

## DORMANT MINERAL EXAMPLES

### **Example 1: “Classic Abandoned minerals case”**

1951-- Alvin Miller conveys to “**J. Smith**, of Dallas Texas” 10 net mineral acres in Section 10.

No further use of record by J. Smith since 1951. No statements of claim recorded, no oil and gas leases, nothing of record since 1951 relating to this mineral interest. Thus, J. Smith interest is subject to Dormant Mineral Act as no use for a period of over 20 year.

Surface owner exercises rights under the Dormant Mineral Act. Reviews county recorder’s office confirming no “use” and the clerk of court’s office confirming no probates of J. Smith. Surface owner serves Notice of Lapse, publishes the Notice in the official county newspaper. Nobody files a statement of claim within 60 days of publication. Surface owner then obtains default quiet title judgment. Surface owner successfully acquires title to the 10 dormant or abandoned mineral acres. This is the classic example of the original purpose of the Act and it being successful in vesting the minerals in the surface owner, and I have personally seen this scenario on numerous occasions.

NOTE: Above scenario would be same result under 2009 amendments except under 2009 amendments the surface owner’s default judgment would be more difficult to challenge if any heirs were ever discovered.

### **Example 2: “Reasonable Inquiry Standard”**

1965-- “**John Anderson**, of Stanley, North Dakota” – sells his farm to his neighbor’s son and reserves ¼ of the minerals.

1984- John Anderson dies a resident of Minot. His family probates the estate and his ¼ mineral interest is conveyed by Mineral deed in 1984 to:

David Anderson – 1/12  
 Fargo, North Dakota

~~Susan Olson-1/12~~

Minot, North Dakota

Sherry Miller -1/12  
Rapid City, South Dakota

1997 – John’s son, David Anderson, dies survived by two children, Jack Anderson and Jill Anderson. Family decides minerals not worth cost of probating at present time, but attorney advises Jack and Jill to file Statements of Claim. Statements of claim are filed in the County Recorder’s office.

2005- Surface owner claims possible dormant minerals.

1. Surface owner concludes that the three children of John Anderson have not leased or filed a statement of claim since the 1984 Mineral Deed. Thus, no “use” for a period of over 20 years.
2. Surface owner sends Notice of Lapse to last address in 1984 and publishes Notice of Lapse in the Mountrail County newspaper. (The notices are returned undeliverable.) Surface owner disregards the two 1997 statements of claim filed by Jack and Jill Anderson—does not send notice to them. Surface owner does not conduct any other research in an attempt to locate any of the three children other than reviewing the 1984 deed.
3. Surface owner obtains default quiet title judgment vesting minerals in him. Notice of the quiet title action was given by publication.

2006- Oil and gas leases are obtained from multiple mineral owners in preparation for drilling prospect.

1. In the title review and leasing process, Company contacts Jack and Jill Anderson who filed statements of claim in 1997 assuming they must be heirs to one of the Andersons who acquired minerals in 1984. Jack and Jill advise they are the heirs to David Anderson. Jack and Jill also provide current addresses for their aunts, Susan

Olson and Sherry Miller. Company advises Andersons that their claim to minerals has a title defect, advises of default judgment obtained by surface owner. Company obtains "protective" leases from Andersons and the surface owner.

2. Anderson family files judicial action to set aside the default quiet title judgment. Anderson's *et.al.* claim their interests are not abandoned and surface owner failed to conduct a reasonable inquiry. Court concludes Jack and Jill's interest is not dormant as a matter of law as they properly filed statements of claim. Court also holds that a reasonable inquiry by the surface owner would have easily located the other mineral owners in this case and rules in favor of the mineral owners.

NOTE: Under 2009 amendments the surface owner's claims here would also likely fail, except if the surface owner conducted an investigation as required under the amendments, it would be unlikely the surface owner would have proceeded with further action and unnecessary legal expense. (However, under the 2009 amendments, for Jack and Jill's statements of claim to be valid, they must identify on the statement that they are the heirs of David Anderson).