



EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" SM
"The Family Business Law Firm" SM

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Oil & Gas, Solar, Pipeline, and Energy Newsletter January 2019

Dear Clients, Friends, and Colleagues:

We are continuing to meet with and write for landowners to advise on current issues and answer questions.

- I. January 9, 2018 meeting at the Wintersville Firestation at 6:00 p.m. See page 2.
- II. Met with over 50 landowners on December 13, 2018 at Loudenville, Ohio. See page 2.
- III. Met with over 60 landowners on November 8, 2018 at the Union Local Middle School at Belmont, Ohio.
- IV. Our website continues to be updated with our recent articles on various topic including solar options and solar leases. For our most recent article, see <https://www.emenswolperlaw.com/landowner-dangers-with-solar-options-solar-leases-and-solar-easements/>.

Sincerely,

Emens & Wolper Team
Dick, Bea, Sean, Kelly,
Todd, Cody, Heidi, Ryan,
Chris, Gail, and Dawn

REPEAT Continuing Landowner Royalty Owner Alert: Royalty owners receiving checks for royalty payments should be following procedures that document everything related to their royalty payments and will likely want to timely notify the relevant oil and gas producers if there appears to be any problems with the payments. Those landowners should also be aware of the four-year statute of limitations in which to claim incorrect or unpaid royalties.



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EXPLORATION AND DEVELOPMENT UPDATE

EMENS & WOLPER UPCOMING MEETINGS AND PRESENTATIONS

January 9, 2019
Starting at 6:00 p.m.
Wintersville Fire Station
286 Luray Dr.
Wintersville, OH 43935

This meeting will focus on legal issues affecting landowners, including royalty issues, assignments of oil and gas leases to Encino Acquisition Partners and EAP Ohio, LLC, the Ohio Dormant Mineral Act and recent decisions regarding the Ohio Dormant Mineral Act, oil and gas operators taking new oil and gas leases, pipelines and right-of-way easements, and estate planning for family businesses.

Need to Understand Cabot Documents: We previously alerted readers of potential problems for landowners who sign a Cabot "Oil and Gas Lease Amendment and Ratification" or "Oil and Gas Lease" in gas storage areas of Ohio. On December 13, 2018 we appeared in Loudenville, Ohio and spoke to over 50 landowners about these potential problems. Please see the Farm and Dairy magazine article titled "Cabot is Making Offers, but Landowners Advised to Wait" at <https://www.farmanddairy.com/news/cabot-is-making-offers-but-landowners-advised-to-wait/528533.html> which quotes us from the meeting.

Oil and Gas Production Expected to be Up by Year's End: According to the Ohio Department of Natural Resources ("ODNR"), oil and gas operators were operating 19 oil and gas rigs in Ohio through December 15, 2018 for development of the Utica Shale. This appears to be an increase from earlier in the year. In November 2018, the ODNR indicated that there were only 17 oil and gas rigs operating in Ohio. Furthermore, through December 15, 2018 the ODNR indicated that it had granted 2,953 permits for horizontal oil and gas wells in the Utica Shale formation and 2,469 Utica Shale wells had been drilled. For more information, see <http://oilandgas.ohiodnr.gov/shale>.

Oil and gas production in Ohio appears to be up from the same time last year. One producer, Ascent Resources – Utica, LLC ("ARU") saw production grow by 39% from the third quarter of 2017 to the third quarter of 2018. 74% of Ohio's 6.95 billion cubic feet of gas per day production came from Jefferson, Belmont and Monroe Counties in Ohio. For more information, see <https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/122818-ohio-gas-production-surges-39-ascent-blows-away-projections>.

It appears that oil and gas production in Ohio will continue to grow. According to the United States Energy Information Administration ("EIA"), the production of natural gas is expected to significantly increase from November 2018 to December 2018. In November 2018, the EIA reported that 30 billion cubic feet of natural gas was produced from the Utica and Marcellus Shales. In December 2018, the EIA expects production to increase production by 403 million cubic feet of natural gas which will amount to 30.4 billion cubic feet of natural gas for the month. For more information, see <https://businessjournaldaily.com/rig-county-stands-at-18-in-ohios-utica/>.

Encino Acquisition Partners ("Encino") Completes Asset Purchase from Chesapeake: In November 2018, Encino completed its purchase of all of the assets of Chesapeake for \$2 billion including 933,000 Ohio-leasehold-acres (320,000 of which are Utica Shale acres) and 920 Utica Shale wells. Encino recently announced that in addition to continuing to develop the acreage purchase from Chesapeake, it plans to acquire additional acres in Ohio to develop. Encino President and CEO, Hardy Murchison, recently announced that Encino will "probably grow outside the Utica as well."

Prior to Encino purchasing Chesapeake's assets, "virtually all" of Chesapeake's natural gas produced from the Utica Shale was transported to the Gulf Coast under existing long-term transportation contracts. It appears Encino may be interested in expanding into other markets, such as Michigan and Canada, through use of the Nexus pipeline project recently constructed in northern Ohio.

Currently Encino is operating with two drilling rigs and one completion crew, but Murchison stated that he expects to increase those numbers to three drilling rigs and two completion crews at some point in 2019. For more information, see <https://businessjournaldaily.com/rig-county-stands-at-18-in-ohios-utica/>.



**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, 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 pipeline easements;
- 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 (CONT.)

Gulfport Energy Corporation ("Gulfport") Increases Utica Production with the Addition of 11 New Oil and Gas Wells in Production: Gulfport increased its production of oil and gas in Ohio from the Second Quarter of 2018 to the Third Quarter of 2018 by completing 11 additional Utica Shale wells which were set into production. Gulfport recently announced in its operational update that the company had produced an average of 1.43 Bcf of natural gas per day in the Third Quarter of 2018. This production was a 7% increase from production in the Second Quarter of 2017 and a 19% increase from production in the Third Quarter of 2017. For more information, see <https://marcellusdrilling.com/2018/10/gulfport-3q18-operations-update-11-new-utica-wells/>.

EQT Corporation ("EQT") Reaches Tentative Settlement with West Virginia Landowners in Royalty Dispute: In 2013 more than 10,000 West Virginia landowners sued EQT in a class action lawsuit alleging that EQT was improperly deducting post-production expense from landowner royalty payments. The landowners claimed that EQT was not allowed to deduct these expenses—including transportation and processing costs—from the landowner royalties under the terms of their leases. The trial was set to proceed in federal court on Tuesday, November 27, 2018, but the trial was cancelled due to a pending settlement between the landowners and EQT. It appears the details of the tentatively-agreed-upon settlement are not yet being made public. Under federal court rules, settlements in class action lawsuits are subject to review by the judge and by members of the plaintiff class prior to finalization. The tentatively-agreed-upon settlement came less than two months after EQT lost a lawsuit against two West Virginia landowners on similar issues. In October 2018, these two landowners, received a judgment in a jury trial which awarded them a total of \$234,540 in back royalty payments. For more information, see <https://marcellusdrilling.com/2018/11/eqt-avoids-trial-settles-wv-class-action-re-royalty-deductions/> and <https://marcellusdrilling.com/2018/10/eqt-loses-post-production-deduction-lawsuit-to-wv-couple/>.

Oil and Gas Companies May Soon be Targeting the Clinton Sandstone for Horizontal Drilling in Ohio: Before the Utica Shale became the most-targeted formation in Ohio, oil and gas companies drilled many wells into the Clinton Sandstone layer of Ohio for oil and gas development. Now, it appears that some oil and gas companies may be transitioning their focus from the Utica Shale back to the Clinton Sandstone. Historically, Ohio wells drilled into the Clinton Sandstone layer were "conventional" (i.e. vertical wells). Marksmen Energy, Inc. ("Marksmen"), headquartered in Calgary, Alberta, Canada, recently announced that it plans to begin drilling horizontal wells in the Clinton Sandstone layer. Marksmen announced that it has an interest in 5,500 acres of land in Ohio which may be utilized in the drilling of horizontal Clinton Sandstone wells. While it is estimated that for Clinton Sandstone wells a horizontal well costs between 3 to 10 times more than a conventional well, Marksmen expects a horizontal well to be between 7 and 20 times more productive.

It appears that Marksmen plans to develop its first horizontal Clinton Sandstone well in Hocking County, Ohio. Named the "Leaman #1 Well," the well is expected to contain a 1,500 foot lateral. A Marksmen spokesperson recently announced that the company is planning "an aggressive drilling program in 2019 to fully develop the acreage" that it currently holds. For more information, see <https://marcellusdrilling.com/2018/11/horizontal-fracking-of-ohios-clinton-sandstone-heats-up/>.



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EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Landowner Groups and Other Ohio Counties Where Emens & Wolper 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

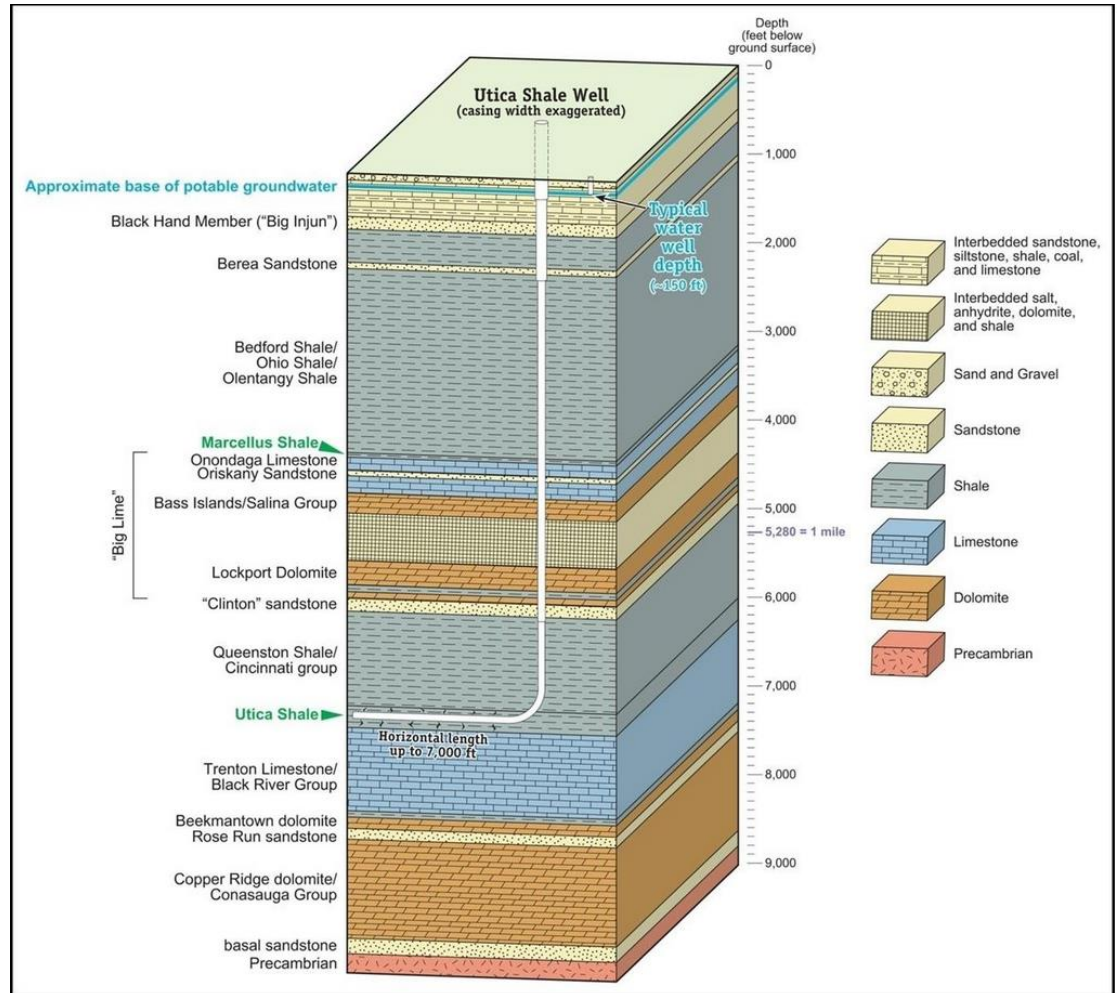
Muskingum Hills Landowners—Southeastern Muskingum County

Perry County Landowners—Perry County

Resources Land Group—Licking and Southeastern Knox County

Smith Goshen Group—Belmont County

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



The preceding illustration can be found at OhioGeology.com and shows the relationship between the Utica Shale and the Clinton Sandstone in Ohio.

Ohio Increases Budget to Plug Orphan Oil and Gas Wells: The Ohio Department of Natural Resources (“ODNR”) estimates that there have been 250,000 oil and gas wells drilled in Ohio since 1860. The ODNR also estimates that only 61,000 of those are currently producing. Some of the remaining wells are potentially “orphan wells” which means oil and gas wells without a record owner that have not been properly plugged and abandoned. This year, state lawmakers doubled the funds given to the ODNR to \$15 million to hire contractors to plug many of these orphan wells. Last fiscal year, the ODNR hired contractors to plug 83 orphan wells for \$6 million (just over \$72,000 per orphan well). This year, the ODNR already has contracts to plug 55 orphan wells for \$3.6 million (approximately \$65,500 per orphan well) and expects to plug a total of 173 orphan wells by the end of the year. Both of these plugging costs seem excessive to us. The funding to plug these orphan wells comes from the Oil and Gas Well Fund, which collects a tax on oil and gas production from operators in Ohio. For more information, see <https://www.dispatch.com/news/20181203/new-law-allows-odnr-to-plug-more-oil-gas-wells>.



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PIPELINE UPDATE

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

- Do I Need to Avoid Probate?
- Solar is Here in Ohio:
Landowners Beware
- 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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Ohio Landowners File Lawsuits Against Nexus Pipeline – Further Restoration Work on Hold: As we discussed in the September 2018 Edition of this Newsletter, one landowner filed a lawsuit in Stark County, Ohio against Nexus claiming that Nexus contractors caused erosion and crop damages on the landowner's property while constructing the Nexus pipeline. Now, at least 12 lawsuits have been filed by landowners against Nexus and one of Nexus' contractors, Michels Corp. ("Michels"), claiming that Nexus and Michels owe such landowners compensation "for specific damages they've caused" when constructing the Nexus pipeline project. The specific damages include allegations of pumping water and silt onto farms without permission, destroying topsoil, destroying crops, and failure to replace drainage tile lines. For more information, see <https://www.cantonrep.com/news/20181204/nexus-michels-sued-by-landowners-for-property-damage>.

A spokesperson for the Nexus pipeline project recently announced that restoration along the pipeline route is on hold until next year. The company states that heavy rain this fall has left the ground too wet to complete restoration activities this year. For more information, see THE COLUMBUS DISPATCH, November 21, 2018.

We would like to remind landowners that if you are experiencing issues with pipeline-related construction, that is it extremely important for such landowners to document all issues in a timely manner. Documentation includes taking pictures of any damages and maintaining a journal with dates and times of construction-related events. Documentation is extremely important because if a landowner brings a lawsuit against a pipeline company, that landowner will bear the burden of proof that the pipeline company caused damages to the property – it is not up to the pipeline company to prove that it *did not* cause the damages!

Rover Pipeline Project Now in Full Service: Recently, Energy Transfer LC ("EP") (the company behind the Rover pipeline project) announced that the final two laterals of the Rover pipeline project entered service. While the pipeline has been partially in service since August 31, 2017, EP was only recently given authority by the Federal Energy Regulatory Commission to place the Sherwood Lateral and the CGT Lateral in service. Now that the Rover pipeline project is fully in service, it is estimated that the 713-mile pipeline may transport up to 3.25 Bcf of natural gas per day to the Midwest Hub near Defiance, Ohio for delivery to markets across Ohio and into Canada. For more information, see <https://dailyenergyinsider.com/news/15832-final-two-laterals-on-rover-pipeline-enter-service/>.



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WIND AND SOLAR ENERGY UPDATE

Solar Projects Continue to be Proposed Across Ohio: We continue to advise landowners who have been approached by solar companies to grant an option to lease and/or lease their land for the construction and installation of solar generating facilities. We believe the two recent articles, discussed below, are worth noting:

Solar Companies Continue to be Interested in Ohio, Despite Regulatory Concerns: According to Becky Campbell, Manager of Legislative and Regulatory Affairs for First Solar Inc. ("First Solar"), Ohio leads the country in solar panel manufacturing but it may fall behind its neighboring states in solar power generation if Ohio does not adopt policy reform which would change the "unstable and overly burdensome energy policies" in Ohio. According to Campbell

"Although Ohio is a powerhouse in clean-tech manufacturing, it's lagging behind most of the country when it comes to renewable installations. According to Powering Ohio, a recent report from Synapse Energy Economics in partnership with the Great Lakes Energy Institute at Case Western Reserve University, Ohio has only 171 megawatts of solar installed statewide, while Pennsylvania and Indiana each have nearly double that amount.

Powering Ohio also estimates that the development of 5.2 gigawatts of solar and wind in Ohio would result in more than \$7.8 billion of investment and create 5,500 jobs."

First Solar, which also manufactures solar panels, states that when fully operational, First Solar's Ohio facilities can produce more than 3.6 million solar panels per year. If installed in Ohio, it is estimated that these solar panels would generate enough electricity to power 190,000 Ohio homes. For more information, see THE COLUMBUS DISPATCH, November 9, 2018.

American Electric Power ("AEP") Proposes Two Solar Plants in Southern Ohio Which Appear Widely Supported: In 2016, AEP made a commitment to develop generation facilities capable of generating 900 megawatts of renewable power. On Tuesday, December 4, 2018, the Public Utilities Commission of Ohio held a state hearing over AEP's proposal to build two solar plants in southern Ohio to fulfill part of that commitment. One of the two solar plants would be constructed in Highland County, Ohio and is expected to have a 400 megawatt capacity. Testimony at the public hearing provided that the Highland County solar plant would create 1,000 construction jobs and would keep 150 permanent positions after construction. Over 50 individuals testified at the PUCO hearing and it appears that the majority support AEP's proposal. For more information, see THE COLUMBUS DISPATCH, December 5, 2018.

LEGAL UPDATE

Ohio Supreme Court Interprets the Marketable Title Act: In 1915 Nick and Flora Kuhn conveyed 60 acres (the "Property") to W.D. Brown and his wife while reserving a one-half royalty interest thereunder. Each subsequent conveyance of the Property stated "Excepting the one-half interest in oil and gas royalty previously excepted by Nick Kuhn, their [sic] heirs and assigns in the above described sixty acres" (the "Exception"). *Id.* at ¶ 3 In 1969 David Blackstone was conveyed the Property by an instrument which also included the Exception. Nine or ten years later, Blackstone attempted to purchase the reserved royalty interest from the Kuhns' heirs but was unsuccessful.

In 2012 Blackstone and his wife filed a lawsuit against the Kuhn heirs claiming that the reserved royalty interest was abandoned under the Dormant Mineral Act, but later amended their Complaint to also seek a declaration that the reserved royalty interest was extinguished under the Marketable Title Act. The trial court granted summary judgment under both claims to Blackstone, but the appellate court reversed as to both. Blackstone only appealed the decision as to the Marketable Title Act claim, which was accepted by the Supreme Court of Ohio.

The Marketable Title Act was enacted by the General Assembly to "simplify[] and facilitat[e] land title transactions by allowing persons to rely on a record chain of title." Ohio Revised Code § 5301.55. Thus, any person "who has an unbroken chain of title of record to any interest in land for forty years or more, has marketable record title" to the interest claimed according to Ohio Revised Code § 5301.48. The Marketable Title Act appears to have the effect of extinguishing all interests and claims in property prior to the claimant's "root of title" which is "that conveyance or other title transaction in the chain of title of a person . . . which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined." Ohio Revised Code § 5301.47(E) and 5301.47(A). The Marketable Title Act, however, provides certain enumerated exceptions which will preserve any interest or claim in property. One such exemption is when the record chain of title for the property contains a reference to the interest claimed. The statute states that "provided that a general reference . . . 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(A). This exception was the issue in *Blackstone* (i.e. whether the Exception was a general reference or specific enough to preserve the reserve royalty reservation).

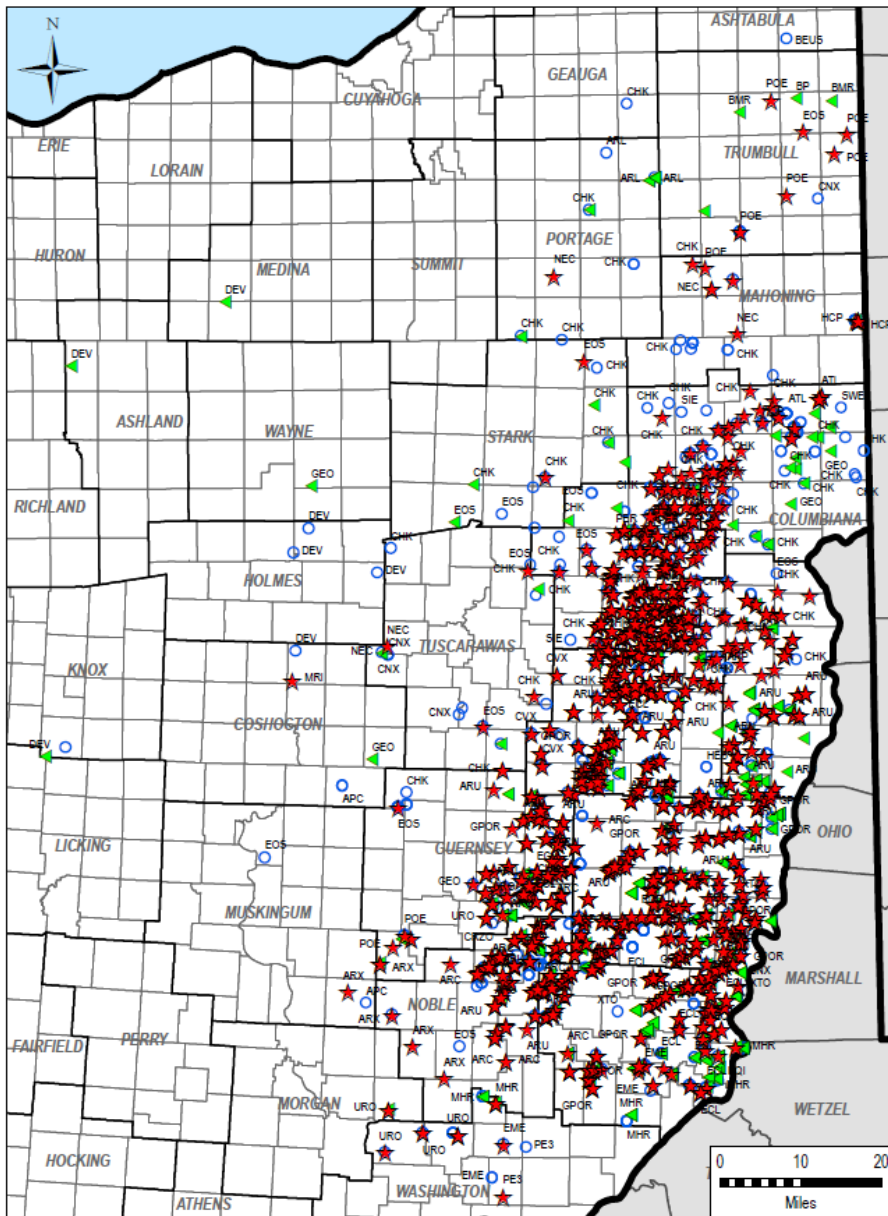


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LEGAL UPDATE (CONT.)

While the Marketable Title Act does not define what a "general reference" is, the Supreme Court of Ohio stated that its ordinary meaning is "marked by broad overall character without being limited, modified, or checked by narrow precise considerations: concerned with main elements, major matters rather than limited details, or universals rather than particulars: approximate rather than strictly accurate." *Blackstone* at ¶ 13. A "specific reference" is a reference which is not general. In *Blackstone* the Supreme Court of Ohio held that the Exception is a specific reference because "there is no question which interest is referenced in the 1969 deed" – the reserved royalty interest. *Id.* at ¶ 15. Thus, the Exception (which was included in *Blackstone's* root of title) was sufficient to preserve the reserved royalty interest.



UTICA HORIZONTAL WELL STATUS THROUGH 11/3/2018

- ★ PRODUCING (2,072)
- ▲ DRILLING; DRILLED (374)
- PERMITTED OR NOT DRILLED (467)

OPERATOR	LBL	PROD	PMT	DRLG	DRLD	TOT
AMERICAN ENERGY UTICA LLC	AEU	0	2	0	1	3
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	215	21	9	15	260
ASCENT RESOURCES UTICA LLC	ARU	355	27	46	53	481
ARTEX OIL COMPANY	ARX	6	0	0	1	7
ARSENAL RESOURCES LLC	ARL	7	0	0	1	8
ATLAS NOBLE LLC	ATL	12	0	0	0	12
BEUSA ENERGY LLC	BEUS	0	1	0	0	1
BRAMMER ENGINEERING INC	BMR	0	0	0	2	2
BP AMERICA PRODUCTION COMPANY	BP	0	0	0	1	1
CHESAPEAKE EXPLORATION LLC	CHK	721	122	6	39	888
CNX GAS COMPANY LLC	CNX	30	12	0	10	52
CARRIZO (UTICA) LLC	CRZO	0	3	0	0	3
CHEVRON APPALACHIA LLC	CVX	8	2	0	0	10
DEVON ENERGY PRODUCTION CO	DEV	0	6	0	3	9
ECLIPSE RESOURCES I LP	ECL	122	48	13	10	193
EM ENERGY OHIO LLC	EME	10	8	4	1	23
ENERVEST OPERATING LLC	EOS	5	20	0	1	26
EQUINOR USA ONSHORE PROP. INC.	EQI	19	2	8	3	32
EQT PRODUCTION COMPANY	EQT	0	2	0	2	4
GEOPETRO LLC	GEO	1	0	0	4	5
GULFPORT ENERGY CORPORATION	GPOR	311	44	9	63	427
HILCORP ENERGY COMPANY	HCP	15	43	0	1	59
HES OHIO DEVELOPMENTS LLC	HES	0	25	0	0	25
HG ENERGY LLC	HGE	0	2	0	5	7
HALCON OPERATING COMPANY INC	HK	0	4	0	0	4
TRIAD HUNTER LLC	MHR	5	13	8	6	32
M & R INVESTMENTS OHIO LLC	MRI	1	0	0	0	1
NORTHWOOD ENERGY CORP	NEC	5	0	0	1	6
PDC ENERGY INC	PDC	0	8	0	1	9
PENNENERGY RESOURCES LLC	PER	39	1	0	0	40
PROTÉGÉ ENERGY III LLC	PE3	2	0	0	0	2
PIN OAK ENERGY PARTNERS LLC	POE	12	0	1	0	13
RICE DRILLING D LLC	RDD	99	4	2	23	128
R E GAS DEVELOPMENT LLC	REG	0	9	0	1	10
SIERRA RESOURCES LLC	SIE	0	3	0	0	3
STATOIL USA ONSHORE PROP INC	STO	0	5	4	1	10
SWEPI LP	SWE	0	1	0	0	1
UTICA RESOURCE OPERATING LLC	URO	28	1	6	0	35
XTO ENERGY INC.	XTO	44	22	4	5	75
TOTALS		2072	467	120	254	2913



KEY DESCRIPTION

PROD	PRODUCING
PMT	PERMITTED
DRLG	DRILLING
DRLD	DRILLED

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