Ohio Supreme Court issues long-awaited decision on Dormant Mineral Act

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The Ohio Supreme Court finally issued its decision on whether the 1989 version of the Dormant Mineral Act ("DMA") was self-executing. Interpreting the 1989 DMA as narrowly as possible, the Court held that the 1989 DMA was not self-executing and required a surface owner to bring a quiet title action to obtain a judicial decree that a severed mineral interest had been abandoned and reunited with the surface owner. Additionally, the Court ruled that the 2006 DMA applies to all claims asserted by surface owners after June 30, 2006.

As a refresher, the 1989 DMA stated that "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 enumerated savings events] applies" (emphasis added).

In Corban, the Court focused its decision on the fact that the DMA used "deemed" and did not use the word "extinguish" and did not declare the severed mineral interests "null and void." The Court spent several paragraphs examining the meaning of the word deem and concluding that "deem" merely created a conclusive presumption that the severed mineral interest was abandoned. Their theory was that the Ohio General Assembly used the 1989 DMA to create this conclusive presumption to be used only as an evidentiary device in litigation and that this was done to remedy the difficulties faced by a surface owner seeking to quiet title to the mineral estate.

As pointed out by Justice Pfeifer (Justice O'Neill joined) in the dissenting opinion, some in the Industry believe that the Court judicially modified the 1989 DMA under the guise of interpretation. Those critical of the decision point out that the majority, while focusing on "deemed abandoned" ignored the second half of the underlined portion of the 1989 DMA by never discussing the term "vested." A vested right is "complete, consummated and subject to involuntary divestiture only upon due process of law" and that a right is vested when it "so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent." Additionally, the 2006 DMA continues to use the phrase "vested in the owner of the surface." The 2006 DMA creates the notice process that a surface owner must first complete before the severed mineral interest "be deemed abandoned and vested in the owner of the surface . . ." ORC 5301.56 (H) would seem to answer any challenge that a surface owner would also have to file a quiet title action under the 2006 DMA ("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"), but the Supreme Court may again hesitate to extinguish an interest without judicial proceeding.

In his dissent, Justice Pfeifer also pointed out that Ohio did not enact its DMA until after the United States Supreme Court upheld the constitutionality of Indiana's DMA in Texaco, Inc. v. Short. By holding that the 1989 DMA was not self-executing and reversing two decades worth of case-law and common practice, the Ohio Supreme Court virtually approved a taking of the mineral rights that many surface owners thought they rightfully owned. He argued that applying the requirements of the 2006 DMA to surface owners who obtained vested mineral rights under the 1989 DMA implements an unconstitutionally retroactive law, and that in attempting to avoid addressing the Ohio Constitutional challenge to the 1989 DMA, the Ohio Supreme Court created a Constitutional issue under the 2006 DMA by impairing substantive vested rights.

The 1989 DMA was enacted to help clear title and promote the development of oil and gas. Following these Supreme Court decisions, title is anything but clear, and surface owners and the oil and gas industry will have to scramble to track years of intestate succession for reservations thought to have been terminated through the 1989 DMA. Surface owners will now, at the very least, have to fulfill the requirements of the 2006 DMA in order to re-vest the oil and gas in themselves. Expect a new wave of challenges to the Court's decision by surface owners. Additionally, with the incoming tsunami of surface owners attempting to complete the requirements of the 2006 DMA, expect a line of cases soon regarding the 2006 DMA and what efforts are required by surface owners before service of notice by publication is permitted. Everyone in the industry and both landowners and mineral owners will be united in seeking guidance and adjudication on these new issues from the courts.