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Oil & Gas, Real Estate, Solar, Easements/Rights of Way Newsletter – May 2021

In this Issue

Dear Clients and Other Friends,

Please read the **Landowner Alerts** below as they provide information that is likely to directly affect you!

Sincerely,
Emens Wolper Jacobs & Jasin Team
Dick, Bea, Sean, Kelly,
Todd, Cody, Heidi, David,
Chris, Gail, Dawn, and Mandy

Landowner Easement Alert: Landowners, please be wary of utility, pipeline, and other easements! We are very concerned because landowners are signing electric, pipeline, and other easements without obtaining the advice of knowledgeable legal counsel. While the document may be short and the words appear friendly, know that your use of your land will be unnecessarily restricted if you do not get landowner-friendly language.

Landowner Compensation Alert: Ohio House Bill 152 ("H.B. 152") has been proposed in the Ohio General Assembly which seeks to modify Ohio's "force unitization" statute, R.C. 1509.28. Sponsor testimony indicates that R.C. 1509.28 is intended to modernize and streamline the force unitization process and establish predictable timelines for the Ohio Department of Natural Resources. However, H.B. 152 goes far beyond these stated purposes. For more important information on H.B. 152, please see page 2 of this Newsletter.

Landowner Tax Alert: Our Estate Planning and Family Business group is keeping a close watch on proposed federal tax changes, which, if enacted, could come into effect soon. Some of the proposed changes could affect mineral owners and landowners significantly as they look to transition their assets to the next generation. Some of the proposed key changes are:

- Reducing the amount of assets persons can gift during life (tax-free);
- Reducing the amount of assets that can pass tax-free to heirs at death;
- Perhaps most importantly, eliminate the step-up in basis on death and carried

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Please visit our website for Educational Articles
www.ewjjlaw.com

- Do I Need to Avoid Probate?
- Landowner Dangers with Solar Options, Solar Leases and Solar Easements
- Easements and Rights of Way – Landowners Beware!
- Important Differences Between Sale of Oil and Gas Minerals and an Oil and Gas Lease
- Selling Your Mineral Rights – Questions You Should Consider First!
- Separating your Mineral Rights: Remember Real Estate Taxes
- Post-Production Costs: Protecting Landowner Rights
- Oil and Gas Leases and Pipeline Easements - This Time It's Different
- Oil and Gas Considerations When Buying and Selling Farmland
- "Force Pooling" in Ohio: Requiring Non-Consenting Landowner's to Develop Their Oil and Gas Minerals
- "Mineral Rights ARE Different Pipeline Easements and Right of Ways: Protecting Your Rights
- Pipeline Easements: Steps to Protecting Landowner Rights
- Unusual Ohio Oil and Gas Lease Provisions
- Ohio Oil and Gas Conservation Law – The First Ten Years (1965-1975)

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(Cont. from page 1.)
Interest avoidance, including capping tax deferral for realty exchanges (1031s).

If enacted, these changes could significantly limit planning opportunities for landowners to transition wealth to the next generation. We are happy to discuss options which you may wish to take advantage of while they're still available.

LEGISLATIVE UPDATE

Important Legislation Introduced Which May Drastically Reduce Lease Bonus Payments and Royalty Payments: House Bill 152 ("H.B. 152") was introduced on February 23, 2021. If passed, this bill will amend Ohio Revised Code Section 1509.28—Ohio's "force unitization" statute. The sponsors of H.B. 152, claim that its purpose is to streamline the force unitization process and establish predictable timelines. **However,** H.B. 152 also adds or amends other language in R.C. 1509.28 which will likely (1) **drastically reduce** the compensation Ohio landowners receive in force unitization, and (2) allow companies to override certain limitations and restrictions the companies agreed to in leases. By drastically reducing the compensation companies have to pay landowners to remove oil and gas from beneath their property without consent, H.B. 152 eliminates the incentive companies currently have to negotiate leases in good faith in order to avoid having to force unitize property. The result will be landowners receiving significantly lower bonus payments and royalties. The leasing option in H.B. 152 provides that landowners wishing to lease will receive a **12.5% net royalty** and a bonus equal to **75%** of the "**current market rate**." This language incentivizes companies to offer the lowest bonus payments possible in order to reduce the "current market rate." Due to the devastating impact we believe H.B. 152 will likely have, we strongly recommend landowners contact their local state representative and the members of the general assembly set forth below to urge them to oppose H.B. 152 unless it is substantially modified to protect Ohio landowners. If you would like a letter that you can fill out and send to your local state representative and the members of the general assembly set forth below, please contact us and we would be happy to provide one.

Chair of the House Energy and Natural Resources Committee: Representative Jason Stephens - District 93; 77 South High Street, 13th Floor, Columbus, OH 43215; Phone: (614) 466-1366

Vice-Chair of the House Energy and Natural Resources Committee: Representative Brian Stewart - District 78; 77 South High Street, 12th Floor, Columbus, OH 43215; Phone: (614) 466-1464

Other members of the House Energy and Natural Resources Committee can be found at: https://ohiohouse.gov/committees/energy-and-natural-resources.

EMENS WOLPER JACOBS JASIN LAW FIRM LEGAL SERVICES

Our law firm provides numerous legal services related to natural resources including the following:

- **We review, analyze and negotiate new and old oil and gas leases and mineral deeds;**
- **We review, analyze and negotiate solar options, letters of intent, and leases;**
- **We review royalty payments, deductions, and division orders;**
- **We represent landowners in ODNR mandatory unitization proceedings who are being forced unitized;**
- **We review, analyze and negotiate wind farm documents;**
- **We review, analyze and negotiate easements proposed by utilities and municipalities;**
- **We analyze mineral abandonment claims and claims regarding expired leases;**
- **We review, analyze and negotiate water, sand, timber, gravel, and coal rights agreements;**
- **We review, prepare and negotiate real estate deeds, mortgages, notes and liens;**
- **We review, analyze, negotiate sale of minerals and royalties;**
- **We assist with litigation on all of these matters;**
- **We work closely with geologists and engineers to obtain their evaluations of oil, gas, gravel, and sand reserves.**

Our law firm also provides services regarding estate planning, succession planning for family farms and other businesses and purchases and sales of farms and other businesses.

EXPLORATION AND DEVELOPMENT UPDATE

Top 25 Gas Producing Utica Shale Wells in Q4 of 2020: Natural gas production in the Fourth Quarter of 2020 was approximately the same as the Third Quarter of 2020 (only approximately 1.752 Bcf lower). Natural gas production amounted to approximately 586.878 Bcf in the Fourth Quarter of 2020 compared to 588.630 Bcf natural gas production in the Third Quarter of 2020. Ascent Resources – Utica LLC ("Ascent") owns 11 of the top 25 gas-producing wells in the state. More information on these top 25 gas-producing wells can be found below and at http://oilandgas.ohiodnr.gov/production#QUART.

OWNER NAME	COUNTY	TOWNSHIP	WELL NAME
GULFPORT APPALACHIA LLC	BELMONT	PEASE	MCKEEGAN 211723 1A
ASCENT RESOURCES UTICA LLC	HARRISON	GREEN	SHEPORGI GRN HR 3H
EAP OHIO LLC	JEFFERSON	SPRINGFIELD	GND TRUST 2-12-4 1H
EAP OHIO LLC	JEFFERSON	SPRINGFIELD	GND TRUST 2-12-4 5H
GULFPORT APPALACHIA LLC	BELMONT	PULTNEY	SHIMBLE 210284 3B
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN	CONNIE JO E CLR BL 3H
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN	CONNIE JO W CLR BL 1H
EAP OHIO LLC	JEFFERSON	SPRINGFIELD	GND TRUST 2-12-4 3H
ASCENT RESOURCES UTICA LLC	HARRISON	GREEN	SHEPORGI E GRN HR 5H
GULFPORT APPALACHIA LLC	BELMONT	PULTNEY	SHIMBLE 210284 1D
RICE DRILLING D LLC	BELMONT	RICHLAND	BIG TEX SCL6H9
GULFPORT APPALACHIA LLC	BELMONT	PULTNEY	SHIMBLE 210284 4A
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING	PANG NW WHL BL 3H
RICE DRILLING D LLC	BELMONT	RICHLAND	BIG TEX SCL6H5
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING	PANG NE WHL BL 5H
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING	PANG NW WHL BL 1H
EAP OHIO LLC	JEFFERSON	ISLAND CREEK	MAPLE 31-7-2 5H
EAP OHIO LLC	JEFFERSON	ISLAND CREEK	MAPLE 31-7-2 205H
RICE DRILLING D LLC	BELMONT	RICHLAND	BIG TEX SCL6H13
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	BLESSED E RCH BL 9H
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	PACKER N MTP JF 3H
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	BESECE E MTP JF 3H
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	BESECE W MTP JF 1H
GULFPORT APPALACHIA LLC	BELMONT	YORK	CHARLIE 210468 8B
EAP OHIO LLC	JEFFERSON	SPRINGFIELD	GND TRUST 2-12-4 205H

Top 25 Oil Producing Utica Shale Wells in Q4 of 2020: Oil production in the Fourth Quarter of 2020 was 1,087,838 bbl lower than the Third Quarter of 2020. Oil production amounted to 4,625,639 bbl in the Fourth Quarter of 2020 compared to 5,713,477 bbl in the Third Quarter of 2020. Ascent, EAP Ohio, LLC ("EAP"), Utica Resource Operating LLC ("Utica Resource"), Gulfport Appalachia LLC ("Gulfport"), and Eclipse Resources I LP ("Eclipse") own all of the top 25 oil-producing wells in the State. Ascent owns 10, EAP owns 9, Utica Resource owns 3, Gulfport owns 2, and Eclipse owns 1. 13 of the top 25 oil-producing wells are located in Guernsey County, with the remaining 12 in Harrison, Carroll, and Monroe Counties. More information on these top 25 oil-producing wells can be found at http://oilandgas.ohiodnr.gov/production#QUART.

Landowner Groups and Other Ohio Counties Where Emens Wolper Jacobs Jasin Law Has Assisted Landowners

Black River Landowners Association—Lorain County

Central Ohio Landowners Association—Richland and Ashland Counties

Coshocton County Landowners Group—Coshocton and Northeastern Muskingum Counties

Jefferson County Landowners Group—Jefferson County

Mohican Basin Landowners Group—Ashland, Wayne, and Holmes Counties

Muskingum Hills Landowners—Southeastern Muskingum County

Perry County Landowners—Perry County

Resources Land Group—Licking and Southeastern Knox County

Smith Goshen Group—Belmont County

Ashland, Ashtabula, Athens, Brown, Butler, Carroll, Columbiana, Crawford, Defiance, Delaware, Erie, Fayette, Franklin, Fulton, Geauga, Guernsey, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Mahoning, Marion, Meigs, Miami, Monroe, Montgomery, Noble, Preble, Pickaway, Portage, Ross, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Union, Warren, Washington, Wayne, Wood, and others.

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Gulfport Energy Corp. ("Gulfport") Announces Emergence from Chapter 11 Bankruptcy: On Tuesday, May 19, 2021, Gulfport announced that it had successfully completed the steps necessary to emerge from chapter 11 bankruptcy protection. On this date, the United States Bankruptcy Court for the Southern District of Texas, Houston Division, entered an order confirming the bankruptcy plan and granted related relief. As part of its emergence from bankruptcy, it is estimated that Gulfport reduced its outstanding debt to creditors by $1.2 billion. Gulfport retained approximately $853 million in debt, however. In addition, Gulfport announced that its CEO, David M. Wood, and CFO, Quentin Hicks, would be leaving the company. Timothy J. Cutt has been picked to be Gulfport's interim CEO and William "Bill" J. Buese has been picked to be Gulfport's CFO. For more information, see the bankruptcy docket at https://dm.epiq11.com/case/gulfport/info and https://www.oklahoman.com/story/business/energy-resource/2021/05/18/gulfport-energy-out-chapter-11-bankruptcy-new-board-leader/5142737001/.

Chesapeake Energy Corporation ("Chesapeake") Will Replace Current CEO: Chesapeake emerged from chapter 11 bankruptcy around three months ago from the date of this Newsletter. However, the company's CEO, Doug Lawler, was replaced by interim CEO, Mike Wichterich. Chesapeake is currently searching for a permanent replacement. The Wall Street Journal obtained an email directed to Chesapeake employees which stated that Mr. Lawler's departure was "not a reflection of his performance or the result of any action on his part." Chesapeake shed approximately $7.8 billion in debt and cut hundreds of jobs as part of its emergence from bankruptcy. For more information, see THE WALL STREET JOURNAL, Chesapeake CEO Plans to Leave within Days (April 28, 2021).

Chesapeake Announces Program to Produce "Responsibly Sourced" Gas: On April 13, 2021, Chesapeake announced a pilot program where it plans to produce "responsibly sourced" gas by conducting continuous on-site emission monitoring and analyzing operational impacts on water, air, land, and community at certain wellpads in Pennsylvania and Louisiana. Chesapeake's announcement comes shortly after EQT Corporation announced a similar program. Once a "responsibly sourced gas" (RSG) program is certified, the operator may sell the gas at a premium to investors who want to purchase gas which "was produced in a socially responsible way." For more information, see FARM AND DAIRY, Chesapeake Joins EQT in Producing Certified "Responsibly Sourced" Gas (April 22, 2021).

Federal Judge Blocks Oil and Gas Development in the Wayne National Forest: In the January 2020 Edition of this Newsletter, we told readers that the Bureau of Land Management was continuing to lease oil and gas mineral rights in the Wayne National Forest. A news release issued by the Bureau of Land Management stated that the leases (some obtained by Eclipse Resources ("Eclipse")) contain 10-year primary terms and a 12.5% royalty provision. Recently, however, a federal judge blocked development of the minerals in Wayne National Forest because their decision found that the United States Forestry Service "failed to adequately consider the environmental impacts hydraulic fracturing would have on Wayne National Forest." Eclipse has asked that the agencies be able to review the environmental impacts without vacating the existing oil and gas leases due to Eclipse's initial investment in the leases. The decision comes shortly after President Joe Biden placed a new moratorium on oil and gas leases covering federal land until a comprehensive review can be completed. For more information, see FARM AND DAIRY, Federal Judge Orders No New Fracking in Wayne National Forest (March 18, 20201).

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Study Finds that Switching from E10 Gasoline to E15 Gasoline Could be Good for the Ohio Economy: A study commissioned by POET shows that a national shift to from E10 to E15 gasoline could add billions of dollars to the Ohio economy. The study suggests that in 2019, Ohio drivers consumed nearly 5 billion gallons of gasoline with an ethanol content of 470 million gallons. To switch, the POET study estimates that about 705 million gallons of ethanol would need to be produced. This is the equivalent of about 84 million more bushels of corn. The study found that the increased crop would add nearly $650 million to the Ohio GDP and also generate more than $231 million in income for local households. For more information, see FARM AND DAIRY, Study Finds E15 Gasoline Could be Big for Ohio (April 22, 2021).

PIPELINE UPDATE

Columbia Gas is Proposing New Pipeline Project in Delaware and Union Counties: The Ohio Power Siting Board recently held a meeting for public comments on Columbia Gas's proposed pipeline project called the Columbia Gas Northern Loop Project ("Northern Loop"). According to Columbia Gas, the Northern Loop is intended to supply natural gas to satisfy an increased demand in Delaware and Union Counties. Construction of the Northern Loop would include 16 to 17 miles of pipeline in these areas. If approved by the Ohio Power Siting Board, Columbia Gas expects to begin construction in 2022 with the pipeline being brought in service by the end of the year. Ohio Power Siting Board spokesman, Matthew Butler, indicated that the next round of public hearings related to the Northern Loop will take place on May 11, 2021. For more information, see THISWEEK OLENTANGY VALLEY NEWS, Columbia Gas Looks to Extend Lines Through Liberty, Concord (April 22, 2021).

Colonial Pipeline Ransomware Attack Appears to Lead to Fuel Shortages and Higher Gas Prices: The Colonial Pipeline is a 5,500-mile pipeline for gasoline, diesel, and refined products that was shut down in early May 2021 due to a ransomware attack that the United States government has linked to the criminal gang known as "DarkSide." According to Colonial Pipeline Co.'s website, when fully operational, the Colonial Pipeline carries about 45% of the fuel consumed on the eastern portion of the United States. The Wall Street Journal has indicated that the pipeline shut down has led to shortages of fuel in certain states including North Carolina, South Carolina, Virginia, and Georgia. These shortages have caused rising prices in gasoline. On Tuesday, May 11, 2021, AAA indicated that the national average for gasoline was up $0.02/gallon at $2.985/gallon. For more information, see THE WALL STREET JOURNAL, Gas Shortages Test East Coast Stations (May 12, 2021).

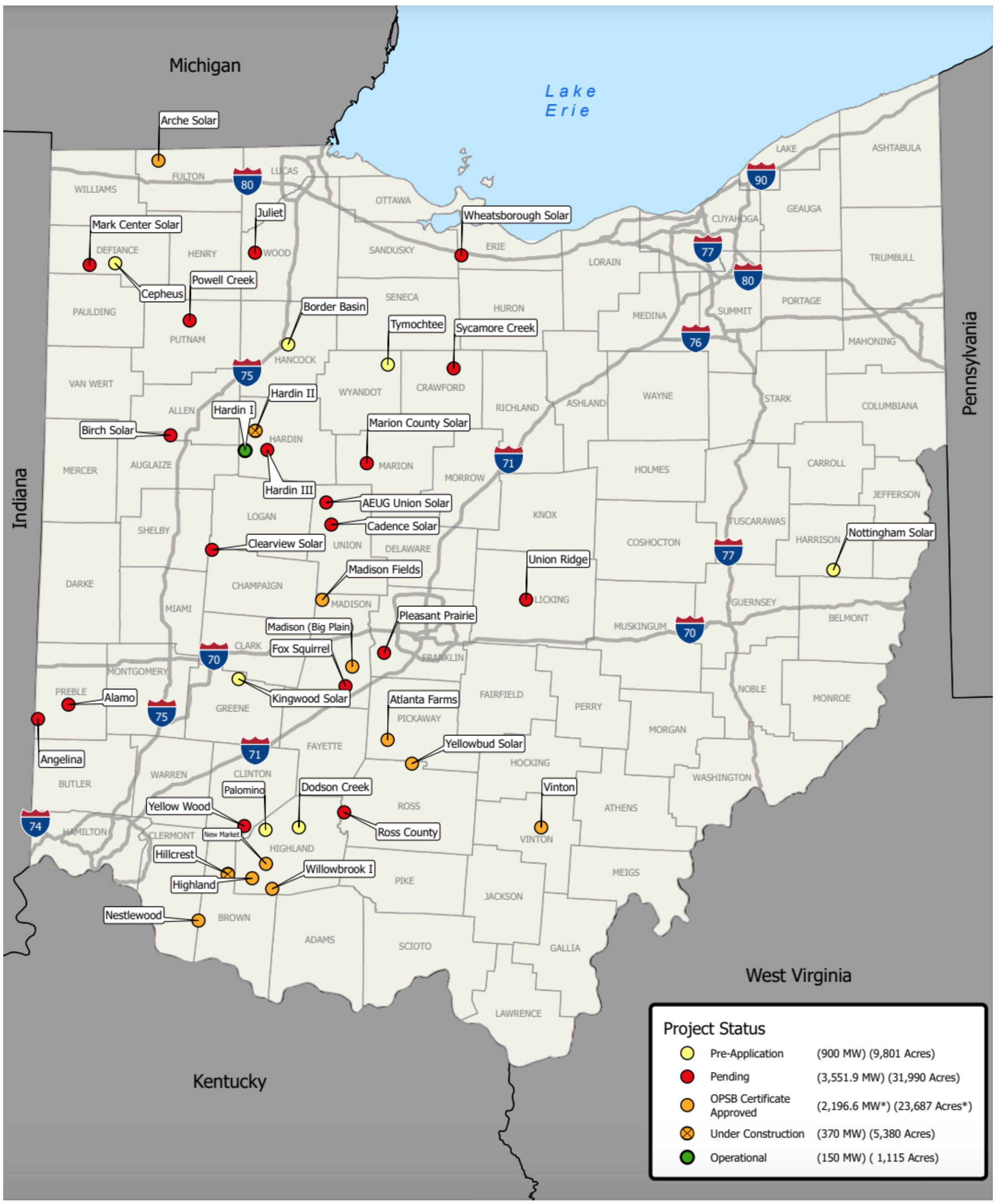
RENEWABLE ENERGY UPDATE

American Electric Power ("AEP") Sets 50% Renewable Energy Goal: In late April 2021, AEP announced that it expects renewable sources of energy to account for more than 50% of its portfolio by 2030. AEP is proposing 16,600 MW of wind and solar generation to accomplish this expectation. The announcement is part of AEP's goal to reduce its carbon dioxide emissions by 80% from its 2000 baseline. AEP has a longer term goal of being carbon neutral by 2050. For more information, see THE COLUMBUS DISPATCH, AEP Sets 50% Renewable Energy Goal (April 23, 2021).

Amazon Announces Intent to Build Solar Farms in Ohio: In late April 2021, Amazon and Lightsource BP announced that they entered into a power purchase agreement for a new 375 MW solar project to be constructed in Auglaize and Allen Counties. According to a news release issued by Lightsource BP, the "facility is expected to deliver nearly 600,000-megawatt-hours annually of additional renewable energy for Amazon operations locally — equivalent to the annual electricity consumption of about 55,000 U.S. homes." Stephanie Kromer, director of energy and environmental policy at the Ohio Chamber of Commerce also issued a statement indicating that "Amazon has a long-term commitment to utilize 100% renewable energy and has invested in operations infrastructure in Ohio. In just three years, the combined direct, indirect and induced effects of Amazon's investment in our state could create thousands of new jobs for Ohioans and hundreds of millions of dollars in new regional income and GDP in Ohio." For more information, see https://www.limaohio.com/news/456501/amazon-to-purchase-power-generated-from-birch-solar-project.

RENEWABLE ENERGY UPDATE (CONT.)

The First Two Utility-Scale Solar Projects Are Expected to Go Online: Construction is “winding down” for the first two utility-scale solar projects in Ohio. The first project, known as the Hardin I solar project is a 150 MW facility planned by Invenergy. The second project, known as the Hillcrest solar project is a 200 MW facility planned by Innergex Renewable Energy. These two projects are the first to become operational, but it appears that many more are to follow. The map below was prepared by the Ohio Power Siting Board and shows the status of all the utility-scale solar projects in Ohio as of April 16, 2021. For more information, see https://www.farmanddairy.com/news/how-utility-scale-solar-came-to-ohio/661248.html.



LEGAL UPDATE

The Supreme Court of Ohio Further Clarifies the "General vs. Specific" Exception to the Ohio Marketable Title Act ("MTA"): The MTA provides that an unbroken chain of title to land for a period of 40 years establishes marketable record title to the land, which generally extinguishes property interests that predate the landowner's root of title. R.C. 5301.47(A) and 5301.48. However, the MTA is subject to certain exceptions, including those referenced in R.C. 5301.49. R.C. 5301.49(A) provides that marketable record title is subject to all "interests and defects" inherent in the muniments of the chain of title, with the exception that a "general reference to easements, use restrictions, or other interests created prior to the root of title" is not sufficient to preserve such an interest from being extinguished unless the general reference also includes "specific identification" of the recorded title transaction that created the interest. In *Erickson v. Morrison*, Slip Opinion No. 2021-Ohio-746, the Supreme Court of Ohio clarified that for a reference in a chain of title to be "specific" (preventing application of the MTA), it need not reference the name of the interest owner.

Erickson relates to a property in Guernsey County, Ohio which was conveyed by James T. and Rose L. Logan to Edward and Alta Riggs in February 1926. The Logans conveyed the property to the Riggs by deed which contained following language "Excepting and reserving therefrom all coal, gas, and oil with the right of said first parties, their heirs and assigns, at any time to drill and operate for oil and gas and to mine all coal." After severance of the oil and gas, the surface was conveyed five times through recorded instruments between 1926 and 1975. On May 1, 1978, a deed was recorded conveying the surface to the Morrisons. Each conveyance contained the severance language which was nearly identical to that contained in the February 1926 severance deed.

On August 24, 2017, the successors-in-interest to the Riggs (the "Ericksons") filed a complaint in the Guernsey County Court of Common Pleas against the Morrisons claiming that they owned the mineral rights by virtue of the February 1926 severance deed. The trial court granted judgement on the pleadings in their favor which was reversed on appeal due to the application of the MTA. On appeal to the Supreme Court, the Ericksons claimed that neither R.C. 5301.49 nor Ohio caselaw requires a reference in a chain of title to name the interest owner's name to be specific. Conversely, the Morrisons claimed that the Supreme Court's holding in *Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132, indicated that if the reference does not name the volume and page of the instrument where the severance occurred, it must include both the type of interest created and the name of its owner.

The Supreme Court reviewed the three-step analysis it originally established in *Blackstone*. Namely, "(1) Is there an interest described within the chain of title? (2) If so, is the reference to that interest a 'general reference'? (3) If the answers to the first two questions are yes, does the general reference contain a specific identification of a recorded title transaction?" After affirmatively answering the first inquiry, the Supreme Court held that the references to the severance in the surface owners' chain of title were sufficiently specific because the references in those deeds were not vague references to prior reservations that may or may not exist. "Rather, the [surface owners'] root of title and subsequent conveyances are made subject to a specific, identifiable reservation of mineral rights recited throughout their chain of title using the same language as the recorded title transaction that created it." Because the Supreme Court also answered the second inquiry affirmatively, it did not need to reach a decision on the third.

It appears that the Supreme Court's decision in *Erickson* indicates that when a chain of title repeats language creating a severance of oil and gas, the reference will be sufficiently specific to prevent application of the MTA. The Supreme Court specifically limited its holding to provide that a reference to a severance of oil and gas need not include the name of the owner of the severed interest to prevent application of the MTA. However, another thing is clear from the *Erickson* decision – the application of the MTA is fact specific and will need to be reviewed by oil and gas companies and practitioners on a case by case basis.