

Ohio Dormant Mineral Act decision appealed to US Supreme Court



Jeffrey R. Huntsberger, Michael W. Wise, William Beckley | Tuesday, December 20, 2016

Many hoped the Ohio Supreme Court's decision in *Corban v. Chesapeake Exploration, L.L.C.* would bring some certainty to the status of the law in the Utica Shale play. Instead, it appears to have created more questions – some of which have now been posed to the U.S. Supreme Court.

The Ohio Supreme Court decision in *Walker v. Shondrick-Nau* has been appealed to the U.S. Supreme Court. (--- Ohio St.3d ----, 2016-Ohio-5793, --- N.E.3d ----) In *Walker*, the Ohio Supreme Court held that a claim to preserve a mineral interest filed within 60 days of notice of intent to declare the interest abandoned was sufficient to preserve that interest. In so holding, the court relied on its contemporaneous decision in *Corban*, where it held that the 1989 version of the Dormant Mineral Act (DMA) was not self-executing, and that the 2006 version of the DMA applies to all claims asserted after June 30, 2006.

The Ohio Supreme Court's decision reversed the 7th District Court of Appeals, which held that the 1989 DMA was self-executing, and therefore the mineral interest merged with the surface on March 22, 1992. (*Walker v. Shondrick-Nau*, 7th Dist. Jefferson No. 13NO402, 2014-Ohio-1499)

The petition for writ of certiorari filed by Walker presents two questions for review:

1. When a property interest has vested pursuant to a lawful statutory enactment of a state legislature, does the *Due Process Clause* to the *Federal Constitution* preclude the retroactive application of a later-enacted, statutory amendment which destroys such interest?
2. When a property interest, vested pursuant to a lawful statutory enactment of a state legislature, has been conveyed by contract in the form of a deed of conveyance, does the *Contracts Clause* to the *Federal Constitution* preclude the retroactive application of a later-enacted, statutory amendment which destroys such interest?

Notably, the Ohio Supreme Court in *Corban* found that surface owners were not vested with a property interest under the 1989 DMA, but rather they merely possessed a conclusive presumption of abandonment of the minerals. Thus, the court held that, "the conclusive presumption of abandonment was only an evidentiary device," and "evidentiary rules (such as the conclusive presumption established by the 1989 law) are procedural in nature and therefore changing them does not alter a vested substantive right." The U.S. Supreme Court's determination on whether to grant certiorari could well hinge on whether it makes the same distinction.

The interpretation and application of the DMA is one of the most important considerations for the oil and gas industry when operating in Ohio. The *Corban* decision dramatically swung the interpretation of the DMA in favor of the owners of ancient mineral severances. If the U.S. Supreme Court determines that the 1989 DMA automatically vested surface owners with a property right, we will see an equally seismic shift back to the benefit of the surface owners.

The response to the petition is due by Jan. 18, 2017.

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