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# Ohio Oil & Gas Title in Focus

Recent Developments in Instrument Interpretations, the DMA/MTA, and Leasing of State-Owned Land

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# Overview

- Deed construction & interpretation
- Assignment interpretations
- Dormant Mineral Act (DMA)
- Marketable Title Act (MTA)
- Leasing of State-Owned Land

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# Instrument Interpretations

# Ohio's Default Rule for Deed Construction: R.C. § 5302.04

## Ohio Revised Code § 5302.04 | All interest conveyed unless otherwise stated.

> "In a conveyance of real estate or any interest therein, all rights, easements, privileges, and appurtenances belonging to the granted estate shall be included in the conveyance, unless the contrary is stated in the deed, and it is unnecessary to enumerate or mention them either generally or specifically."

## Importance

- Presumption: all associated interests are included unless expressly excluded
- Applies to surface, mineral estates, and oil and gas leasehold interests

# The Long Point Energy Case: No. 23-3680, 2025 U.S. App. LEXIS 617 (6th Cir. Jan. 10, 2025).

**Facts:** In 1948, a deed conveyed two tracts (165 and 80 acres) with a single paragraph at the end reserving oil and gas rights. The grantor's heirs later conveyed these reserved rights to Long Point.

> *"Excepting a right of way to Belmont Electric Cooperative Inc. for an electric power line and excepting a right of way to the Citizens Telephone Company for a telephone line and excepting all of the **oil and gas** and the right of leasing the same, together with customary surface privileges."* (Emphasis added)

**Issue:** Did the oil and gas reservation apply to both tracts or only to the second (80-acre) tract?

**Holding:** The Sixth Circuit held the reservation applied to both tracts, reversing summary judgment.

# Warranty Deed

Know All Men by These Presents: That Bertha E. Freudiger

of the Town of Seville County of Medina and State of Ohio

in consideration of the sum of Ten Dollars ($10.00) and other valuable considerations

to her paid by Glenn R. Perkins and Ruth E. Perkins

of R.F.D. #1 Alledonia County of Belmont, and State of Ohio

the receipt whereof is hereby acknowledged, do hereby GRANT, BARGAIN, SELL and CONVEY to the said Glenn R. Perkins and Ruth E. Perkins their heirs and assigns forever, the following REAL ESTATE, situated in the County of Belmont in the State of Ohio and in the Township of Washington and bounded and described as follows:

First Tract:

Being a part of Section Twenty-five (25) Township Five (5) Range Four (4) and beginning for the same at a stone marked A at the Northeast corner of said Section 25; thence West with North line of said Section 25, 10 rods to a stone in run; thence up said run, following the road making the middle of the road, the line, south 61.1/2° West 18.16 rods; thence South 68° West 11.28 rods to a small drain; thence North 74° West 23.80 rods; thence South 88° West 16 rods; thence North 49.½° West 9.88 rods to a stone in the North Section line, thence West 72.8 feet with North Section line to a stone at a wild cherry tree, thence South with Elizabeth Riley line about 160 rods to a stone; thence East 4 rods and 4 feet to a run; thence South about 160 rods to the south line of said Section 25; thence East 80 rods with the South line of said Section 25 to the South-east corner of said Section 25; thence North about 320 rods with eastern line of said Section 25 to the place of beginning, containing 165 acres more or less.

Excepting from all of the above tract of land the No. 8 or Pittsburg vein of coal which has heretofore been conveyed by deed by Mathias and Ivey Noffsinger to Peter H. Hitchcock and Wm. D. Reese, together with mining rights and privileges conveyed by said deed of conveyance.

Second Tract:

Being the West half of the South-west quarter of Section Nineteen (19) Township Five (5) Range Four (4) in the district of lands subject to sale at Marietta, Ohio, containing 80 acres more or less.

Excepting the six foot seam of coal together with mining rights and privileges conveyed by the coal deed.

Excepting a right of way to Belmont Electric Cooperative Inc. for an electric power line and excepting a right of way to the Citizens Telephone Company for a telephone line and excepting all of the oil and gas and the right of leasing the same, together with customary surface privileges.

The property hereby conveyed being the same as that described as first parcel, although the school lot was therein excepted in deed of Vernon E. Freudiger, Executor of the Will of Martha J. Dermott, deceased, dated October 31, 1947, recorded in Volume 373, page 127 of the Record of Deeds of Belmont County. The school lot excepted in said Executors Deed was by lease recorded in Volume 7, page 456, which has expired and it is therefore not excepted from this conveyance.

TO HAVE AND TO HOLD said premises, with all the privileges and appurtenances thereunto belonging, to the said Glenn R. Perkins and Ruth E. Perkins, their heirs and assigns forever.

# The Lucky Land Case: 134 F.4th 868 (6th Cir. 2025)

This case involved the interpretation of severance deeds that reserved "any and all oil, petroleum and natural gas" along with rights to enter the land for extraction.

The central issue was whether the operator's rights to drill included the right to drill from Lucky Land's surface out to adjacent properties as well.

The Sixth Circuit held that the deeds did not expressly grant such rights and that horizontal drilling from neighboring lands was not a "necessary and proper" right contemplated by the original parties. The court concluded that, absent explicit language, the reservation did not extend to off-site subsurface access.

Under Ohio law, when the mineral and surface estates are severed:

- The **mineral owner (and their lessee)** has only the right to **reasonably use the surface** for **developing the minerals beneath that specific tract**.
- That **implied surface use right does not extend** to drilling for or producing minerals under **adjacent tracts**.

# *Mineral Dev., Inc. v. SWN Prod.* (Ohio), LLC, 2025-Ohio-395 (7th Dist.).

**Facts:**

- A 1918 deed reserved a 1/2 royalty interest "from future wells drilled **on these premises.**"
- In 2012, the current landowner entered an oil and gas lease that allowed pooling and unitization of the land.
- Four horizontal wells were drilled within pooled units, with the wellbores of three wells passing beneath the land at issue, and the fourth well not traversing underneath at all.
- Wellhead located on surface of different premises.
- The successor to the 1918 royalty interest sought to receive royalties from production of all four wells.

**Issue 1 (Traversing Wells):** Does the reservation apply to the 3 horizontal wells whose laterals traverse beneath the property, even if the surface location is off-site?

**Issue 2 (Non-Traversing Wells):** Does that same reservation extend to a horizontal well within a pooled unit where the wellbore does not pass beneath the property, but production is allocated by unit acreage?

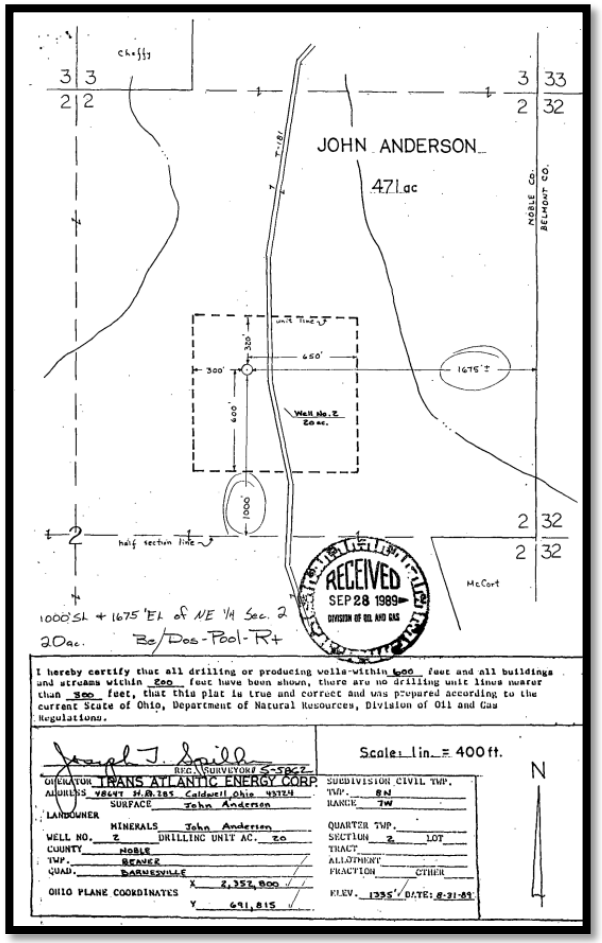
**Holding:** Yes, to both.

# *Hogue v. PP&G Oil Co., LLC*, 2024-Ohio-2938
# *Sabre Energy Corp. v. Gulfport Energy Corp.*, 2024 U.S. App. LEXIS 20143

Interpretation of leasehold assignments — did the assignment include deep rights?

***Hogue* — 2007** Assignment of 2.5% Working Interest in certain wells and "the related 20-acre drill site unit."

***Sabre* — 1993** Assignment of ORRI in 25 vertical shallow wells. Bottom of exhibit provided, "This assignment of overriding royalty interest pertains to the aforementioned wells and the drilling units associated therewith and does not extend to the undrilled acreage associated with the lease referenced and/or pooling agreement."



# Common Interpretive Issues

## Scope

- Does the assignment language include deep rights (Utica/Point Pleasant)?
- Is an interest in a “drill site unit” inherently depth-limited?

## Regulatory context

- Interpretation must consider Ohio Admin. Code 1501:9-1-04(C) in effect ***at the time of execution***
  - Less than 4,000 feet, at least a 20-acre drilling unit
  - Greater than 4,000 feet, at least a 40-acre drilling unit

## Extrinsic evidence and ambiguity

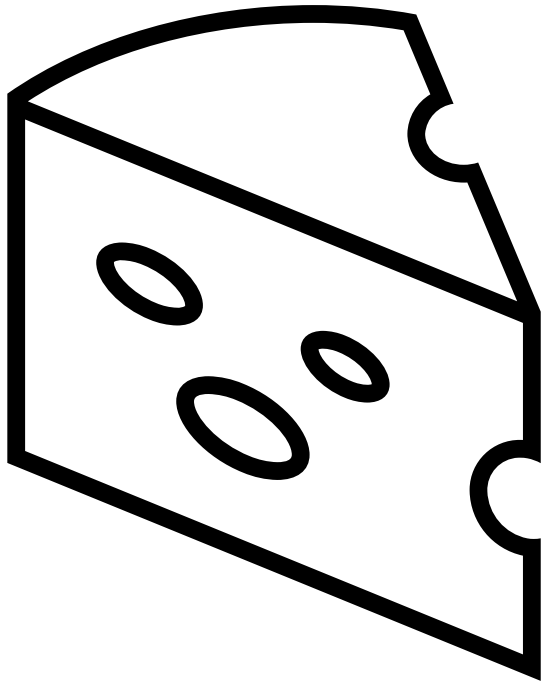
- Is the term “drill site unit” ambiguous?
- Industry usage?

# Holdings & Takeaways

***Hogue*** — "The 20-acre drill site unit contained a 4,000-foot depth limitation based on the Ohio Administrative Code... the language of the Assignment is unambiguous and does not convey deep rights." (¶ 61) (emphasis added)

***Sabre*** — "Sabre Energy's ORRIs in drilling units smaller than 40 acres do not attach to the Utica Shale/Point Pleasant formation." (p. 6) (emphasis added)

- → These kids of Swiss cheese lease chains with acreage/depth limited assignments are tricky to interpret.
- → Rule of thumb: If a leasehold interest is assigned in a well with a 20-acre drilling unit, pay close attention to the language used, and the administrative code proscribing minimum drilling unit acreage for the well in effect at the time the assignment was executed.



# Ohio Dormant Mineral Act (DMA)

## *Cardinal Minerals, LLC v. Miller*, 2024-Ohio-2133 (7th Dist. 2024), jurisdiction declined, 2024-Ohio-5104; *Cardinal Minerals, LLC v. Miller*, 2024-Ohio-3121, (7th Dist. 2024), jurisdiction declined, 2024-Ohio-5340

**Who has standing to challenge abandonment of a mineral interest under the Ohio Dormant Mineral Act ("DMA")?** Ohio Rev. Code § 5301.56.

Familiar DMA fact pattern:

- Oil and gas estate reserved a long time ago (Pfalzgraf interest)
- Surface owners (Millers) pursued abandonment under the DMA in 2013
  - Surface owner's title search identified Pfalzgraf heirs and last known addresses, but notice served by publication only
  - Surface owners completed the DMA process by filing notice of failure to file, then leased oil and gas estate
- Wells were drilled
- 8 years later, Cardinal Minerals, LLC purchased the interest + cause of action from heirs, and sued the Millers and operator challenging the DMA filings and lease

# A Quick DMA Refresher…

Before mineral interest vests with the surface owner, the surface owner must:

1. Serve notice on each holder of intent to declare the mineral interest abandoned.
2. At least 30 but no later than 60 days after the notice is served, file an affidavit of abandonment in the county recorder's office where the land is located.

In response, the Holder can file of record either (1) a claim to preserve the interest; or (2) an affidavit identifying a savings event within 60 days of the date notice was served, which will preserve the interest from abandonment.

If the Holder does nothing within the 60-day period, the surface owner can then file a Notice of Failure to File, thereby vesting title to the mineral interest in the surface owner.

Ohio Rev. Code § 5301.56(H)(2): *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.*

# Holdings & Takeaways

**Key issues:** Does Cardinal Minerals, LLC have standing to challenge the DMA filings for defective notice? What interest, if any, did it purchase from the Pfalzgraf heirs?

**Holding:** Only the record holder of the mineral interest at the time the DMA process is completed, and not a subsequent purchaser, has standing to challenge the abandonment process.

**Takeaways:**

1. A purchaser who acquires a mineral interest subject to completed DMA filings acquires nothing, because under Ohio Rev. Code § 5301.56(H)(2)(c), that interest was deemed abandoned and vested with the surface estate upon completion of the DMA process.
2. Third parties—including oil and gas operators when leasing—may rely on the completion of the DMA process, despite apparent irregularities in recorded filings, to credit ownership of the mineral interest as deemed abandoned and vested with the surface owner, unless the mineral holder has obtained a judgment declaring the abandonment invalid.

For more detail, visit: The Future of Ohio Mineral Transactions

# Ohio Marketable Title Act (MTA)

# Ohio Marketable Title Act (MTA)

**Ohio Revised Code § 5301.47, *et seq*.**

"[O]perates to extinguish such interests and claims, existing prior to the effective date of the root of title." Ohio Rev. Code § 5301.47(A).

**Root of Title**

"That conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined." Ohio Rev. Code § 5301.47(E).

# Ohio Marketable Title Act — Exceptions

**Ohio Revised Code § 5301.49(A)**

"All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided that a general reference in such muniments, or any of them, to . . . interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such . . . interest. . . ."

**Ohio Revised Code § 5301.49(D)**

"Any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title or record is started. . . ."

**Title Transaction**

"Any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage." Ohio Rev. Code § 5301.47(F).

# *Crozier v. Pipe Creek Conservancy, L.L.C.*, 2023-Ohio-4297

**Facts:**

- In 1935, a deed conveyed the subject property, but "EXCEPTED AND RESERVED, all the oil & gas rights and privileges on and underlying the above described tract of land."
- The root of title deed contained the following reference: "except*ing* and reserv*ing* all the oil and gas rights and privileges on and underlying the above described tract of land." (Emphasis added)

**Issue:** Whether an almost verbatim repetition of a prior oil and gas reservation was a "general" reference, and thus subject to extinguishment under the Marketable Title Act (MTA).

**Holding:** The reference in the root of title deed was a "general" reference.

> ***"We find that the repetition is vague, as it is subject to two interpretations. The repetition can be read as an original reservation or as a reference to a prior reference."***

# *Crozier v. Pipe Creek Conservancy, L.L.C.* (Cont.)

**Appealed to the Ohio Supreme Court**

- Proposition of law: *"'Root of title' is fixed as that title transaction most recent to be recorded as of a date forty years prior to the time when marketability is being determined."*

**Subsequently dismissed as "improvidently accepted."**

# *Crozier v. Pipe Creek Conservancy, L.L.C.* (Cont.)

**Takeaways:**

- "Vague" references are insufficient to preserve an interest under the MTA.
- Look out for references that are subject to two interpretations:
  - Reference to a prior reservation?
  - New reservation?
- Keep Erickson v. Morrison, 2021-Ohio-746, in mind:
  - Is the reference repeated throughout remainder of chain of title?

# *RL Clark, LLC v. Hammond*, 2024-Ohio-5051

**Facts:**

- 1902 Deed — "excepting the one half (1/2) of the oil and gas royalty."
- Appellants argued that multiple oil and gas leases entered into by the surface owners after the root of title constituted title transactions as to the one-half (1/2) royalty.

**Issue:**

- Whether an exception of "one half (1/2) of the oil and gas royalty" was extinguished under the MTA.
- **Specifically** — Whether oil and gas leases entered into by the surface owners of the subject property constituted title transactions as to the one-half (1/2) royalty.

# *RL Clark, LLC v. Hammond* (Cont.)

**Holding:**

- The one-half (1/2) oil and gas royalty is not preserved because the surface owners' oil and gas leases cannot serve as title transactions for the one-half (1/2) royalty.
- The one-half (1/2) oil and gas royalty is a non-participating royalty interest.
  - "Royalties are distinct from the right to drill for oil and gas." *White Revocable Tr. v. Kemp*, 2023-Ohio-4513, ¶ 29 (7th Dist.).
  - "If a party is trying to prove that a non-participating royalty interest is preserved in the chain of title, a description of that interest must appear in the recorded documents."

**Result:** Oil and gas leases have no relationship to non-participating royalty interests.

# *RL Clark, LLC v. Hammond* (Cont.)

**Takeaways:**

- Bad news for NPRI owners?
- Makes clear that oil and gas leases do not serve as title transactions for affected non-participating royalty interests.
- NPRI owners must take affirmative steps to preserve:
  - Affidavit of preservation
  - Conveyance of interest

# *Claugus Family Farm & Forests, L.P. v. Piatt*, 2025-Ohio-291

**Facts:**

- 1900 Royalty Deed — Conveyed "unto J.T. Craig 3/4 and M.F. Piatt the 1/4 part of the one-half part of their royalties of all the oil and gas. . . ."
- J.T. Craig ¾ Royalty — Multiple estates filed after root of title
- M.F. Piatt ¼ Royalty — No estates filed after root of title

**Issue:** Whether a probated will containing a residuary clause recorded in the county where the property sits constitutes a title transaction under the MTA.

# *Claugus Family Farm & Forests, L.P. v. Piatt* (Cont.)

**Sample Residuary Clause:**

ITEM II. All the residue of my property, both real and personal which I may own or have the right to dispose of at the time of my decease, I hereby give, devise, and bequeath in the

# *Claugus Family Farm & Forests, L.P. v. Piatt* (Cont.)

**Holding:**

- Rejected argument that the probated will was insufficient to preserve because it did not specifically identify the royalty interest.
- Reaffirmed the proposition that a will containing a broad residuary clause (probated in the county where the property is located) constitutes a title transaction.

**Considerations:**

- Preservation of the J.T. Craig interest could not also serve to preserve the M.F. Piatt interest because these are separate and distinct royalty interests, not fractional interests arising from the same royalty.

# *Claugus Family Farm & Forests, L.P. v. Piatt* (Cont.)

**Considerations:**

- Leaves open possibility for title transactions concerning one fractional mineral interest owner to preserve for all other fractional mineral interest owners.
- Probated will with residuary clauses, regardless of how broad, serve as title transactions; probated wills without residuary clauses will not.

# Leasing of State-Owned Land

# Leasing of Ohio Public Lands Overview

- Ohio Oil and Gas Land Management Commission
- Recent nominations, approvals, denials, and bidding
- Case law update
- Practice pointers

# Ohio Oil and Gas Land Management Commission

- Created in 2021 by Ohio legislature to facilitate oil and gas development under public lands through a nomination/bidding process
- Five members appointed by Governor:
  - ODNR Director
  - Two members with oil and gas industry experience
  - One member with expertise in finance/real estate
  - One member representing a statewide environmental/conservation group
- Process: parcels are nominated by submitted a form, 45-day notice and comment period, then a meeting to approve or disapprove

# Nomination Process

- Parcel or parcels are nominated for leasing via form created by Commission
  - Can be submitted either by agency or outside party — basic identifying information for parcel, plat map, and estimated distance from well pad to public land
  - Contact info for nominating party, proposed lease bonus, and fees — all confidential until lessee is selected
- After nomination, 45-day notice period for public comment
- Commission holds meeting to approve or disapprove, considering multiple factors — economic benefit, compatibility with current use, environmental/geologic impact, and objections/additional lease condition recommended by agency
- Bidding process for operators

# Nomination Approvals & Denials

- First nominations acted upon by Commission in November 2023
- Most nominations are approved, either as nominated or with additional conditions
- Reasons for denials:
  - Nomination along State Route 7 was denied because Ohio Dept. of Transportation was not the mineral fee owner for all four of the nominated parcels
  - Disagreement over special lease conditions related to USFWS' Wildlife and Sportfish Restoration Program, whose grant enabled state to purchase the land
  - I-70 nominations were denied because Federal Highway Administration hadn't given express written consent
- Commission could also approve and recommend additional special lease conditions
  - Examples:
    - Hold harmless provisions
    - Additional economic incentive language (e.g., standard royalty is 1/8, but additional economic incentive of 5.5% to function as 18% royalty)

# Case Law Updates

- Recency of Commission's creation = case law and challenges to decisions are limited
- *Parks v. Oil & Gas Land Mgmt. Comm'n*, 2025-Ohio-847 (10th Dist. 2025)
  - Appeal from Franklin County Court of Common Pleas re: Commission's approval on nomination of lands in Salt Fork State Park brought by environmental and conservation groups
  - Common Pleas Court determined that it lacked subject matter jurisdiction, 10th Dist. agreed: "there simply was no order of an agency issued pursuant to an adjudication denying … the issuance or renewal of a license or registration of a licensee, revoking or suspending a license" as required by Ohio law
  - 10th Dist. also determined that plaintiffs lacked standing: plaintiffs contended that they may be harmed in the future by oil and gas development on public lands, and court determined that this was too tenuous to give plaintiffs standing

# Practice Pointers

- Note that Commission is still in its infancy
  - At most recent meeting in May, changes were made to the standard lease form to change primary term from 3 to 5 years
- Be careful when nominating multiple parcels
  - See recent denial because ODOT did not own fee simple mineral rights to **each** of the nominated parcels
- Likelihood of new case law as leasing activity increases
  - In particular, attempts to gain standing on different facts, and/or subject matter jurisdiction for a tract with an executed lease, rather than simply had a nomination approved for bidding
- Be mindful
  - Several of these meetings have been contentious and are widely covered by local and state press, as well as advocacy groups in attendance

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