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-Hau, among others) involve the applicability of Ohio’s Marketable Title Act (the “MTA,” RC §3101.47, et seq.) and two different versions of Ohio’s Dormant Mineral Act (the “DMA,” RC §3801.56) 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.

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 330 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.

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 setback, first measured from residences and more recently, from property lines. These constraints 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 development more economic.

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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 encourages 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 real or personal? 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. Experienced, 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.