

Quieting title in a volatile mineral production economy

Landowners, oil and natural gas producers, royalty interest owners, and their attorneys are awaiting several Ohio Supreme Court decisions that taken together will profoundly impact Ohio's 21st century energy production industry and the rights of all interested parties. The leading cases (Corban v. Chesapeake Exploration LLC and Walker v. Shondrick-Nau, among others) involve the applicability of Ohio's Marketable Title Act (the "MTA", RC 5301.47, et seq.) and two different versions of Ohio's Dormant Mineral Act (the "DMA", RC 5301.56) to the rights of all interested parties. Until these cases are resolved, attorneys working to resolve competing claims on subsurface mineral interests will be operating in a most uncertain legal environment.



William D. Fergus Jr.
Hoffinger Stevenson



Stephen A. McCoy
Hoffinger Stevenson

To better understand the complex issues involved and the stakes for the interested parties, consider the following hypothetical situation: Harry Homeowner, who owns 100 acres in rural eastern Ohio, is approached by Larry Landman to lease Homeowner's land for oil and gas exploration and extraction. Landman offers Homeowner thousands of dollars per acre as a signing bonus and assures Homeowner that he will soon become a millionaire as a result of all the production and bonuses to follow. However, as many other landowners in Ohio have recently discovered, Homeowner does not actually own most of the minerals under his land and the reality of the local county records, again, rears its dream-crushing head. Larry Landman encour-

ages Harry Homeowner to contact an attorney and tells Homeowner that no payments will be forthcoming until all of these title issues are resolved.

Upon accepting the case, Homeowner's attorney will be faced with complex legal issues. Homeowner's case involves many of the questions currently before the Supreme Court. For example, are royalty interests realty or personality? If the latter (as existing case law holds), how are the interests created, secured, and/or extinguished? Does the MTA apply to mineral interests, or is it superseded by the DMA?

Even when the Supreme Court provides answers to these and other legal questions, land owners and legal practitioners will be faced with some potentially vexing practical issues. Most interest holders will find that many oil

and gas producers are unwilling to pay lease payments and royalties until a court has resolved potentially conflicting claims. Expensive, time consuming public records searches are needed to fully determine the rights of the various interest holders.

Activity associated with mineral interest production has receded in the wake of the precipitous worldwide decline in oil and natural gas prices over the last two years. Hopefully, this pause in production activity will allow the courts to clarify the rights of the various industry stakeholders before the markets rebound and productive activity booms once again.

This article is intended solely to provide broad, general information, not legal advice. Readers should seek advice from a licensed attorney with regard to any specific legal issues. Statements or opinions expressed are those of the author and do not necessarily reflect those of the Columbus Bar Association, its officers, board, or staff.

Ohio wind farms see increase in project authorizations despite legislative restrictions

Ohio ranks far below other states in the number of clean energy wind farms. Only two Ohio wind farms have begun operation since 2012, Blue Creek, a 300 MW farm owned and operated by Iberdrola Renewables and the Timber Road 99 MW wind farm owned and operated by EDP Renewables. Other wind farms have not been built, even though the Ohio Power Siting Commission has authorized the construction and operation of 12 windfarms since 2009.



Sally W. Bloomfield
Bricker & Eckler

make it difficult to site turbines in a large project area.

Recently, however, there has been an uptick in the number of projects that are already authorized to be built. The Ohio Power Siting Board has authorized amendments for newer turbines and developers appear to be prepared to construct in the near future. Most plan to take advantage of the federal tax credits which decrease in size each year in the future. In addition, the cost of the turbines has declined, making wind developments more economic.

This article is intended solely to provide broad, general information, not legal advice. Readers should seek advice from a licensed attorney with regard to any specific legal issues. Statements or opinions expressed are those of the author and do not necessarily reflect those of the Columbus Bar Association, its officers, board, or staff.

One of the reasons is that the Ohio General Assembly has passed legislation that restricts their economics by setting a freeze on the amount of renewable power electric companies must purchase. It also passed successively more restrictive wind farm amendments in the past five years, increasing the length of turbine setbacks, first measured from residences and more recently, from property lines. These constraints

ENERGY LAW AROUND THE BAR

The Columbus Bar's Energy Law Committee keeps attorneys updated on energy law and its intersecting areas, including state and federal regulatory practice, administrative law, and environmental law.

Dylan Borchers, of Bricker & Eckler, is set to begin his second year as chair of the Energy Law Committee. Borchers has been published by both the Ohio and American Bar Associations regarding energy law.

Bricker & Eckler provides a diverse range of legal services, with six Ohio locations. Borchers practices in the firm's Regulated Industries Practice Group, focusing on energy infrastructure development, regulatory proceedings and energy policy.

Looking for an
oil and gas lease
attorney?

Visit the directory @
CBALAW.ORG

Attorney succession planning helps protect clients during unexpected circumstances

The Columbus Bar recently implemented an Advance Succession Registry, helping attorneys to plan for unforeseen circumstances. Although there is no law or rule in effect in Ohio that requires an attorney to participate in a succession registry, the need to have a plan is discussed in the Ohio Rules of Professional Conduct.

The registry, open to all Ohio-licensed attorneys free of charge, allows participants to designate another Ohio-licensed attorney to help clients in a limited capacity in the case of the death, disability or disbarment of the registering attorney. The designated attorney would be able to contact clients,

obtain instructions on transferring files and obtain time extensions when needed. The registry does not give the designated attorney the authority to wind down a law practice, provide clients with a final accounting of fees and expenses, collect fees, access client trust account funds or other bank accounts or liquidate or sell a law practice.

The program is free of charge and open to all Ohio-licensed attorneys. Registration forms are now being accepted. Questions on the Advance Succession Registry can be directed to Lori Brown at (614) 340-2053 or lori@cbalaw.org.

LAWYERS QUARTERLY



Summer 2016 out now
Topic: Technology in the
Lawyer's Life

Columbus Bar members received their last printed issue of *Columbus Bar Lawyers Quarterly*. For members, future issues will be delivered via email. We'll still be producing 4 issues a year, with all the legal updates and professional development content you've come to expect. www.cbalaw.org