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William Patric and Peter Kakela, Department of Resource Development

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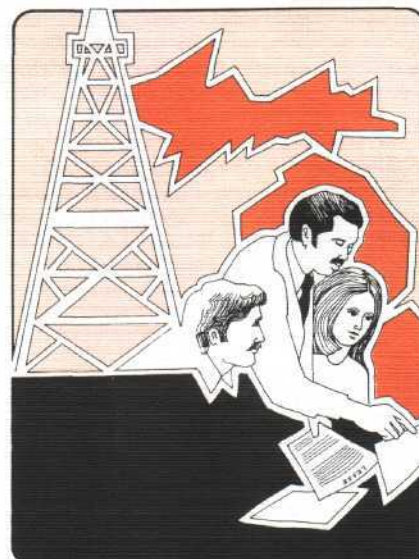
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The Dormant Minerals Act

by William Patric and Peter Kakela, Department of Resource Development

"A number of years ago, the mineral rights were separated from my (surface) land. Can I get them back?"

The answer is "yes, possibly . . ."



On January 18, 1982, the United States Supreme Court upheld the constitutionality of the Michigan Dormant Minerals Act of 1963 (PA-42: 1963), a decision which could have significant ramifications for holders of oil and gas rights throughout Michigan. In essence, the Act ". . . provides that an oil or gas interest severed from surface ownership, which has not been sold, leased, mortgaged or transferred for 20 years is deemed abandoned in favor of the surface owner." (1) The intent of the law is to encourage oil and gas exploration and development in Michigan by reducing the difficulty of locating the mineral-rights owners. As *Oil and Gas News* reports, this decision ". . . opens the door for challenges of mineral leases 20 or more years old when no action has been taken to retain the subsurface mineral right holdings." (2)

Unfortunately, many individuals are probably unaware of the Act and may fail to take the necessary steps to take advantage of its provisions or to protect themselves from the losses it can cause.

Severed Mineral Rights

To understand the importance of the Dormant Minerals Act, the concept of severed mineral rights must be explained. In the most typical situation, "Landowners hold rights to the minerals and other materials found beneath the surface of their land as well as to the land surface itself." (3) This is called "fee simple"

ownership — ownership of both surface and mineral rights.

These surface and subsurface rights are usually held and conveyed together. They can be divided and held separately, however, either by the sale, devising, or leasing of mineral or oil and gas rights to others or by deed reservations that permit owners to sell their surface resources but still retain their subsurface rights. Although complete or partial separation of these rights is a common practice in many areas, it often complicates . . . the ownership . . . status of the surface owner. (4)

This is exactly the sort of practice that has occurred in Michigan. The state alone holds over 2 million acres of mineral rights severed from surface ownership (this compares to some 4.5 million acres of fee simple state holdings). The extent of privately held severed mineral rights in Michigan is unknown, but State Department of Natural Resources officials believe them to be widespread. It is with these severed oil and gas rights on private lands that the Dormant Minerals Act is concerned. The Act applies only to hydrocarbons — not to other mineral types — and only to private lands. It is intended to unravel the complex tangle of severed oil and gas holdings in Michigan. Its purpose ". . . is not to vest title to the severed interests in the surface owner, but rather is to facilitate development of those subsurface properties by reducing the problems presented by fragmented and unknown ownership." (5)

Details of the Act

The Dormant Minerals Act presumes abandonment of severed mineral rights after 20 years and transfers them to the surface owner if none of the following actions occur during the 20-year period:

- 1) a drilling permit is issued for such severed rights or oil or gas is actually withdrawn from the severed holdings (i.e., the severed party has exercised his mineral rights);
- 2) the interest is utilized for underground gas storage operations;
- 3) a record claim of interest is filed with the county recorder of deeds; or
- 4) the severed interest is sold, leased, mortgaged or transferred by recorded instrument.

If, after the 20-year time period, none of the above actions has occurred, any interest in oil or gas thus abandoned ". . . shall vest as of the date of such abandonment in the owner or owners of the surface in keeping with the character of the surface ownership." (6)

Thus, anyone holding mineral rights that were severed anywhere from 10 to 20 years ago would be well advised to take one of the above steps to ensure continued ownership of the holdings. Conversely, surface property owners with mineral rights severed 20 or more years ago should investigate possibilities for regaining their severed rights.

Preserving or Regaining Severed Mineral Rights

In light of the Dormant Minerals Act, the steps to either preserve or regain severed oil or gas rights should be reiterated. First, for a non-surface owner to preserve such rights, some sort of action must be taken relative to the severed interest, such as transferring, leasing, actual production, etc; or a claim of interest must be filed (at least once every 20 years). This affidavit identifying the owner of the oil and gas interest should be filed with the register of deeds in the county where the rights are located. It should describe the land and the interest claimed, give the name and address of the person or persons claiming the interest, and specifically state the intention to retain the rights to the oil and gas deposits of the property.

Not surprisingly, many Michigan surface landowners who previously sold the mineral rights to their property regret that decision today. In some instances, however, the Dormant Minerals Act can give them a second chance at oil and gas pro-

duction possibilities. But this opportunity can only arise if none of the aforementioned actions have occurred within the 20-year period. If such is the case, the surface landowner is not required to take any special action to regain title to any hydrocarbons beneath his property. Should a landowner wish to obtain a judicial determination of his title, an action to "quiet title" may be brought in the circuit court in the county where the land is located. The resultant judgment should be recorded with the register of deeds. In many cases, however, a judicial determination will not be required.

The Act in Perspective

As expected, the Dormant Minerals Act is a controversial piece of legislation. With an increasing number of people affected by the Act (whether they know it or not), disputes surrounding it are likely to increase. But the courts have clearly found the Act to have a valid public purpose. As Michigan Supreme Court Justice Mary Coleman put it,

Although the most apparent benefactor of the Act is the owner of the surface estate who may receive title to the interest upon the owner's failure to record, others will also benefit . . . The Act as a whole works to the benefit of the public by improving the marketability of severed mineral interests and thereby increasing the development of fossil fuels, the revenues from property taxes, and employment with its related benefits. (7)

References

1. *Oil and Gas News*, January 22, 1982, p. 11.
2. *Ibid.*
3. Barlowe, Raleigh (1978). *Land Resources Economics* (Englewood Cliffs, NJ: Prentice Hall, Inc., p. 430.
4. *Ibid.*
5. *Oil and Gas News*, p. 11.
6. State of Michigan Dormant Minerals Act of 1963 (P.A. 1963, No. 42).
7. *Oil and Gas News*, p. 11.



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