EMENS & WOLPER LAW FIRM
A LEGAL PROFESSIONAL ASSOCIATION

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IN THIS ISSUE

Oil & Gas, Pipelines, and Energy Newsletter October 2016

Dear Clients, Friends, and Colleagues:

Included in this issue are the current and anticipated regulatory and construction dates for the four major pipelines expected to begin construction in the next year (i.e. Rover, Utopia, Nexus, and Leach XPress). Each of these major pipelines appears to be moving forward with a great deal happening within their respective processes.

Please note that the title of this Newsletter has been changed by adding Energy to recognize that we advise and assist clients on wind farm documents, solar energy contracts, water issues, and coal leases as well as oil and gas leases and pipeline and utility easements.

We are pleased to see oil and gas prices beginning to rise. Current natural gas future contracts are now within the range of $2.50 - $3.00 per mcf. Also crude oil future contracts are now within the range of $45 per barrel. There is no assurance that these prices will continue to rise, however; they may even go down. The only sure bet is that oil and gas prices will continue to remain volatile.

Sincerely,

Emens & Wolper Team
Dick, Sean, Craig, Michael, Chris, Bea, Kelly, Cody, and Gail

Ohio Landowner Alert

Pipeline Lawsuits Against Landowners – The Kinder Morgan Utopia ("KMU") pipeline project has already filed more than 150 lawsuits against Ohio landowners seeking eminent domain authority to acquire easements. While many of our KMU clients have settled their claims with KMU, we are actively litigating many other KMU easement disputes. Rover Pipeline, LLC is expected to file numerous lawsuits seeking eminent domain authority shortly after receiving its Certificate of Public Convenience and Necessity from the Federal Energy Regulatory Commission. We continue to urge landowners to obtain knowledgeable legal counsel to negotiate easement terms and compensation, and to prevent getting a default judgment if sued.

PIPELINE UPDATE

Timelines for Current Ohio Pipeline Projects

Emens & Wolper represents many landowners on each of these pipeline projects. If you would like any more information regarding any of the pipelines, below, or their timelines, please contact us. We can also provide you with a copy of correspondences our office has filed with the Federal Energy Regulatory Commission Rover on the Rover Pipelines Project, the Nexus Gas Transmission Pipeline Project, and the leach XPress Pipeline Project..

Rover Pipelines Project - On July 29, 2016, Rover Pipeline, LLC ("Rover") was issued its Final Environmental Impact Statement ("FEIS") from the Federal Energy Regulatory Commission ("FERC"). We are pleased to see many of our requests made in our April 11, 2016 FERC filing regarding the Draft Environmental Impact Statement were included as FERC Recommendations for the project in the FEIS.

Rover expects to receive within the next 45 days a Certificate of Public Convenience and Necessity ("CPCN"), allowing it to exercise the right of eminent domain. Shortly after the issuance of a CPCN, we expect Rover to begin litigation to obtain eminent domain against hundreds of landowners across the state. According to a recent Rover publication, Rover expects FERC to issue construction authorization in the fourth quarter of 2016.

Kinder Morgan Utopia Pipeline Project ("KMU") - KMU is continuing to file suits for eminent domain against Ohio landowners. However, KMU has put a temporary halt on allowing drain tile work to start on quite a few properties, as KMU is working on obtaining permits relating to wetlands and waterbody crossings. KMU advises it expects the permits the first part of November and KMU's project manager stated he would be reviewing the affected tracts to see if the permit process can be bypassed on many of them. This review was supposed to take place previously.

KMU has acknowledged that the permit holdup may potentially put some landowners in a difficult position to have tile work completed this fall; KMU has assured us that KMU will work with landowners to allow the pre-pipeline tile work to be installed prior to pipeline construction. KMU is expected to start tree clearing and major bored this fall/winter, with trenching slated to begin spring of 2017..

Nexus Gas Transmission Pipeline Project - Nexus cleared several hurdles recently on its way to moving its project forward. The Ohio EPA granted permits for the five Ohio compressor stations to be built. Nexus also was given District Court Approval on September 12, 2016 to survey the remaining county tracts that have been fighting Nexus on that front.

We filed our comments on Nexus' Draft Environmental Impact Statement ("DEIS") on August 29, 2016. Our comments pointed out that the DEIS it did not go far enough in addressing notice for the City of Green alternative and environmental, issues and requested the Federal Energy Regulatory Commission condition any issuance of a Certificate of Public Convenience and Necessity on additional measures. We will be keeping a close eye on developments and changes that may result. Nexus has indicated it expects to receive a Certificate of Public Convenience and Necessity in early 2017 and begin construction in thereafter with a goal of having the pipeline in service by November of 2017.

Leach XPress Pipeline Project - Columbia Gas Transmission, LLC ("Columbia") is still continuing to secure easements for land covered by the Leach Xpress Pipeline Project. On September 1, 2016, the Federal Energy Regulatory Commission ("FERC") issued its Final Environmental Impact Statement for the project. We are again pleased to see many of the FERC Recommendations added since the issuance of the Leach XPress' Draft Environmental Impact Statement. Columbia expects to receive a Certificate of Public Convenience and Necessity and begin construction, starting with tree clearing this winter.

PIPELINE UPDATE - CONTINUED

Shell Pipeline Company LP ("Shell") Announces Falcon Ethane Pipeline System: This summer, Shell announced a new 94-mile ethane pipeline project that, once completed, will span Ohio, West Virginia, and Pennsylvania. The proposed pipeline, known as the Falcon Ethan Pipeline System, would collect gas from the rich Marcellus and Utica shales before transporting it to western Pennsylvania. According to proposed plans, gas would be collected from a two-leg system with three source points including MarkWest Energy Partners LP's plants in Washington County, Pennsylvania and Harrison County, Ohio and Utica East Ohio Midstream's plant in Harrison County, Ohio.

Once collected, the ethane would be transported to Shell's proposed multi-billion dollar cracker plant in Beaver County, Pennsylvania. Shell announced in June that it would build a 400-acre cracker plant near the Ohio River, about 30 miles north of Pittsburgh. According to Natural Gas Intelligence, if built, the cracker plant "would mark the first time in more than 20 years that such a facility has been constructed in the United States outside the Gulf Coast." Once completed, the facility is expected to have a capacity to produce 1.6 million metric tons/year of polyethylene and 1.5 million metric tons/year of ethylene, which are both key components in manufacturing plastics. The production is due, in part, to the expected 100,000 barrels/day capacity which may be provided by the Falcon Ethan Pipeline System.

Shell expects its pipeline to be completed by late 2018.

For more information see http://www.naturalgasintel.com/articles/107415-shell-at-work-on-three-state-ethane-pipeline-system-to-feed-pa-cracker.

Spectra Energy Corp. ("Spectra") Expects Heavy Costs Associated with Texas Eastern Pipeline after Explosion: Spectra expects to spend between $75 million and $100 million related to an explosion of the Texas Eastern Pipeline that occurred on April 26, 2016 in Salem Township, Westmoreland County, Pennsylvania. According to BizJournals, the explosion "blew out a 24.5-foot piece of the 30-inch diameter natural gas line" and severely burned a local resident. Currently, the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") is reviewing the cause of the blast, but has already found external corrosion in welds during its preliminary investigation. On July 17, 2016, PHMSA ordered Spectra to make further corrective exams and test other aspects of the pipeline before putting it back in to service. Spectra CEO Gregory L. Ebel told BizJournals that by November 1, 2016 it expects to be able to fully meet customers' demands regarding the pipeline. For more information see http://www.bizjournals.com/pittsburgh/blog/energy/2016/08/pipeline-work-to-cost-75m-100m.html.

Kent State University Professor Predicts Kinder Morgan Utopia Pipeline Brings Economic Boost to Ohio: Kinder Morgan plans to have its $500 million Utopia Pipeline operational by early 2018. The pipeline is expected to export 75,000 barrels of Marcellus and Utica shale ethane from Ohio to Canada every day. This ethane will be transported to a cracking facility operated by NOVA Chemicals Corp., who currently receives its ethane from the Sunoco Logistics Mariner West Pipeline.

Researchers at Kent State University believe that the Utopia Pipeline will bring as much as $237 million worth of economic activity to Ohio. According to TheIntelligencer, the study performed by university personnel predicted that the pipeline "will generate $4.9 million in tax revenue, create 2,132 direct and indirect jobs, contribute $144.9 million to Ohio's gross state product, and provide an $87.5 million uplift to the Ohio economy through additional income and spending." Kinder Morgan hopes to begin construction on the Utopia Pipeline early next year. The company believes that about half of the contractors working on the project will come from Ohio. According to Kent State University's economics professor, Shawn Rohlin, "This project will produce direct and indirect economic benefits to Ohio, and plays an important role in keeping Ohio's business community thriving while growing jobs in the state." For more information see http://www.theintelligencer.net/news/top-headlines/2016/08/study-utopia-pipeline-will-bring-ohio-237m-in-economic-activity/.

EMENS & WOLPER 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 royalty payments and division orders;**
- **We review, analyze and negotiate pipeline easements;**
- **We analyze mineral abandonment claims and claims regarding expired leases;**
- **We represent landowners in ODNR mandatory unitization proceedings who are being forced unitized;**
- **We review, analyze and negotiate water, sand, wind, solar, timber, gravel, and coal rights agreements;**
- **We review, analyze, negotiate sale of minerals and royalties; and**
- **We assist with litigation on all of these matters.**

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

WIND ENERGY UPDATE

Just How Much Wind Would be Needed to Power America?: The United States Court of Appeals in Washington, DC, heard arguments Tuesday, September 27, 2016 over the Obama administration's Clean Power Plan, which dictates carbon-cutting standards for states based on their greenhouse-gas emissions. The Supreme Court put a hold on enforcement of the plan in February to allow legal challenges to it to be resolved in court. If the Court of Appeals rules that the government can legally enforce the plan, the country will need to start using a lot more renewable energy (like wind and solar), and much less coal, by the year 2030. According to BusinessInsider "Part of the plan calls for the creation of incentives to encourage states to build wind farms. Though the US invested $14.5 billion in wind-power project installations last year, wind farms still provide less than 5% of the nation's energy."

John Hensley, manager of industry data analysis at the American Wind Energy Association, conducted some analysis to determine what the country could look like if it was to rely *solely* on wind power. According to him, the United States consumes 4.082 billion megawatt-hours of electricity. Each wind turbine, on average, is capable of producing 7,008 megawatt-hours of wind energy annually. Thus, to power the entire United States, 583,000 onshore turbines would be required. Hensley also stated that generally a wind turbine requires 0.74 acres of land per megawatt produced. Thus, if the country was to construct 583,000 onshore turbines, it would need a total land mass approximately the size of Rhode Island. For more information see http://www.businessinsider.com/wind-turbines-to-power-earth-2016-9.

Supreme Court of Ohio Strikes Down Challenge to Buckeye Wind I Amendments: In a unanimous decision released on Wednesday, September 7, 2016, the Supreme Court of Ohio affirmed the Ohio Power Siting Board's manner in which it approved revisions to a proposal for the Buckeye Wind I wind farm in Champaign County. The Buckeye Wind I wind farm could have approximately 52 wind turbines that can generate a total of 135 megawatts. The appeal was brought by the Champaign County government and the three township governments within the county claiming that the Ohio Power Siting Board failed to include "basic" conditions within its approval of the plan such as requiring EverPower Wind Holdings, Inc. ("EverPower"), the wind farm's developer, to pay for road maintenance related to the project.

The local governments claimed that the Ohio Power Siting Board needed to conduct a hearing on six proposed changes to the wind farm. These proposed changes, requested by EverPower, included (1) moving all the electrical lines underground, (2) relocating access roads, (3) constructing a new access road, (4) adjusting the size of the construction staging areas, (5) moving one staging area, and (6) relocating the substation so that both the Buckeye Wind I and the newly-proposed Buckeye Wind II could share the substation. The Court, however, found the county failed to timely object to the board's decision to conduct a hearing on a portion of the proposed changes. "In accord, we hold that the county's failure to take any action to challenge the scope of the hearing until *after* the hearing had already occurred and *after* the board had issued its order deprived the board of an opportunity to cure any alleged error at a time when it reasonably could have done so," Justice O'Donnell concluded for the Court. For more information see http://www.dispatch.com/content/stories/business/2016/09/07/ohio-supreme-court-strikes-down-challenge-to-wind-farm-approval.html and http://www.courtnewsohio.gov/cases/2016/SCO/0907/141210.asp#.V-0zr_krLIU.

EXPLORATION AND DEVELOPMENT

Rice Energy, Inc. ("Rice") Set to Acquire Vantage Energy, LLC ("Vantage Energy") in New Deal: Rice is set to acquire Vantage Energy for approximately $2.7 billion. The proposed acquisition is important because Vantage Energy is currently the 15th largest shale gas producer in the United States. The deal would expand Rice's drilling operations in Greene County, Pennsylvania-based Marcellus wells by about 85,000 acres. Rice's CEO called the deal "transformational" as it would give Rice control of about 231,000 net acres in the Marcellus and Utica shales with over 1,100 drilling locations. In a statement, Rice said that "This deal represents the largest core dry gas Marcellus acquisition to date. Rice plans to raise money to fund the acquisition by selling 40 million shares of common stock. It also said that underwriters have an option to purchase an additional 6 million shares. Should the acquisition fail to be completed, Rice said that it will use the proceeds from the sale of the shares for general expenses. For more information see http://triblive.com/business/headlines/11210146-74/rice-energy-shale.

The Top Five Utica Shale Producers in 2015: The Utica shale is the second largest shale-gas play in the country by production according to fool.com. Due to the recent commodities pricing drop, however, the shale gas exploration in Ohio does not seem like it will grow rapidly for some time. Nevertheless, some producers are continuing to extract the gas trapped within the rock beneath Ohio and, according to fool.com, these five producers stand above the rest:

(1) *Chesapeake Energy Corporation* ("Chesapeake"): Chesapeake is by far the largest producer in the Utica shale. In 2015, Chesapeake drilled 588 wells within the Utica shale; more than the rest of the industry combined. Chesapeake spent approximately $2 billion around 2010 to lease more than 1 million acres of land.

(2) *Gulfport Energy Corporation* ("Gulfport"): Gulfport is second on the list in the Utica shale. It is estimated that Gulfport currently holds 1.7 trillion cfe of natural gas reserves. In 2015 Gulfport drilled 165 Utica wells.

(3) *Ascent Resources, LLC* ("Ascent"): Ascent, founded by Chesapeake's late Aubrey McClendon, hits third on the list. In 2015 Ascent drilled 120 wells in the Utica shale.

(4) *Antero Resources Corp.* ("Antero"): Antero drilled 83 Utica shale wells in 2015. While the company has drilled 131 wells to date, it is estimated that Antero has another 814 future drilling locations.

(5) *Eclipse Resources Corp.* ("Eclipse"): Finally, Eclipse rounds off the top five with 54 Utica wells drilled in 2015.

For more information see http://www.fool.com/investing/2016/08/17/the-5-companies-dominating-the-utica-shale-play.aspx and the "Utica Horizontal Well Status Map," below.

IMPORTANT: LEGAL UPDATE

Supreme Court of Ohio Finally Clarifies Ohio Abandonment Statute: After many months of waiting, the Supreme Court of Ohio released, on September 15, 2016, fourteen decisions regarding the heavily litigated Dormant Minerals Act ("DMA"), R.C. 5301.56. Although fourteen decisions were handed down, only three written opinions were released regarding the DMA's application. The Court used *Corban v. Chesapeake Exploration, L.L.C.*, Slip Op. No. 2016-Ohio-5796, as its lead case to resolve what could be the most important ambiguity regarding the act; was the 1989 version of the DMA a "self-executing statute"? The Court's answer, in a 5 to 2 opinion was "no."

In 2013, Hans Michael Corban filed suit in the Harrison County, Ohio Common Pleas Court against all of the oil and gas developers who had an interest in a lease/drilled well for oil and gas beneath his property (herein collectively "Chesapeake"). The suit was seeking (1) to quiet title to the oil and gas; (2) to declare that Corban owned the oil and gas under his land; (3) a permanent injunction against further development; and (4) compensation for conversion and unjust enrichment. Based on diversity jurisdiction, Chesapeake removed the case to the federal District Court for the Southern District of Ohio and moved for summary judgment. In order to determine the issues, clarification was needed on two ambiguities of Ohio law which were certified to the Supreme Court of Ohio.

Landowner Groups and Ohio Counties where Emens & Wolper will Assist 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

Adams, Allen, Ashtabula, Athens, Auglaize, Brown, Butler, Carroll, Champaign, Clark, Clermont, Clinton, Columbiana, Crawford, Cuyahoga, Darke, Defiance, Delaware, Erie, Fairfield, Fayette, Franklin, Fulton, Gallia, Geauga, Greene, Guernsey, Hamilton, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Huron, Jackson, Lake, Lawrence, Logan, Lucas, Madison, Mahoning, Marion, Medina, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Noble, Ottawa, Paulding, Pickaway, Pike, Portage, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Vinton, Warren, Washington, Williams, Wood, and Wyandot

LEGAL UPDATE - CONTINUED

(1) Does the 2006 version or the 1989 version of the [DMA] apply to claims asserted after 2006 alleging that the rights to oil, gas, and other minerals automatically vested in the surface land holder prior to the 2006 amendments as a result of abandonment?

(2) Is the payment of a delay rental during the primary term of an oil and gas lease a title transaction and "savings event" under the DMA?

The General Assembly, in 1961, enacted the Marketable Title Act ("MTA"), R.C. 5301.47 et. seq., to extinguish interests and claims in land that existed prior to the root of title with "the legislative purpose of simplifying and facilitating land title transactions by allowing a person to rely on a record chain of title." The statute provides that an unbroken chain of title to an interest in land for 40 years or more "shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interest, claims, or charges whatsoever, the existence of which depends upon any act, transaction, event, or omission that occurred prior to the effective date of the root of title." Thus, marketable record title "operates to extinguish" all other prior interests which are declared to be "null and void."

At common law, severed oil and gas mineral rights were not subject to abandonment or termination for failing to produce those minerals. Abandonment of an interest in real property required proof of the owner's intent to abandon the interest, and not mere nonuse. The Supreme Court of Ohio held that the MTA, as originally drafted, did not apply to oil and gas mineral interests to overcome this common law doctrine. Thus, the General Assembly amended the statute to include the DMA, to curtail the common law rule and specifically allow extinguishment of mineral interests.

In 1989, R.C. 5301.56, within the MTA, was amended "to provide a method for the termination of dormant mineral interests and the vesting of their title in surface owners, in the absence of certain occurrences within the preceding 20 years." The amendment stated "[a]ny mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface," unless (1) the mineral interest was related to coal; (2) the interest was held by the United States, the State of Ohio, or another political body described in the statute; or (3) one or more other enumerated saving events had occurred within the preceding 20 years. This amendment was called the 1989 DMA.

The 1989 DMA was significantly amended on June 30, 2006 to require a surface owner who wanted to merge a severed mineral interest with the surface to give notice to the current record mineral interest holder. Then, if the mineral interest owner did not take action to preserve his/her interest, the surface owner could file an "Affidavit of Forfeiture" memorializing his new interest in the oil and gas.

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

- 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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LEGAL UPDATE - CONTINUED

The pertinent language "shall be deemed abandoned and vested in the owner of the surface" has provided much confusion across Ohio. For instance, some, including Corban, advocated that the 1989 DMA operated as a self-executing statute, where a severed mineral interest was automatically transferred to the surface owner upon the occurrence of a 20-year period with no savings event. Others, including Chesapeake, advocated that the 1989 DMA did not operate as a self-executing statute and judicial intervention was required to perfect an interest in the minerals. Depending on which interpretation was chosen, a surface owner might or might not need to comply with the notice provisions of the 2006 DMA.

While reviewing the arguments, Justice O'Donnell, writing for the Supreme Court of Ohio, first noted that the DMA does not use the word "extinguish," nor does it declare the oil and gas mineral interests "null and void" like the MTA does with surface land. Rather, it provides that the dormant mineral interests "shall be deemed abandoned and vested." He explained "[c]ourts construing the meaning of the word 'deemed' when used in a statute have been nearly unanimous in concluding that a conclusive presumption is created." The Court has previously held that in Ohio "[a] conclusive presumption may be defined as an inference which the law makes so preemptory that it may not be overcome by any contrary proof, however strong." Therefore, it is an *evidentiary device*, opposed to a legal right.

Justice O'Donnell held that in enacting the 1989 version of the DMA, the General Assembly sought to simplify the proof needed when a surface owner was faced with proving a dormant oil and gas holder relinquished their interest. Before the act, the surface owner had to rely on proving the subjective intent of their opponent. Thus, by providing the conclusive presumption, the General Assembly provided surface owners a stronger chance to reclaim dormant minerals.

Justice O'Donnell's opinion says that if the oil and gas mineral interests were automatically transferred, it would run counter to the stated intent of the MTA. Because the MTA was drafted with the intent of allowing "a person to rely on a record chain of title" some action should be taken to legally recognize the abandonment of oil and gas that is recorded in the chain of title. Automatic forfeiture would be outside of such a chain. Thus, the 1989 version of the DMA was not a self-executing statute and Corban needed to have filed a quiet title action to secure his ownership of the oil and gas.

LEGAL UPDATE - CONTINUED

Under both the 1989 and 2006 versions of the DMA, a mineral interest may be preserved if it was the subject of a *recorded* "title transaction." According to the MTA a "title transaction" is a transaction that affects title to an interest in land. A delay rental payment "represent[s] sums paid by the lessee to the lessor on an annual, quarterly or other basis for the privilege of postponing drilling or other operations under [an oil and gas] lease." Although delay rental payments were made on the lease on the Corban land in 1985, 1986, 1987, and 1988, these payments were not recorded. Furthermore, a delay rental payment does not affect title to land apart from the oil and gas lease. The only interest in the land that may be affected by delay rental payment is the lease itself. Therefore, the *Corban* opinion wrote "[b]ecause a delay rental payment does not affect title to any interest in land, occurs outside the record chain of title, and is not filed or recorded in the office of the county recorder," it is neither a title transaction nor sufficient to preclude use of the DMA.

In addition to the decision in *Corban* the second written opinion released by the Court was *Walker v. Shondrick-Nau*, Slip Opinion No. 2016-Ohio-5793. Here, John Noon ("Noon") acquired property in 1965 in Noble County, Ohio, including the mineral rights underlying the surface. The same year he resold the surface while reserving the rights to all the coal, oil, gas, and other minerals onto himself. In 1970 and 1977, the surface was again transferred, each time specifically referring to the mineral reservation. By 2009 Jon D. Walker, Jr. ("Walker") had purchased the surface property and in 2011 Walker sent a "Notice of Abandonment" to Noon at his last known address. Within two months Noon filed an "Affidavit and Claim to Preserve" the minerals. The next year Walker filed a declaratory judgment action claiming ownership under the 1989 DMA.

Relying on its holding in *Corban*, Justice O'Conner writing for the Court, held that three of the issues raised in the case (related to which version of the DMA applies) were already answered. Furthermore, because Noon had filed an Affidavit and Claim to Preserve the minerals within 60 days of receiving notice, he retained his mineral interest under the Court's 2015 decision in *Dodd v. Croskey*, 143 Ohio St.3d 293, where it was held that a timely-filed response to a surface owner's notice to abandon is sufficient to preserve the severed mineral interest regardless of whether a savings event occurred within the 20 years prior.

The most interesting portion of this decision, however, comes from the dissents. Dissenting Justice Pfeifer wrote that the 1989 DMA is self-executing and because no savings event occurred after 1965 Noon automatically lost his mineral interest and his "Affidavit and Claim to Preserve" was filed in vain. Justice O'Neill, on the other hand, agreed with Justice Pfiefer that the affidavit was filed in vain, but wrote that the 1970 and 1977 deeds, which transferred the surface while referring to the minerals, constituted a title transaction. Thus, Justice O'Neill opined that Noon lost his interest in the oil and gas in 1997. Based on this line of reasoning, it is clear that at least one Justice was in favor of a "rolling" 20 year statutory period.

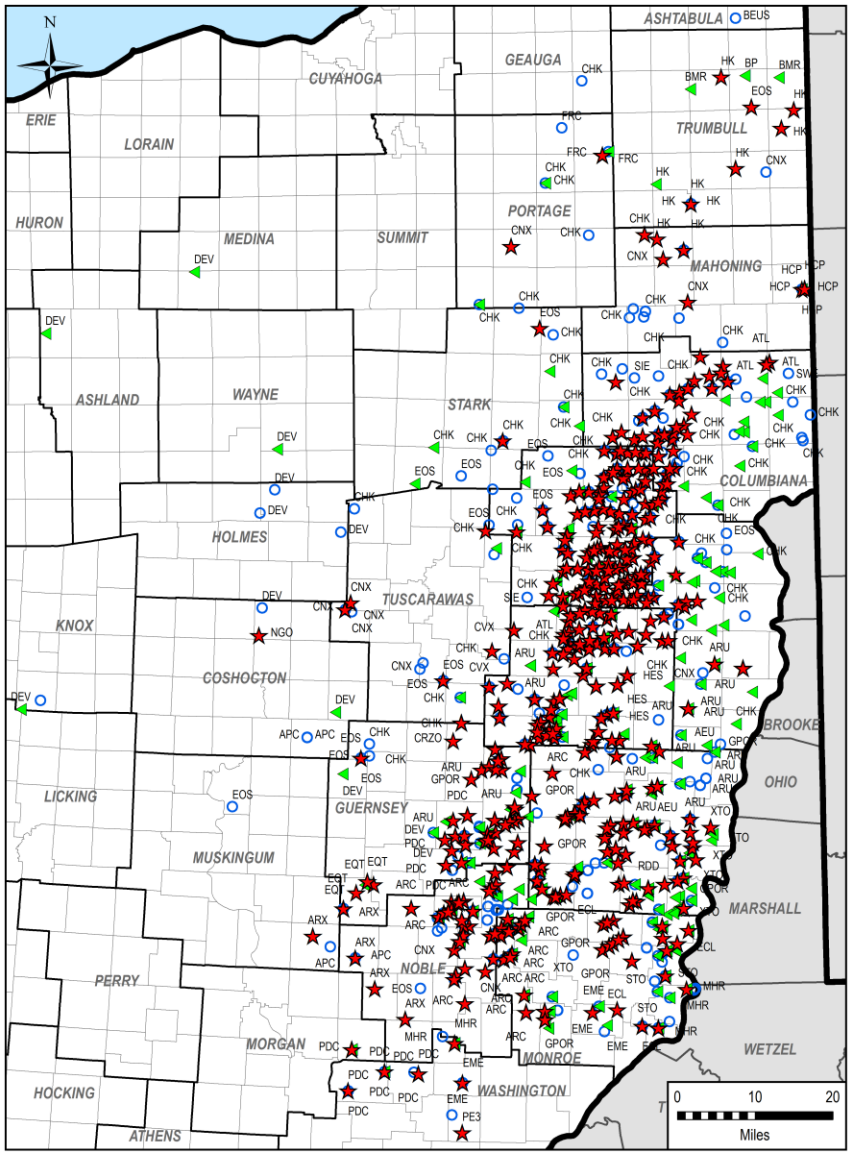
The Court issued one final written decision regarding the DMA and its application. *Albanese v. Batman*, Slip Opinion No. 2016-Ohio-5814. In 1952 Mayme Sulsberger died and left her entire interest in the mineral rights below many acres in Belmont County, Ohio to her daughter, Frances Batman ("Frances"). Frances executed an "Affidavit and Notice of Claim of Interest in Land" that referenced the mineral interests which was recorded in 1981. Once she died, she left, by will, all of the mineral interests she owned to her son Nile Batman ("Batman"). Her will was probated and recorded in the county recorder's office eight years later in 1989.

Within 20 years, both Batman and the owners of the surface over his mineral interest leased the oil and gas. In 2012, both surface owners filed a quiet title action against Batman and his lessees, claiming the surface owners were the sole owners by virtue of the 1989 version of the DMA. Justice Kennedy, writing the opinion of the Court, once again, relied on the decision in *Corban*. Because the surface owners failed to follow the notice provisions of the 2006 amendments, Batman was still rightfully the owner of the mineral interests.

Justice Pfeifer concurred with this decision, but only in the conclusion. For him, the 1989 version of the DMA is still a self-executing statute, but the Batmans had sufficient title transactions to preserve their mineral interests. The 1981 affidavit preserved the mineral interest until the recordation of Frances' will in 1989, which preserved the mineral interest until it was leased by Batman in 2008. Thus, even if the 1989 statute were to apply, Batman would still be the owner of the mineral interest.

LEGAL UPDATE - CONTINUED

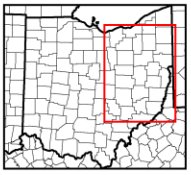
Sunoco Pipeline L.P. ("Sunoco") Held to have Eminent Domain Authority in Ohio: In an opinion released September 29, 2016, the Court of Appeals for the Seventh District of Ohio affirmed the trial court's decision that: (1) Pure propane and pure butane are considered "petroleum" for purposes of R.C. 1723.01; (2) Sunoco is a common carrier for purposes of R.C. 1723.08; and (3) The Mariner East 2 Pipeline project is "necessary" and will serve a "public purpose." As a result of the decision, Sunoco obtained all of the Ohio statutory elements required for eminent domain authority to construct the Mariner East 2 Pipeline project in Harrison County, Ohio. In addition to Sunoco, the holding will seemingly give similar pipeline, Kinder Morgan Utopia, more ammunition when suing landowners for eminent domain authority in coming months. Some issues, however, not timely raised for appeal, are still available to landowners to try to refute the eminent domain authority of these pipelines.



UTICA HORIZONTAL WELL STATUS THROUGH 9/3/2016

★ PRODUCING (1,396)
◀ DRILLING; DRILLED (393)
○ PERMITTED OR NOT DRILLED (443)

OPERATOR	LBL	PROD	PMT	DRLG	DRLD	TOT
AMERICAN ENERGY UTICA LLC	AEU	0	3	0	3	6
ANADARKO E & P ONSHORE LLC	APC	0	4	0	0	4
AMERICAN PETROLEUM PRTR OH LLC	APP	0	2	0	0	2
ANTERO RESOURCES CORPORATION	ARC	136	22	16	23	197
ASCENT RESOURCES UTICA LLC	ARU	93	28	26	41	188
ARTEX OIL COMPANY	ARX	6	1	0	0	7
ATLAS NOBLE LLC	ATL	12	0	0	0	12
BEUSA ENERGY LLC	BEUS	0	1	0	0	1
BP AMERICA PRODUCTION COMPANY	BP	0	0	0	1	1
BRAMMER ENGINEERING INC	BMR	0	0	0	2	2
CHESAPEAKE EXPLORATION LLC	CHK	620	117	16	72	825
CNX GAS COMPANY LLC	CNX	40	15	5	4	64
CARRIZO (UTICA) LLC	CRZO	5	3	2	7	17
CHEVRON APPALACHIA LLC	CVX	8	2	0	0	10
DEVON ENERGY PRODUCTION CO	DEV	0	6	0	7	13
ECLIPSE RESOURCES I LP	ECL	54	41	15	22	132
EM ENERGY OHIO LLC	EME	2	7	0	3	12
ENERVEST OPERATING LLC	EOS	5	17	0	1	23
EQT PRODUCTION COMPANY	EQT	6	0	0	2	8
MOUNTAINEER KEYSTONE LLC	FRC	2	2	1	3	8
NGO DEVELOPMENT CORP	NGO	0	1	0	0	1
GULFPORT ENERGY CORPORATION	GPOR	192	42	20	36	290
HILCORP ENERGY COMPANY	HCP	10	27	0	1	38
HESS OHIO DEVELOPMENTS LLC	HES	58	25	0	8	91
HG ENERGY LLC	HGE	1	2	0	4	7
HALCON OPERATING COMPANY INC	HK	7	5	1	0	13
TRIAD HUNTER LLC	MHR	9	11	1	4	25
PDC ENERGY INC	PDC	25	10	3	4	42
PROTÉGÉ ENERGY III LLC	PE3	1	0	0	0	1
RICE DRILLING D LLC	RDD	37	4	0	16	57
R E GAS DEVELOPMENT LLC	REG	40	10	1	1	52
SIERRA RESOURCES LLC	SIE	0	3	0	0	3
STATOIL USA ONSHORE PROP INC	STO	1	14	4	4	23
SWEPI LP	SWE	0	1	0	0	1
XTO ENERGY INC.	XTO	26	18	2	11	57
	TOTALS	1396	444	113	280	2233



KEY	DESCRIPTION
PROD	PRODUCING
PMT	PERMITTED
DRLG	DRILLING
DRLD	DRILLED

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Emens & Wolper would like to thank Marty Shumway for providing the Utica Status Map, above.