Severed Mineral Owners to Face Legal Hurdles

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On September 15, 2016, the Supreme Court of Ohio issued its long awaited decision in Corban v. Chesapeake Exploration, LLC, 2016-Ohio-5796, holding that the 1989 version of the Ohio Dormant Minerals Act ("1989 DMA") could only be relied upon by surface owners in cases brought before June 30, 2006. In Corban, the Court also held that the 1989 DMA was nothing more than an evidentiary mechanism that assisted in proving a claim for abandonment of minerals and did not automatically abandon and vest ownership of severed mineral rights in the surface owners at that time. As a result, since the 2006 version of the Ohio Dormant Minerals Act ("2006 DMA") added a mandatory statutory notice procedure in all abandonment cases, the 1989 DMA became inapplicable to new cases against severed mineral interest holders.

For many severed mineral interest owners, Corban was considered to be the end of a long and grueling process that cleared the way to allow mineral owners to lease their mineral rights and thereby receive lucrative bonus and royalty payments from oil and gas producers. Unfortunately, many severed mineral interest owners are finding that producers are still unwilling to recognize their mineral claims short of a court order entered in a declaratory judgment lawsuit or a settlement with the surface owner. This situation has resulted in significant confusion and frustration for mineral interest owners who had expected an end to their struggles following Corban.

In the wake of Corban, some severed mineral interest owners are finding that, before they can lease their minerals and receive bonus and royalty payments, they must take certain legal actions, including: (1) filing estate proceedings or other documents showing that they are the true heirs who inherited the severed mineral interest, (2) clearing off faulty abandonment claims filed by surface owners under the 2006 DMA and otherwise establishing ownership to the minerals via litigation, and (3) contesting surface owner claims, such as Marketable Title Act claims or claims that the 2006 DMA, as interpreted in Corban, violates the U.S. Constitution.

Until recently, many severed mineral interest owners never knew that they had inherited mineral interests in Southeast Ohio. Not surprisingly, these owners are frequently finding that the estate of the individuals who passed these severed interests on failed to adequately document the transfer of the severed mineral interests to the next generation. Without this documentation, many producers are unwilling to recognize current mineral ownership since outstanding and unknown heirs may still have a claim.

Similarly, some producers are requiring that (likely) faulty 2006 DMA abandonment proceedings be voided and declared invalid in a lawsuit before those producers will make payments to severed mineral interest owners. The 2006 DMA abandonment procedure is difficult for surface owners to accomplish and easy for severed mineral owners to defeat. Under the 2006 DMA, a surface owner must locate the current "holders" or owners of a severed mineral interest and attempt to notify those holders by certificated mail, return receipt requested, at their last known address. If notice cannot be completed by certified mail, the surface owners must then serve notice by publication. If even one severed mineral interest owner comes forward and files an Affidavit of Preservation, the surface owner's abandonment fails as to all mineral interest owners.

Due to the high likelihood that severed mineral interest owners would respond, many surface owners only performed a portion of the required steps under the 2006 DMA. Importantly, those surface owners failed to do a search of the county records, including probate records, to locate the last known address of the severed mineral interest owners. As a result, severed mineral interest owners did not receive adequate notice. While these abandonment proceedings are invalid, removing them can be a time consuming process that requires additional legal proceedings.

Finally, while Corban, and the string of cases decided in its wake, were expected to eliminate legal proceedings under the 1989 DMA, many severed mineral interest holders are finding that some surface owners are not giving up easily. One of the cases on the 1989 DMA

decided by the Ohio Supreme Court in the wake of Corban was Walker v. Shondrick-Nau, 2016-Ohio-5793. On December 14, 2016, counsel for the surface owner, Jon Walker, filed a petition to the Supreme Court of the United States claiming that the 2006 DMA, as interpreted by the Ohio Supreme Court, unconstitutionally infringed on their client's federal constitutional rights by failing to provide adequate notice before eliminating the conclusive evidentiary mechanism for abandonment.

Similarly, many Ohio severed mineral interest holders whose cases remained pending at the trial level have found that surface owners are now seeking to amend their complaints to include similar claims. Importantly, as a result of these claims, some producers still refuse to make payments to severed mineral interest owners even when those owners have already obtained quiet title judgments against the surface owners unless those producers were joined in the underlying court cases. Situations like these highlight the importance of following proper procedures and joining all parties claiming an interest in the mineral estate in the course of litigation.

In short, even after Corban, severed mineral interest owners in Ohio continue to face significant hurdles in order to obtain recognition of their mineral interests by producers. Critically, these additional hurdles highlight the importance of retaining experienced oil and gas counsel to follow proper procedures and practices when clearing title to severed mineral interests. Unless these procedures and practices were followed, many severed mineral interest owners are finding that, even after Corban, producers are unwilling to make bonus and royalty payments.

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