



January 1990

Mixon v. One Newco, Inc.: A Look at Dormant Mineral Acts

Anna H. Ruth
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/jnrel>



Part of the Oil, Gas, and Mineral Law Commons

[Right click to open a feedback form in a new tab to let us know how this document benefits you.](#)

Recommended Citation

Ruth, Anna H. (1990) "*Mixon v. One Newco, Inc.: A Look at Dormant Mineral Acts*," *Journal of Natural Resources & Environmental Law*. Vol. 6 : Iss. 1 , Article 7.

Available at: <https://uknowledge.uky.edu/jnrel/vol6/iss1/7>

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in *Journal of Natural Resources & Environmental Law* by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

Mixon v. One Newco, Inc.: A Look at Dormant Mineral Acts

INTRODUCTION

Dormant mineral acts, or lapse statutes,¹ are an important legal principle, especially in those states where minerals have a significant economic influence.² The statutes affect property which is divided into separate estates. When a specified period of time passes without the mineral estate owner exercising his or her use rights, the acts reunite the surface interest with the mineral interest. By reuniting the estates, the statute makes the entire property potentially more productive. These lapse statutes also clarify ownership of the land.³

For many years the constitutionality of such statutes was questioned. In *Texaco v. Short*,⁴ the United States Supreme Court upheld the constitutionality of the Indiana Dormant Mineral Interests Act⁵ against challenges that the statute constituted a taking without compensation,⁶ and violated the notice provision of the due process clause as well as the equal protection clause.⁷

A majority of states that enacted lapse statutes about the same time as Indiana, set a twenty year window after which a lapse would occur.⁸ However, Georgia chose a much shorter period of seven years.⁹ In *Mixon v. One Newco, Inc.*,¹⁰ the most recent ruling in the area of lapse statutes, the United States

¹ Pindar, *Marketability of Titles-Effect of Texaco, Inc. v. Short*, 34 MERCER L. REV. 1005, 1005 (1983).

² Van Slooten v. Larsen, 299 N.W.2d 704, 710 (Mich. 1980); see also *Texaco v. Short*, 454 U.S. 516, 524 n.15 (1982).

³ *Short*, 454 U.S. at 523 (quoting *Short*, 406 N.E.2d at 627).

⁴ *Short*, 454 U.S. 516 (1982).

⁵ IND. CODE ANN. § 32-5-11-1 to 8 (Burns 1980 & Supp. 1989).

⁶ U.S. CONST. amends. V., XIV at § 1.

⁷ U.S. CONST. amend. XIV, § 1.

⁸ Illinois 25 years; Michigan 20 years; Minnesota 20 years; Nebraska 23 years; but see Wisconsin 10 years.

⁹ GA. CODE ANN. § 44-5-168(a) (1988 & Supp. 1989).

¹⁰ 863 F.2d 846 (11th Cir. 1989).

Court of Appeals for the Eleventh Circuit upheld Georgia's Dormant Mineral Rights Act.¹¹ This comment analyzes that decision. It discusses the possible expansion of the application of lapse statutes in two areas: first, the substantial shortening of the time period before rights are lost, and second, limiting the ways to retain those rights. A brief history, including the Supreme Court's holding in *Short*, sets the stage for the changes occurring in the area of dormant mineral interests.

I. HISTORY

Until the United States Supreme Court decided *Short*, much controversy surrounded the lapse statutes that state legislatures began enacting about twenty-five years ago.¹² *Short* involved the Indiana Dormant Mineral Interest Act.¹³ This act, passed in 1971, provided for the automatic lapse of a mineral interest where the mineral owner had failed to use, to register, or to pay property taxes for twenty years.¹⁴ The Supreme Court held that the Indiana statute was a legitimate exercise of the state's police power.¹⁵ The Court reasoned that the Act's two year grace period following its passage provided adequate protection to the owners of the mineral rights.¹⁶ The Court also determined there was no "taking without compensation" because an individual's failure to follow the procedures required by the state resulted in an abandonment. Thus, there was nothing for which to compensate the property owner.¹⁷

The Court reasoned that the actions required by the state to define abandonment accomplished the goals set by the legislature in creating the lapse statute. These goals include remedying uncertainties in titles and facilitating the exploitation of energy sources and other valuable mineral resources.¹⁸ Registration of the mineral interest was found to be a minimal burden to place on the owner of those mineral interests.¹⁹ The Court further held that the exception for holders of multiple mineral interests was

¹¹ *Id.* at 851.

¹² Michigan 1963, Nebraska 1967, Indiana 1971, Wisconsin 1973.

¹³ IND. CODE ANN. § 32-5-11-1 to 8 (Burns 1980 & Supp. 1989).

¹⁴ IND. CODE ANN. § 32-5-11-1.

¹⁵ *Short*, 454 U.S. at 529.

¹⁶ *Id.* at 532-33.

¹⁷ *Id.* at 530.

¹⁸ *Id.* at 524 n.15.

¹⁹ *Id.* at 538.

not a violation of the equal protection clause because the state's interest was related to the central purpose of the Act.²⁰ Furthermore, there is no adverse impact on those that do not hold multiple interests.²¹ The Court further determined that the holder of the mineral interest is presumed to have knowledge of the Act²² and that because of the self-executing provision,²³ the notice required for a judicial proceeding is not applicable.²⁴

II. GEORGIA'S DORMANT MINERAL STATUTE

Prior to the enactment of Georgia's Dormant Mineral Rights Act in 1975,²⁵ *Brooke v. Dellinger*²⁶ governed the rights of surface owners against the mineral rights holders. Mere nonuse or prescription²⁷ did not render loss of title of the mineral rights. For the mineral owner to lose title, there must have been an actual adverse use of the minerals by the one claiming title.²⁸

The Georgia legislature enacted its dormant mineral rights statute to "provide an additional method for obtaining good title to property."²⁹ However, the statute limits the use of this method to the owner of the surface estate. The Georgia statute provides that the surface rights' owner may regain title to severed mineral rights by filing a petition in superior court for the county where the land is located.³⁰ In order for the surface owner to regain title, the mineral owner must fail to work the mineral estate or pay property taxes for the seven years since the conveyance which immediately preceded the filing of the petition.³¹ The statute exempts holders of leases which pertain to a specific number of years.³² Also exempt from the statute are owners of

²⁰ *Id.* at 539-40 n.36 (holders of multiple interests more likely to produce minerals).

²¹ *Short*, 454 U.S. at 540.

²² *Id.* at 532.

²³ IND. CODE ANN. § 32-5-11-1.

²⁴ *Short*, 454 U.S. at 533-35.

²⁵ GA. CODE ANN. § 44-5-168 (1988 & Supp. 1989).

²⁶ 17 S.E.2d 178 (Ga. 1941).

²⁷ BLACK'S LAW DICTIONARY (5th ed. 1979) (defining prescription as a "preemptory and perpetual bar to . . . action . . . when creditor has been silent for a certain time without urging his claim").

²⁸ *Brooke*, 17 S.E.2d at 182.

²⁹ *Larkin v. Laster*, 334 S.E.2d 158, 159 (Ga. 1985) (quoting Ga. L. 1975, p. 725).

³⁰ GA. CODE ANN. § 44-5-168(b)(1).

³¹ GA. CODE ANN. § 44-5-168(a).

³² *Id.* at § 44-5-168(f).

mineral rights that have leased those mineral rights in writing to a licensed mining operator.³³

Unlike the Indiana statute at issue in *Short*, the Georgia statute does not include a specific "grace period." In *Nelson v. Bloodworth*,³⁴ the Georgia Supreme Court determined the first date that a suit could be brought under this statute. The court stated that the "seven years immediately preceding the filing" meant that the period began to run, at the earliest, on the first effective date of the statute, July 1, 1975.³⁵ Accordingly, July 1, 1982 was the first date upon which suits could have been brought under this statute.

The Supreme Court of Georgia first upheld the constitutionality of Georgia's Dormant Mineral Rights Statute in *Hayes v. Howell*.³⁶ The purposes for the statute as stated by the court in *Hayes* were: (1) "to encourage the use of the state's mineral resources and the collection of taxes; or [(2)] to encourage the use of land free of interference by the holders of mineral rights who neither use nor pay taxes on them."³⁷ The court determined that these were legitimate goals. The state's action, requiring the mineral owner to use or pay taxes on the minerals, is rationally related to those goals.³⁸ Because it meets these tests, the Act is a reasonable exercise of police power.

As in *Short*, the Georgia statute itself does not divest the mineral owner of his rights. Rather the owner causes the loss by his or her failure to perform the minimal requirements of the statute.³⁹

The Supreme Court of Georgia determined in *Hinson v. Loper*⁴⁰ that mineral rights leased according to the statute are exempt even if the lease was initiated by a previous owner of those rights.⁴¹ This protects the rights of the lessees whether they hold a lease for a certain number of years or as a licensed mining operator.⁴²

³³ *Id.*; see also § 12-4-72(7) which provides: "Mining operator" means any person, firm partnership, joint venture, association, corporation, municipality, or county engaged in or controlling one or more surface mining operation.

³⁴ 232 S.E.2d 547 (Ga. 1977).

³⁵ *Id.* at 549.

³⁶ 308 S.E.2d 170 (Ga. 1983).

³⁷ *Id.* at 176.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 304 S.E.2d 722 (Ga. 1983).

⁴¹ *Id.* at 723.

⁴² *Id.*

Furthermore, the court found in *Larkin v. Laster*⁴³ that paying the taxes after a petition was filed does not toll the lapse aspect of the statute⁴⁴. The Georgia Supreme Court also determined the payment of state or federal estate taxes does not meet the requirements of the statute.⁴⁵ Similarly, payment of property taxes by the surface owner does not inure to the mineral rights if those rights are held separately.⁴⁶

Several questions concerning the interpretation of Georgia's lapse statute have been addressed by the Georgia Supreme Court since the enactment in 1975. However, the act had not been challenged in the federal courts until *Mixon v. One Newco, Inc.*⁴⁷

III. *MIXON V. ONE NEWCO, INC.*

A. *Facts*

The surface owner, *Mixon*, filed suit claiming ownership of the mineral rights under Georgia's Dormant Mineral Rights Act.⁴⁸ *Mixon* conveyed all interest in the mineral rights to Allied Chemical Corporation ("Allied") on March 28, 1964. Allied worked the mineral rights to some degree until 1971.⁴⁹ Neither Allied nor its successor, General Chemical Corporation (formerly known as One Newco, Inc.) exercised the rights between 1972 and 1986.⁵⁰ Moreover, the owners of the mineral rights failed to pay taxes during those years.⁵¹ Because neither Allied nor One Newco was a licensed mining operator,⁵² neither qualified for the explicit statutory preemption under Georgia's Act. Following removal from state court, the United States District Court for the Middle District of Georgia entered a judgment in favor of *Mixon* uniting his surface ownership with the mineral rights.⁵³ Subsequently, One Newco, the mineral interest holder, appealed.

⁴³ 334 S.E.2d 158 (Ga. 1985).

⁴⁴ *Id.* at 160.

⁴⁵ *Dubbers-Albrecht v. Nathan*, 356 S.E.2d 205, 207 (Ga. 1987).

⁴⁶ *Hayes*, 308 S.E.2d at 176.

⁴⁷ 863 F.2d 846 (11th Cir. 1989).

⁴⁸ *Id.* at 847.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*; see also *supra* note 33.

⁵³ *Mixon*, 863 F.2d at 847.

On appeal One Newco argued: (1) the surface owner needed to establish at least some affirmative acts of dominion with respect to the minerals; (2) the interest was preserved by working the rights at any time during the seven-year period immediately following the conveyance of those rights; and (3) the statute violated the Equal Protection Clause of the Fourteenth Amendment by the exclusion of fixed durational leases and leases to licensed mining operators.⁵⁴

The appellant argued that despite the statutory requirements, the surface owner must comply with traditional adverse possession requirements as well.⁵⁵ These requirements include actual, open, notorious, exclusive and adverse nonpermissive use for the statutorily prescribed period.⁵⁶ However, the court determined that the statute "simply creates an additional method to acquire title beyond traditional adverse possession."⁵⁷

Traditional adverse possession law focuses on the steps one must take to acquire the ownership.⁵⁸ The statute's focus is on the steps the owner of the mineral rights must follow to retain ownership.⁵⁹ Affirmative action by the surface owner is required in a traditional adverse possession.⁶⁰ However, the Georgia statute imposes no burdens upon the surface owner.⁶¹

Appellants further argued that their use of the minerals during the seven year period immediately following the conveyance permanently preserved their rights.⁶² The statute provides that if the mineral rights are not worked for "a period of seven years since the date of the conveyance and for seven years immediately preceding the filing of the petition"⁶³ they can be lost. The court determined that the legislature chose a "floating period" of seven years after the conveyance.⁶⁴ It concluded that

⁵⁴ *Id.* at 847-48.

⁵⁵ *Id.* at 819.

⁵⁶ BLACK'S LAW DICTIONARY 49 (5th ed. 1979) (defining adverse possession as: "nonpermissive use which is actual, open, notorious, exclusive and adverse for the statutorily prescribed period.").

⁵⁷ *Mixon*, 863 F.2d at 849; *see also* *Larkin v. Laster*, 334 S.E.2d 158, 159 (Ga. 1985).

⁵⁸ *Mixon*, 863 F.2d at 849.

⁵⁹ GA. CODE ANN. § 44-5-168.

⁶⁰ *Mixon*, 863 F.2d at 849.

⁶¹ *Id.*

⁶² *Id.*

⁶³ GA. CODE ANN. § 44-5-168(a)

⁶⁴ *Id.*

a definite period of seven years of noncompliance by the mineral owner must immediately precede the filing of a petition by the surface owner.⁶⁵

The *Mixon* court, interpreting the timing of the seven year period, did not address the sufficiency of that seven year period. Additionally, the Supreme Court in *Short* left unanswered the question of whether a shorter period of nonuse would be appropriate.⁶⁶

One Newco contended that Georgia's exclusion of fixed durational leases⁶⁷ and leases to licensed mining operations⁶⁸ violated the Equal Protection Clause of the Fourteenth Amendment.⁶⁹ In addressing this issue, the court determined that when solely economic interests are concerned, the proper standard of review is whether the classification bears a rational relationship to a legitimate purpose.⁷⁰

The Supreme Court found in *Short* that the Indiana Dormant Mineral Interest Act's exemption of owners with multiple interests in the same county⁷¹ did not violate the Equal Protection Clause.⁷² Indiana had a legitimate purpose and the exemption of multiple owners furthered that purpose.⁷³ In *Mixon* the Eleventh Circuit felt that the legislature probably preferred fixed durational leases⁷⁴ because of the problem that Georgia had faced with perpetual leases.⁷⁵ The court also indicated that leasing to licensed mining operators increased the chances that the minerals would actually be mined and taxes collected on those

⁶⁵ *Id.* The court raised the possibility that there may be an overlap of the two seven-year periods.

⁶⁶ *Short*, 454 U.S. 516, 536 n.28; but see GA. CODE ANN. § 44-5-164 (1982). Traditional adverse possession under color of title ripens in seven years under Georgia law. Since Georgia's lapse statute is stated in terms of a "presumption of adverse possession" it seems very logical that they would choose the seven-year period. See GA. CODE ANN. § 44-5-168 preamble.

⁶⁷ A lease for a certain number of years.

⁶⁸ GA. CODE ANN. § 44-5-168 (f); § 12-4-72(7).

⁶⁹ U.S. CONST. amend. XIV, § 1; *Mixon*, 863 F.2d at 850.

⁷⁰ *Mixon*, 863 F.2d at 851.

⁷¹ IND. CODE ANN. § 32-5-11-4.

⁷² *Short*, 454 U.S. at 539-40.

⁷³ *Id.*

⁷⁴ See *supra* note 67.

⁷⁵ *Mixon*, 863 F.2d at 851 (referring to Rehberg and McLaughlin, *The Implied Duty to Mine in Georgia*, 20 GA. ST. B. J. 216 (1984); BLACK'S LAW DICTIONARY 801 (5th ed. 1979) (defining perpetual leases: "A lease of lands which may last without limitation as to time . . .").

minerals.⁷⁶ Therefore, because the distinction did bear a rational relationship to a legitimate state purpose, the *Mixon* court held the exclusion did not violate the Equal Protection Clause.⁷⁷

This exclusion, plus the lack of registration as one of the options for retaining ownership of the mineral rights, indicates that Georgia is using its lapse statute as an economic tool.⁷⁸ The Indiana Supreme Court recognized the economic impact carried by similar lapse statutes. It stated, "The dependence of local economies upon the mineral recovery industry and the entire State upon limited fossil fuel resources illustrates the public nature of these purposes."⁷⁹ Unlike some states that have enacted dormant mineral rights legislation,⁸⁰ Georgia is not as interested in the lost or unknown owners⁸¹ but rather is more concerned about the use of the minerals and collection of taxes on those minerals,⁸² as an economic benefit for the State.

B. Unanswered Question

The Supreme Court in *Short* made it clear that the Indiana statute passed judicial scrutiny with respect to the notice provisions because it is self-executing.⁸³ "The Due Process Clause does not require a defendant to notify a potential plaintiff that a statute of limitations is about to run."⁸⁴

The *Mixon* court declared that Georgia's lapse statute "contains a built-in statutory notice" to the mineral rights owner.⁸⁵

⁷⁶ *Mixon*, 863 F.2d at 851; but see *McCoy v. Richards*, 623 F.Supp. 1300, 1304-05 (D.C. Ind. 1984); see also *Kirby v. Ashland Oil, Inc.* 463 N.E.2d 1127, 1129-30 (Ind. App. 1 Dist. 1984).

⁷⁷ *Mixon*, 863 F.2d at 851.

⁷⁸ GA. CODE ANN. § 44-5-168(a); see also *Dubbers-Albrecht v. Nathan*, 356 S.E.2d 205, 207 (Ga. 1987).

⁷⁹ *Texaco v. Short*, 454 U.S. 516, 524 n.15 (1981).

⁸⁰ See, Comment, *Severed Mineral Interests of Unknown or Missing Owners in Kentucky*, 3 J. MIN. L. & POL'Y 185 (1987-88); See also FLA. STAT. ANN. § 712.01-.10 (West 1988); ILL. ANN. STAT. ch. 96 1/2 para. 9201-17 (Smith-Hurd Supp. 1989); KY. REV. STAT. ANN. § 353.460-.470 (Michie 1983); NEB. REV. STAT. § 57-228 to 231 (1988) (Nebraska's statute does not apply retroactively); N.C. GEN. STAT. 1-42.1 to .9 (1983) & Supp. 1989); VA. CODE ANN. § 55-153 to 155 (1989 & Supp. 1989); WIS. STAT. ANN. § 706.055, .057 (West 1981 & Supp. 1989).

⁸¹ *Short & Thomas, Kentucky Mineral Law* § 15.02 (1986); ILL. ANN. STAT. ch. 96 1/2, para. 9201-17; KY. REV. STAT. ANN. § 353.460-.470.

⁸² *Hayes v. Howell*, 308 S.E.2d 170, 176 (1983).

⁸³ *Texaco v. Short*, 454 U.S. 516, 535 (1981).

⁸⁴ *Id.* at 536.

⁸⁵ *Mixon v. One Newco, Inc.*, 863 F.2d 846, 849 (11th Cir. 1989).

After seven years of noncompliance the mineral rights may be lost by a presumption of adverse possession.⁸⁶ However, the surface owner must file a petition for a declaratory judgment to gain title to the mineral rights.⁸⁷ A judicial proceeding is needed in Georgia.⁸⁸ The notice provisions to be followed are set out in the statute; service is to be the same as in an *in rem* proceeding, including publication.⁸⁹ Whether these notice provisions are adequate remains to be answered by the courts. The Supreme Court in *Short* found that although the surface owner did not have to give special notice to the mineral owner, failure to do so "certainly would preclude him from obtaining a declaratory judgment that his adversary's claim is barred"⁹⁰

CONCLUSION

The validity of dormant mineral acts was settled by the United States Supreme Court in *Short*.⁹¹ However, the concept of lapse statutes has been expanded by the validation of Georgia's Dormant Mineral Rights Act. The United States Court of Appeals for the Eleventh Circuit in *Mixon*⁹² and the Supreme Court of Georgia in *Hayes*⁹³ upheld the constitutionality of the Georgia statute.

Georgia's statute allows only two ways of retaining the mineral interest.⁹⁴ The interest is retained by using the minerals or by paying taxes on them within a seven year period. Both of these options are designed to bring money to the state. Conversely, registration of the claim is not one of the options in Georgia. Exemption of certain leases from the statute makes the economic purposes of the statute evident—it allows the mining industry to attract potential investors.⁹⁵

Lapse statutes emerged as a method of clearing title to real property. Land increases in value when potential claims by un-

⁸⁶ GA. CODE ANN. § 44-5-168.

⁸⁷ GA. CODE ANN. § 44-5-168(b)(1).

⁸⁸ *Id.*

⁸⁹ GA. CODE ANN. § 44-5-168(b)(3).

⁹⁰ *Short*, 454 U.S. at 536.

⁹¹ *Texaco v. Short*, 454 U.S. 516 (1982).

⁹² *Mixon v. One Newco, Inc.*, 863 F.2d 846 (11th Cir. 1989).

⁹³ *Hayes v. Howell*, 308 S.E.2d 170 (Ga. 1983).

⁹⁴ GA. CODE ANN. 44-5-168.

⁹⁵ *Mixon*, 863 F.2d at 851.

known mineral owners are extinguished.⁹⁶ This increased value provides a larger tax base on which to tax the property. Thus, lapse statutes such as Georgia's may now be a new and important weapon in a state's arsenal of revenue raisers.

Anna H. Ruth

⁹⁶ *Short*, 454 U.S. 516; see also *Short & Thomas*, *supra* note 81.