

RONALD K. LEMBRIGHT* (0023732)

**Counsel of Record*

10724 Cardinal Lane
Breacksville, OH 44141
440-781-4639

Counsel for Appellees William L. Kalbaugh,
William H. Boak, Jennifer Bernay, Charlotte S.
Bishop, Richard G. Davis, Harry Roy Davis,
Thomas Davis, Harry K. Kalbaugh, Michael
Kalbaugh, and Samuel G. Boak

R. JEFFREY POLLOCK* (0018707)

**Counsel of Record*

ERIN K. WALSH (0078142)
McDonald Hopkins, L.L.C.
600 Superior Ave., East, Suite 2100
Cleveland, OH 44114
216-348-5400
216-348-5474 fax
jpollock@mcdonaldhopkins.com

Counsel for Appellees Karen A. Chaney, Patty
Hausman, Linda C. Boyd, and Terri Hocker

BRIAN CRIST
3384 N. River Rd.
Zanesville, OH 43701

Appellee, pro se

CONSOLIDATED COAL COMPANY
n/k/a CONSOL ENERGY, INC.
1000 CONSOL Energy Dr.
Canonsburg, PA 15317

Appellee

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INTRODUCTION

The arrival of shale gas development in Ohio has brought to the fore a variety of legal issues. Among them are questions about the proper interpretation and application of the Dormant Minerals Act, R.C. 5301.56. Although the Dormant Minerals Act was first enacted in 1989, and amended in 2006, questions about the Act have arisen with regularity only recently—as shale gas development has unlocked previously unavailable or underutilized mineral resources.

The variety of legal questions that have arisen in the lower courts counsels caution when answering the narrow question presented in this case. Numerous cases involving the Dormant Minerals Act remain pending in the lower courts, and this Court itself has at least one other case currently before it. *See Chesapeake Exploration, L.L.C. v. Buell*, Case No. 2014-0067. In many of those cases, the legal questions at issue go far beyond this case’s narrow proposition of law.

Most significantly, this case does not address the interplay between the original 1989 version of the Dormant Minerals Act and the version of the law as amended in 2006. That question has arisen with increasing regularity in the lower courts, but has not yet been addressed by this Court. *See Walker v. Noon*, 2014-Ohio-1499 ¶ 35 (7th Dist.) (“No Ohio appellate court or the Ohio Supreme Court has yet to address the issue of when to apply the 1989 version of R.C. 5301.56 and when to apply the 2006 version.”). But, although implicated by the facts of this case, the parties did not raise the relationship between the two versions of the Act below and that relationship is not presented by the proposition of law that this Court accepted for review.

Because of the prevalence of litigation surrounding the Dormant Minerals Act, and because this case does not present any issues concerning when the 2006 version of the Act applies and when its predecessor does, the Court should expressly reserve the question of whether, when, and how to apply the different versions of the Dormant Minerals Act.

STATEMENT OF AMICUS INTEREST

The State's interest in this case is twofold—one in promoting the overall public interest and one in a landowner capacity. First, the State has an interest in “simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title,” R.C. 5301.55, and in “facilitating the exploitation of energy sources and other valuable mineral resources,” *Texaco, Inc. v. Short*, 454 U.S. 516, 538 n.34 (1982) (citation omitted). Second, as a property owner itself, the State's interest in the obtaining a clear interpretation of the Dormant Minerals Act is similar to the interest of many other property owners throughout Ohio. In many instances, ownership of the mineral rights underlying state land has reverted to the State by operation of the Dormant Minerals Act. Thus, the State has an interest in preserving ownership of those mineral interests that have vested in itself and in similarly situated surface property owners.

ARGUMENT

There are two significant versions of the Dormant Minerals Act, R.C. 5301.56, that at least have the potential to affect the mineral interests at issue in this case. The first is the original version of the Act that the General Assembly adopted in 1989. The second is the version of the Act as amended in 2006. Although similar in many ways, the two versions differ significantly in the process by which abandoned mineral interest vest in the landowner.

The original version of the Dormant Minerals Act was adopted in 1989 as a supplement to the already-existing Marketable Title Act. Ohio Legislative Service Commission Bill Analysis, Sub.S.B. No. 223 (1988). The General Assembly adopted the Act to, among other things, create a way to deem a severed mineral estate abandoned and increase the utility of that estate by restoring ownership of the mineral interest to the owner of the surface property. *Id.* The 1989 version of the Act provided for the *automatic* vesting of “abandoned” or “dormant” mineral rights in the owner of a surface estate. “Abandoned” mineral rights were defined as

mineral interests owned separately from the surface land and to which one of six exceptions did not apply. *See* R.C. 5301.56(B)(1)(c) (1989) *recodified at* R.C. 5301.56(B)(3).

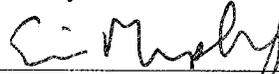
In 2006, the General Assembly amended the Dormant Minerals Act. The amended version of Act eliminated the *automatic* vesting of title to abandoned mineral interests in the owner of the surface estate. Instead, the 2006 amendments required that a surface owner provide *notice* of the surface owner's intent to declare the mineral interest abandoned, and provided a means for the holder of that mineral interest to contest that declaration. *See* R.C. 5301.56(E)-(H). Thus, for abandoned mineral interests that had not already vested in the owner of the surface estate under the older version of the Act, the amended version of the Dormant Minerals Act now requires notice before an interest can be deemed abandoned.

Courts throughout Ohio are increasingly facing the question of whether to apply the 1989 or 2006 version of the Dormant Minerals Act to mineral interests that vested in surface owners prior to the amendment of the Act but that are only now the subject of a quiet title action. *See Walker v. Noon*, 2014-Ohio-1499 ¶ 35 (7th Dist.) (“No Ohio appellate court or the Ohio Supreme Court has yet to address the issue of when to apply the 1989 version of R.C. 5301.56 and when to apply the 2006 version.”). Most courts that have addressed the issue have held that the 1989 version of the Dormant Minerals Act was self-executing and that mineral interests automatically vested in the owners of surface property. As a result, those courts have found that the prior return of those interests back to the surface owner was unaffected by the 2006 amendments. *See id.* ¶ 41-42; *see also Schucht v. Bedway Land And Minerals Co.*, Harrison C.P. No. CVH 2012-0010, (April 21, 2014); *Blackstone v. Moore*, Monroe C.P. No. 2012-116 (Jan. 22, 2014); *Shannon v. Householder*, Jefferson C.P. No. 12CV226 (July 17, 2013); *but see Dahlgren v. Brown*, Carroll C.P. No. 13CVH27445 (Nov. 5, 2013).

The question of which version of the Act applies is potentially implicated by the facts of this case, but not by the legal question the Court accepted. The proposition of law that the Court accepted in this case assumes that the mineral interests in question had not already vested in the owners of the surface estates by operation of the 1989 version of the Act. It assumes instead that the 2006 version of the Act applies. The Court should adhere to that assumption, and should *expressly* reserve the question concerning when the 2006 version of the Act applies and when the 1989 version applies. That timing question was not addressed below and the Appellants did not raise it in their Memorandum in Support of Jurisdiction. The Court should therefore make clear that by resolving the narrower question presented in this case, it is taking *no* position on the larger question of the relationship between the different versions of the Act. It should save that timing question for another day and for a case that presents full briefing on that important subject.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio



ERIC E. MURPHY* (0083284)
State Solicitor

**Counsel of Record*

SAMUEL C. PETERSON (0081432)

Deputy Solicitor

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

eric.murphy@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*

State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* State of Ohio was served on June 4, 2014, by U.S. mail on the following:

Paul Hervey
Jillian A. Daisher
Fitzpatrick, Zimmerman & Rose Co., L.P.A.
P.O. Box 1014
New Philadelphia, OH 44663

Counsel for Appellants

Rupert Beetham
110 S. Main Street
P.O. Box 262
Cadiz, OH 43907

Counsel for Appellees John William Croskey, Mary E. Surrey, Roy Surrey, Emma Jane Croskey, Margaret Ann Turner, Mary Louise Morgan, Martha Beard, Lee Johnson, Edwin Johnson, Joann Zitko, David B. Porter, Joann C. Wesley, Cindy R. Weimer, Evert Dean Porter, Stuart Barry Porter, Brian K. Porter, Marie Elaine Porter, Kim D. Berry, Samuel G. Boak, Lorna Bower, Sandra J. Dodson, and Ian Resources, LLC

Ronald K. Lembright
10724 Cardinal Lane
Breacksville, OH 44141

Counsel for Appellees William L. Kalbaugh, William H. Boak, Jennifer Bernay, Charlotte S. Bishop, Richard G. Davis, Harry Roy Davis, Thomas Davis, Harry K. Kalbaugh, Michael Kalbaugh, and Samuel G. Boak

R. Jeffrey Pollock
Erin K. Walsh
McDonald Hopkins, L.L.C.
600 Superior Ave., East, Suite 2100
Cleveland, OH 44114

Counsel for Appellees Karen A. Chaney, Patty Hausman, Linda C. Boyd, and Terri Hocker

Marquette D. Evans
Evans Law Office
902 Race Street, 2nd Floor
Cincinnati, OH 45202

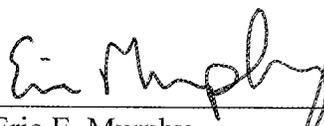
Brian Crist
3384 N. River Rd.
Zanesville, OH 43701

Counsel for Appellee Harriet C. Evans

Appellee, pro se

Consolidated Coal Company
n/k/a CONSOL ENERGY, INC.
1000 CONSOL Energy Dr.
Canonsburg, PA 15317

Appellee


Eric E. Murphy
State Solicitor