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Oil & Gas, Real Estate, Solar, Easements/Rights of Way Newsletter – September 2022

Dear Clients and Other Friends,

Please accept our apologies for the delay in getting current information to you! With the onslaught of solar leases and electric easements, we have been so busy protecting landowners that we are just now getting caught up!

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

Easement Alert: We continue to be concerned about the wording of electric utility easements being proposed to landowners. The easements are not just “boiler plate” as the utility landman would like you to believe – THE ELECTRIC UTILITY EASEMENTS LIMIT AND RESTRICT YOUR USE OF YOUR LAND.

Solar Alert: Please see our article in the July/August 2022 issue of OUR OHIO. (Ohio Farm Bureau, Volume 101, Issue 6) titled “Landowner Problems with Solar Projects.” If you do not receive OUR OHIO, you may find the article on our website at <https://ewjjlaw.com/landowner-problems-with-solar-projects-part-b/>.

Royalty Alert: Natural gas prices continue to rise and we are advising royalty owners to be extra careful in reviewing their royalty checks. In our review of clients’ royalty checks, we continue to find unwarranted deductions being taken from royalty payments.

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EXPLORATION AND DEVELOPMENT UPDATE

*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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Top 25 Gas Producing Utica Shale Wells in Second Quarter of 2022: Natural gas production in the Second Quarter of 2022 was approximately the same as the First Quarter of 2022. Natural gas production amounted to approximately 5.430 Bcf in the Second Quarter of 2022 compared to 5.418 Bcf natural gas production in the First Quarter of 2022. Ascent Resources – Utica LLC (“Ascent”) owns 10 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 and Number
ASCENT RESOURCES UTICA LLC	HARRISON	GREEN	DWAYNE W GRN HR 2H
EAP OHIO LLC	JEFFERSON	SPRINGFIELD	BSA JN SPR 8H
ASCENT RESOURCES UTICA LLC	HARRISON	GREEN	DWAYNE GRN HR 4H
GULFPORT APPALACHIA LLC	JEFFERSON	WARREN	ANGELO 210728 5A
EAP OHIO LLC	JEFFERSON	SPRINGFIELD	BSA JN SPR 6H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WELLS	Gabriel SW WEL JF 4H
ASCENT RESOURCES UTICA LLC	HARRISON	GREEN	DWAYNE E GRN HR 6H
EAP OHIO LLC	JEFFERSON	SPRINGFIELD	BSA JN SPR 210H
EAP OHIO LLC	JEFFERSON	SPRINGFIELD	BSA JN SPR 10H
SWN Production (Ohio) LLC	MONROE	ADAMS	CRAWFORD B 3H
SWN Production (Ohio) LLC	MONROE	GREEN	RUFENER A 3H
GULFPORT APPALACHIA LLC	JEFFERSON	WARREN	ANGELO 210718 4A
SWN Production (Ohio) LLC	MONROE	GREEN	RANDALL A 1H
SWN Production (Ohio) LLC	MONROE	GREEN	RANDALL D 5H
SWN Production (Ohio) LLC	MONROE	ADAMS	CRAWFORD D 5H
SWN Production (Ohio) LLC	MONROE	GREEN	RUFENER B 5H
SWN Production (Ohio) LLC	MONROE	ADAMS	CRAWFORD A 1H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	Borum N SMF JF 3H
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	ATHENA N SMF JF 3H
ASCENT RESOURCES UTICA LLC	BELMONT	PULTNEY	FLEAGANE SE PLT BL 6H
SWN Production (Ohio) LLC	MONROE	GREEN	RANDALL B 3H
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN	SMITH SE CLR BL 4H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	BORUM NE SMF JF 5H
GULFPORT APPALACHIA LLC	JEFFERSON	WARREN	ANGELO 211739 1A
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING	VANNELLE SW WHL BL 2H

Top 25 Oil Producing Utica Shale Wells in Second Quarter of 2022: Oil production in the Second Quarter of 2022 was 1,061,229 bbl higher than the First Quarter of 2022. Oil production amounted to 5,018,523 bbl in the Second Quarter of 2022 compared to 3,957,294 bbl in the First Quarter of 2022. EAP Ohio, LLC (“EAP”), Ascent, Antero Resources Corporation (“Antero”), and Utica Resource Operating LLC (“Utica Resource”) own all of the top 25 oil producing wells in the State. EAP owns 9, Ascent owns 6, Antero owns 6, and Utica Resource owns 4. Of the top 25 oil-producing wells in the state, 10 are located in Guernsey County, 6 are located in Harrison County, 6 are located in Noble County, and 3 are located in Carroll County. More information on these top 25 oil-producing wells can be found at <http://oilandgas.ohiodnr.gov/production#QUART>.



**EMENS WOLPER JACOBS
JASIN LAW FIRM
LEGAL SERVICES**

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

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.

Ascent Resources, LLC ("Ascent") Announces Closing on Acreage from XTO Energy ("XTO"): On August 5, 2022, Ascent announced that it closed an acquisition of approximately 26,800 net acres from XTO, a subsidiary of Exxon Mobil Corporation, for \$270 Million. Ascent announced that it financed the acquisition with a combination of cash on hand and borrowings under its revolving credit facility. The acquisition includes acreage within both the Utica Shale and Marcellus Shale plays and increases Ascent's net production by about 60 MMcfed. Ascent previously held a contiguous acreage position of about 337,000 net leasehold acres, including about 73,000 net mineral acres, primarily in Belmont County, Jefferson County, Guernsey County, Harrison County, and Noble County. A press release from Ascent related to the acquisition may be found at <https://www.prnewswire.com/news-releases/ascent-resources-llc-announces-closing-of-utica-shale-bolt-on-acquisition-301600949.html>.

Natural Gas Futures Prices Hit 14-Year High: In August 2022, world natural gas futures prices increased to a 14-year high. Typically, in the late summer and early fall, natural gas producers attempt to store gas until winter, when demand and prices are at their highest. However, certain global factors have caused prices to increase in recent months. For example, commentators state that the increase in natural gas futures is partly in response to Russia's announcement that it planned to close one of Europe's main natural gas pipelines, the Nord Stream pipeline. The announcement comes just shortly after Freeport LNG, the second largest natural gas exporter in the United States, stated that it was being shut down due to a fire on June 8, 2022. The Wall Street Journal explains that "The last time natural-gas prices were so high was back before the shale-drilling boom flooded the domestic market with cheap gas and the U.S. flipped from importing the power-plant fuel to becoming the world's leading exporter." For more information, see <https://www.wsj.com/articles/endless-demand-spurs-u-s-natural-gas-prices-to-shale-era-highs-11661245053> and <https://www.nasdaq.com/articles/u.s.-natgas-jumps-7-to-14-year-high-on-soaring-global-prices>.

INTEL UPDATE

Computer Chip Manufacturing Facility Underway in New Albany, Ohio: On August 9, 2022, President Joe Biden signed the CHIPS and Science Act (H.R.4346) ("CHIPS Act"), which seeks to bolster the United States semiconductor supply chain and promote research and development of advanced technologies in the United States. The CHIPS Act provides more than \$52 billion in subsidies to support microchip manufacturing. One manufacturer, Intel, is intending to construct a new computer chip manufacturing facility in New Albany, Ohio. Intel projects that the manufacturing facility will create 7,000 construction jobs and 3,000 jobs making the computer chips. The formal groundbreaking event occurred on September 9, 2022 when President Biden visited the plant site in Licking County, Ohio, where Intel has started construction of the manufacturing facility.



*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.

PIPELINE UPDATE

Agricultural Easements May Not Prevent Eminent Domain for Pipelines: Earlier this year, Columbia Gas challenged the scope of the Agricultural Easement Donation Program by attempting to take an easement across land with an existing agricultural easement. Arno Renner, as one owner of the land, donated 231.25 acres in Union County, Ohio to the Ohio Department of Agriculture (“ODA”) in 2003. The ODA Office of Farmland Preservation entered into an agreement with the Union Soil and Water Conservation District to monitor the easement. The Union Soil and Water Conservation District has since taken the position that the terms of the easement prohibit non-farm commercial/industrial utility construction, including a pipeline proposed by Columbia Gas. The eminent domain lawsuit was recently decided in favor of the landowners. However, the Court found that Columbia Gas was attempting to take was more than necessary and the Ohio Power Siting Board had not reviewed the amount of land that was going to be taken and for how long. Therefore, while Columbia Gas was prohibited from taking the land through eminent domain, it was not because of easement. The decision has been appealed to the Third District Court of Appeals. For more information, see <https://ocj.com/2022/05/battle-for-protecting-preserved-farmland-won-sort-of-for-now/>.

RENEWABLE ENERGY UPDATE

Ohio County Commissioners Have Some Authority to Adopt Resolutions Related to Solar Projects: On August 18, 2022, the Marion County Commissioners voted to approve resolutions submitted by the Trustees of Big Island Township, Claridon Township, Richland Township, and Salt Rock Township. The four resolutions, which follow a similar format, each restrict wind and solar development in those townships. Other Trustees of other townships may want to help landowners by adopting resolutions providing for the wise development of solar projects which is now permitted by Ohio law.

On July 12, 2021, Governor Mike Dewine signed Ohio Senate Bill 52 (“SB 52”) which changed the process for renewable energy projects. For example, SB 52 introduced a new public meeting requirement and permits the County Commissions to adopt a resolution prohibiting or limiting the project’s development. Following the required public meeting, the County Commissioners have 90 days to either (1) adopting a resolution prohibiting construction of the project, or (2) adopting a resolution limiting the size of the project to a smaller geographic area.

SB 52 will not affect all solar projects, however. The law is prospective and includes a “grandfathering clause.” For solar projects, SB 52’s requirements do not apply to applications to the Ohio Power Siting Board (“OPSB”) for a certificate or for a material amendment to an existing certificate where, as of the law’s effective date, the project (i) is in the PJM new services queue at the time the application is found by OPSB to be complete, and (ii) has received a completed system impact study from PJM and paid PJM the applicable fees.



RENEWABLE ENERGY UPDATE (CONT.)

In the February 2022 Edition of this Newsletter we provided a map showing the utility scale solar projects in Ohio which were pending, under construction, and operational. The Ohio Power Siting Board has updated this map as of August 18, 2022 which we include below:



For more information, see <https://opsb.ohio.gov/about-us/resources/solar-farm-map-and-statistics>.



LEGAL UPDATE

The Supreme Court of Ohio Held that Texas *Duhig Rule* Related to Overconveyances of Oil and Gas Has Narrow Application in Ohio: The *Duhig Rule*, first promulgated in *Duhig v. Peavy-Moore Lumber Co.*, 135 Tex. 503, 507-508, 144 S.W.2d 878 (1940), is a deed-interpretation rule rooted in equity “which estops a grantor from claiming title to a severed oil and gas interest when doing so would breach the grantor’s warranty of title as to the title and interest purportedly conveyed to the grantee.” *Senterra, Ltd. v. Winland*, Slip Opinion No. 2022-Ohio-2521, ¶ 2. The *Duhig Rule*, therefore, may arise in situations where a grantor purports to convey to a grantee a larger interest in oil and gas than he/she owns at the time of the deed. *See id.* In a case of first impression, the Supreme Court of Ohio held in *Senterra* that the *Duhig Rule*, may be utilized in Ohio only when the grantor owns the exact oil and gas interest purported to be transferred to the grantee in such deed.

Senterra involved three severances of oil and gas underlying one property. In 1925, Lulu E. and James H. Winland and Alta H. and William H. Dermot conveyed the property to Joseph E. Russel and George E. Russell while excepting one-quarter of the oil and gas. In 1941, Joseph E. Russel and George E. Russell conveyed the property to George E. Russell while excepting all of the oil and gas. In 1954, George E. Russell, conveyed the property to Stanley and Margaret Juzwiak while excepting one-quarter of the oil and gas. The 1954 deed did not reference either the exception made in 1925 or 1941. The question in *Senterra* centered around “What interest, if any, in the oil and gas did George E. Russell except in 1954”?

Senterra, as successor-in-interest to the Juzwiaks, argued that, pursuant to the *Duhig Rule*, because George E. Russell purported to convey a three-fourths interest in the oil and gas to the Juzwiaks in the 1954 deed, while he only owned a three-eighths interest therein, preference must be given to the grant and his exception was *void ab initio*, transferring all of his three-eighths interest to the Juzwiaks. Conversely, the purported heirs of George E. Russell argued that because George E. Russell excepted a one-quarter interest in the oil and gas while owning a three-eighths interest therein, the *Duhig Rule* does not apply.

Over a sharp dissent, the majority of the justices on Supreme Court of Ohio held that the *Duhig Rule* is a “narrow, equitable principle” which does not apply to the facts at issue in *Senterra*. *Id.* at ¶ 23. The justices followed the reasoning of *Trial v. Dragon*, 593 S.W.3d 313, 319 (Tex.2019), in holding that the *Duhig Rule* only applies “if the grantor owns the exact interest to remedy the breach at the time of execution and equity otherwise demands it.” (Emphasis removed.) *Id.* at ¶ 20. If effect was given to the grant in 1954, the Juzwiaks would have been conveyed the three-eighths interest in the oil and gas owned by George E. Russell. However, this would not satisfy the purported conveyance of three-fourths of the conveyance referenced in the deed. Therefore, the *Duhig Rule* is not applicable to the 1954 deed and George E. Russell’s exception of a one-quarter interest in the oil and gas was valid.

The Supreme Court of Ohio’s decision in *Senterra* is significant. Historically, properties with severed oil and gas interests have been the subject of numerous lawsuits. These lawsuits typically claim ownership of the oil and gas pursuant to either the Ohio Marketable Title Act, R.C. 5301.47 *et seq.*, or the Ohio Dormant Mineral Act, R.C. 5301.56. With respect to chains of title with multiple severances of oil and gas, it appears that the Supreme Court of Ohio has opened at least one narrow bright-line avenue for surface owners to claim ownership of oil and gas interest under their properties through use of the *Duhig Rule*.