for clearing title to their mineral rights from old mineral severances. Nevertheless, almost all of the legal issues surrounding the 1989 DMA remain pending before the Ohio Supreme Court, and most DMA cases pending before Ohio's trial courts are stayed. Based on recent events, however, this will likely change soon.

On February 10, 2016, the Supreme Court of Ohio lifted their stay, *sua sponte*, on a case known as *Tribett v. Shepherd*. The Ohio Supreme Court originally issued the stay to hold off making a decision in *Tribett* pending the Court's decision in *Walker v. Shondrick-Nau* and a series of other 1989 DMA cases. The original stay in *Tribett* was not surprising, since most of the legal issues in *Tribett* were essentially the same as other cases relating to the 1989 DMA already before the Court, including *Walker*. Two of the legal issues in *Tribett*, however, had yet to come before the Court in other 1989 DMA cases: (1) whether the 1989 DMA is constitutional; and (2) whether a 1989 DMA claim

is subject to a 21-year statute of limitations.

While seemingly insignificant, the Ohio Supreme Court's decision to lift the stay on Tribett strongly suggests that it may be planning to file a consolidated opinion, or series of opinions, resolving all of the major legal issues currently before the Ohio Supreme Court involving the 1989 DMA. Why would the Court lift the stay and request briefing on the two unique issues in Tribett if it planned to reverse Walker (because if Walker is reversed, then Tribett becomes moot)? Such rulings could spell disaster for surface owners or severed mineral holders, depending on how the Ohio Supreme Court rules.

In litigation involving "all-or-nothing" outcomes, parties usually try to settle to avoid the risk of receiving nothing. To date, however, very few 1989 DMA cases have settled, largely as a result of attorneys and their clients taking a "wait and see approach."

Surprisingly, many surface owners and severed mineral holders have, sometimes on the advice of counsel, failed to investigate their legal options on the theory that they could afford to wait until the Ohio Supreme Court rules on all of the legal issues. While this "wait and see" approach may at one time have had some logic (when the Ohio Supreme Court seemed to be leaning towards a series of piecemeal decisions), this approach should be perhaps reconsidered. The Ohio Supreme Court will likely be issuing a sweeping ruling soon, given the number of 1989 DMA cases and issues pending before it. Once it rules, many surface or severed mineral owners could lose all of their claims to valuable mineral rights under the 1989 DMA, depending on which way the decision falls. Consequently, any Ohio surface owner or severed mineral holder who has waited to assert their claim should seek and retain trustworthy, competent legal counsel, and investigate their options, including the possibility of settlement in advance of the long-awaited 1989 DMA rulings. If not, they could be left with nothing after the Ohio Supreme Court rules.

No one can predict how the Ohio Supreme Court will ultimately interpret the 1989 DMA, but rest assured, a decision in Walker and other cases currently pending before the Ohio Supreme Court will likely result in clear winners and losers. Because no one can guarantee who will win and who will lose, those who are risk-averse should avoid rolling the dice with assets that could easily exceed of a million dollars. Competent oil and gas counsel should be able to steer you in the right direction.

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