

## Chapter 8

# Dormant Mineral Acts: Addressing Severed Mineral Interests in a Fractional World

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### § 8.01. Introduction.

The Utica and Marcellus shale region has a fractionalization problem. Since Colonel Edwin Drake struck oil near Titusville, Pennsylvania in 1859,<sup>1</sup> people have been severing, splitting, and sharing mineral interests underlying the eastern producing states. Often, these severed mineral interests are very small — left collectively to sleep below the soil with unknown, and perhaps uninterested owners who have little incentive to claim them. Dormant minerals not only create potential title ambiguities that can impede the sale of a property, but they often frustrate the ability of the surface and other mineral owners to develop the properties.

Traditional remedies applicable to non-consenting covenants and common-law approaches to reuniting the surface with the mineral estate are often inadequate for curing title defects and may be of uncertain application. The legislative bodies in several states, including Ohio, Michigan, Pennsylvania, Kentucky, Tennessee and West Virginia, have enacted dormant mineral legislation to combat this problem, with varying degrees of success.<sup>2</sup> This chapter surveys the constitutionality, structure, and meaning of dormant mineral legislation in the eastern producing states. Part One explains the problems that these states face and the inadequacy of common-law solutions to fractionalized ownership. Part Two provides an overview of the solution, with Parts Three, Four, and Five explaining the three primary approaches to dormant mineral legislation in this region: the “marketable title,” “trusteeship,” and “hybrid” approaches. Each of these approaches attempts to reconcile the property rights of unlocatable and/or inactive mineral interest owners with the problems caused by leaving minerals “dormant.” Part Six concludes that clear legislative guidance is a necessary step to “striking oil” again.

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<sup>1</sup> Ross H. Pifer, “Drake Meets Marcellus: A Review of Pennsylvania Case Law upon the Sesquicentennial of the Oil and Gas Industry,” 6 *Tex. J. Oil Gas & Energy L.* 47, 48 (2011).

<sup>2</sup> New York is one of the only states in the Marcellus and Utica shale region that has not enacted some form of dormant mineral legislation.