INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CASE NO. 25-ICA-100

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Transaction ID 76539494

WINGED FOOT MINERALS, LLC
an Oklahoma Limited Liability company, et al.
PETITIONERS,

v.

SWN PRODUCTION COMPANY, LLC
a Texas Limited Liability company, et al.,
RESPONDENTS

SWN RESPONDENTS' JOINT BRIEF

On Appeal from the Circuit Court of Marshall County. West Virginia
Civil Action No. 22-C-83
(Honorable Jason A. Cuomo)

Timothy M. Miller
Robert M. Stonestreet
Tiffany M. Arbaugh
Babst Calland Clements & Zomnir, P.C.
300 Summers Street, Suite 1000
Charleston, WV 25301
tmiller@babstcalland.com
rstonestreet@babstcalland.com
tarbaugh@babstcalland.com
Counsel for SWN Production Company, LLC and Equinor USA Onshore Properties Inc.

Andrew G. Jenkins
Jenkins Legal Group
77 South Washington Street
Waynesburg, PA 15370
andrew@jenkinslegalgroup.com
Counsel for Mineral Acquisition Company, I, L.P. and MAC I (YC) L.P.

Jeffery D. Kaiser
Andrew R. Thalman
Phillips, Gardill, Kaiser, & Altmeyer, PLLC
61 Fourteenth Street
Wheeling, WV 26003
jeffkaiser@pgka.com
andrewthalman@pgka.com
Counsel for Lynn E. Cook, Mary K. McKeets, Frances J. Putharich, Amy C. Murray, and Suzanne Thompson

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Respondents Lynn E. Cook, Mary K. McKeets, Frances J. Pucharich, Amy C. Murray, Suzanne Thompson, Mineral Acquisition Company I, L.P., MAC I (YC) L.P., SWN Production Company, LLC and Equinor Onshore Properties Inc. (collectively, the "SWN Respondents"), by and through their respective undersigned counsel, submit this Joint Brief in Opposition to the Petitioners' Joint Opening Brief as follows:

I. INTRODUCTION AND EXECUTIVE SUMMARY.

This appeal presents two questions for the Intermediate Court of Appeals to address. First, may a tax deed convey real property rights that were never owned by the person in whose name the delinquent real property taxes were assessed and without adequate notice to the actual owner of the property interests? As a matter of law and common sense, the answer is clearly "no." The circuit court below agreed in finding that a tax deed purporting to convey certain oil and gas interests assessed in the name of R. Robinson Chance, Jr. did not validly convey such interests because those interests were never conveyed to Mr. Chance in the first place. In their Opening Brief, Petitioners openly admit that is true. "The Petitioners are not arguing, and have never argued, that R. Robinson Chance, Jr. owned the Subject Interest when it was assessed in his name." *Opening Brief* at 11. Yet, Petitioners contend that the circuit court was still wrong to set aside a tax deed conveying oil and gas interests that Mr. Chance never owned and without adequate notice to the actual owners of those oil and gas interests.

The second question is whether oil and gas interests may be validly conveyed by a tax deed when the entire fee interest in the same property, including the aforementioned oil and gas interests, is covered by a separate tax assessment for which taxes were fully paid. The circuit court concluded that taxes on the oil and gas interests were assessed and paid on the property as a whole, which included the oil and gas interests. Therefore, the circuit court found that a separate assessment of

just the oil and gas rights was an improper duplicative/double assessment, and non-payment of which could not serve as a valid basis for a tax deed. Petitioners have no cogent argument for why the circuit court's conclusion is incorrect.

As explained more fully below, the Intermediate Court of Appeals should affirm the circuit court's order. Petitioners cannot acquire, via tax deed, oil and gas rights that the "delinquent" taxpayer never owned in the first place. And payment of taxes assessed against the fee interest of a property necessarily covers the oil and gas interests included in that fee interest.

II. STATEMENT OF THE CASE

A. Factual Background

1. The Parties and Their Respective Estates.

Winged Foot Minerals, LLC ("WFM"), a mineral purchasing and holding company based in Oklahoma, and a group of individuals consisting of Corita Prendergast, Mary Lou Buckman, Grace Hoyt, Connie Sue Gandee, Eugene Prendergast, Frank Prendergast, Melissa Ulik, Lori Gulling, Elizabeth Prendergast, Julya Prendergast, Dawn Miruka, and Paul Prendergast (the "Prendergast Heirs") (collectively, "Petitioners"), filed this action seeking to quiet the title to a three-fourths (3/4) interest (i.e. 75%) in the oil and gas (the "Oil and Gas Interests") underlying approximately 227.48 acres[1] situate in Meade District, Marshall County, West Virginia (the "Subject Property") and to recover damages for conversion and trespass. (PA 15-24). Petitioners' claims are solely premised on the validity of a tax deed to James Prendergast dated April 5, 1993 ("Tax Sale Deed"). (PA 26).

With the exception of Respondents SWN Production Company, LLC ("SWN") and Equinor USA Onshore Properties, Inc. ("EQNR"), the remaining respondents are the heirs,

[1] The Subject Property is later described in the chain if title as containing 222.4 acres, more or less, pursuant to a resurvey prepared by Stegman & Schellhase, Inc., dated May 2, 1972. (PA 403).

successors and assigns of Joseph Nolte, Sr. ("Nolte Descendents") and are the true owners of the Oil and Gas Interests. (PA 317). SWN and EQNR have acquired numerous oil and gas leases from the Nolte Descendants covering the entirety of the Oil and Gas Interests. (PA 352-355). The leases with the Nolte Descendants are currently held by production pursuant to their terms. The oil and gas underlying the Subject Property is actively being developed and produced. *Id*.

2. The Nolte Descendants Source of Title.

Joseph Nolte Sr. died on December 18, 1920, seized with 363.88 acres, more or less, including the Subject Property. (PA 24, 376-382). The 1919 Land Book shows Joseph Nolte assessed with "FEE 363.81 LYNN CAMP." (PA 191).

In his will, Joseph Nolte Sr. devised the 363.88 acres as three separate tracts to certain of his heirs, but further devised the oil and gas as follows:

> I will and bequeath to my four heirs, Mrs. Theresa Wiegand, Joseph Nolte Jr., Mary Nolte and Christina Nolte, one heir as heretofore mentioned, and Joseph Wiegand Jr., equal shares in all the oil and gas, rentals, and profits that have accrued from the same, or may hereafter accrue from the same, and all other minerals owned by me, in and underlying the whole farm of 363.88 acres that may hereafter be operated or developed, the proceeds arising therefrom to be equally divided among my four heirs heretofore mentioned in this article.

Subject to devises or dispositions relating to the oil and gas within the Nolte Farm containing 363.88 acres, more or less, (the "Parent Tract"), a parcel or tract identified as Lot 1, described as containing approximately 134.68 acres ("Lot 1"), was devised to his son, Joseph Nolte Jr.; a parcel or tract identified as Lot 2, described as containing approximately 136.40 acres ("Lot 2"), was devised to his daughter, Theresa Wiegand; and a parcel or tract identified as Lot 3,

described as containing approximately 92.80 acres ("Lot 3"), was devised to his granddaughters, Mary Nolte and Christina Nolte. (PA 376-382). The oil and gas within and underlying the Parent Tract (i.e., 363.88 acres) vested as follows:

> An undivided one-fourth (1/4th) interest in the oil and gas within the Parent Tract was devised to his son, Joseph Nolte Jr.;
>
> An undivided one-fourth (1/4th) interest in the oil and gas within the Parent Tract was devised to his daughter, Theresa Wiegand;
>
> An undivided one-fourth (1/4th) interest in the oil and gas within the Parent Tract was devised to his grandson, Joseph Wiegand Jr.;
>
> An undivided one-eighth (1/8th) interest in the oil and gas within the Parent Tract was devised to his granddaughter, Mary Nolte; and
>
> An undivided one-eighth (1/8th) interest in the oil and gas within the Parent Tract was devised to his granddaughter, Christina Nolte.

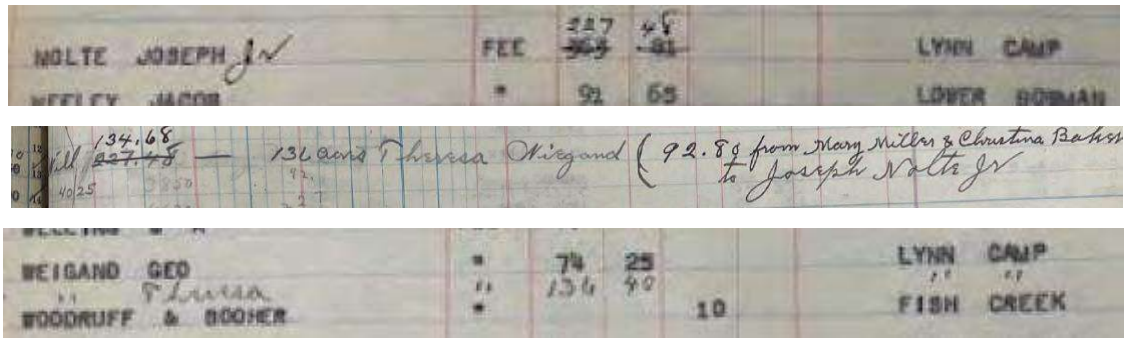
The interests of Theresa Wiegand, Joseph Wiegand Jr., Mary Nolte, and Christina Nolte collectively make up the Oil and Gas Interests at issue in this appeal.

3. The Oil and Gas Interests to the Parent Tract including the Subject Property.

On March 21, 1921, Mary Miller, formerly known as Mary Nolte, and Christina Baker, formerly known as Christina Nolte, conveyed Lot 3 to their uncle Joseph Nolte Jr., reserving their respective one-eighth (1/8th) interests in the oil and gas. (PA 384-385). Following that conveyance, Joseph Nolte Jr. owned (1) the "surface" of Lot 1, (2) the "surface" of Lot 3, and (3) a one-fourth (1/4th) interest in the oil and gas underlying the Parent Tract (*i.e.,* 363.88 acres). Joseph Nolte Jr.'s one-fourth (1/4th) interest in the oil and gas within Lot 1 (*i.e.,* 134.68 acres) had not been severed from the "surface" estate of Lot 1 and his one-fourth (1/4th) interest in the oil and gas within Lot 3 (*i.e.,* 92.80 acres) had merged or reunited with the "surface" estate of Lot 3. (PA 376-385). As a result, Joseph Nolte Jr. owned the surface and an undivided one-fourth (1/4th) oil and gas interest in 227.48 acres (134.68 acres in Lot 1 plus 92.80 acres in Lot 3 – *i.e.* the Subject Property), as well

as a one-fourth (1/4th) oil and gas interest in the remaining portion of the Parent Tract containing 136.40 acres (*i.e.,* Lot 2 devised to his sister, Theresa Wiegand).

The 1920 Land Book shows the assessment of the Parent Tract (*i.e.,* FEE 363.81 LYNN CAMP) changed to the name of Joseph Nolte Jr. and the land as a whole continued to be assessed in fee as "FEE 227.48 LYNN CAMP" with a notation stating "136 acres Theresa Wiegand (92.80 from Mary Miller & Christina Baker to Joseph Nolte Jr[]." (PA 388-389).



4. The Taxes

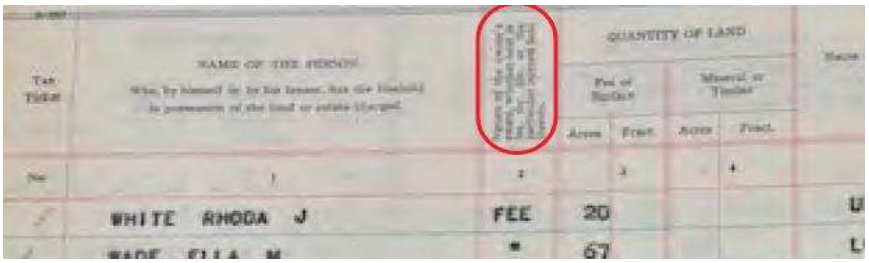
a. The Nolte Assessments.

An assessment appeared on the 1932 Land Books in the name of Joseph Nolte and described as "ROYALTY OIL." (PA 221-225). At the same time, Joseph Nolte was also being assessed for the land as a whole and described as "FEE 227.48 LYNN CAMP." *Id.*

The remaining portion of the Parent Tract (*i.e.,* Lot 2 containing 134.68 acres) devised to Theresa Wiegand was likewise assessed as a whole and described as "FEE 136.4 LYNN CAMP." (PA 487).

It is important to highlight that the 1933 Land Book is set up slightly different than in years past by virtue of the removal of the column wherein the word "FEE" was used prior to listing the acreage and described location of the assessed interest.

1932 Land Book "FEE" column circled in red. (PA 219).



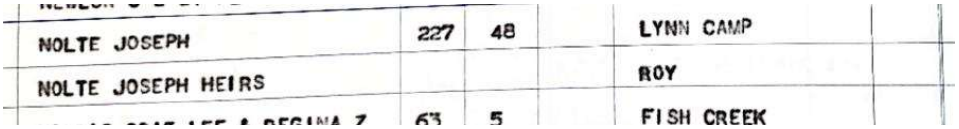
1933 Land Book does not include a "FEE" column. (PA 220).

The removal of the "FEE" column immediately prior to the acreage column in the 1933 Land Book resulted in the land assessment in the name of Joseph Nolte for "FEE 227.48 LYNN CAMP" (as previously assessed) changed to "227.48 LYNN CAMP." This same change in the land book formatting also changed the land assessment in the name of Theresa Weigand for "FEE 136.40 LYNN CAMP" to "136.40 LYNN CAMP."

In 1938 the ROYALTY OIL assessment dropped off the land books, yet Joseph Nolte continued to be assessed for the land as a whole and described as "227.48 LYNN CAMP." (PA 231-247).

In 1946, an assessment for "ROY" appeared on the land books in the name of the Joseph Nolte Heirs. (PA 394). *There are no conveyance instruments of record or other documents in the*

chain of title to account for this new assessment. The ROY assessment provided no source for its entry, no indication of where the assessed interest was located, what acreage was associated with the assessed interest, or whether the assessed interest related to the Parent Tract, a part of the Parent Tract, or some other tract altogether. (PA 394). It was simply an obtuse and vague description without a means to link it to any particular amount of acreage or any particular tract of land whatsoever.



NOLTE JOSEPH	227	48		LYNN CAMP	
NOLTE JOSEPH HEIRS				ROY	
	63	5		FISH CREEK	

Petitioners claim the *1946 ROY assessment* "*is the one on which this entire case turns*." *Opening Brief* at 4. Petitioners argue that because Theresa Weigand, Joseph Wiegand, Jr., Christina Baker, or Mary Miller were not separately assessed for the three-fourths oil and gas interest they collectively owned, the 1946 ROY assessment "was, therefore, the only assessment ever created which covered their severed interest." *Id*. This is faulty logic for a number of reasons as further explained below; however, recall that Joseph Nolte Sr. devised his oil and gas interest underlying the entire 363.88 acre Parent Tract, not the 222.40 acres of oil and gas that Petitioners sometimes argue the ROY assessment relates to.[2] *Id.* Petitioners' claims fall apart when you account for the fact that the severance occurred in 1920, yet this assessment did not come on the land books until 1946. (PA 376-382).

b. The 1972 Conveyance to R. Robinson Chance, Jr.

In 1971, Joseph T. Nolte, being the same as Joseph Nolte Jr., died testate and pursuant to his last will and testament, he directed his executor to sell his "farm property" and divide the

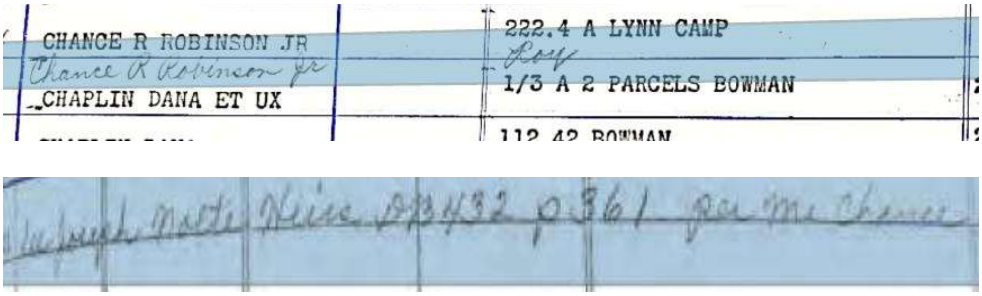
[2] As further explained herein, Petitioners also take the position that the ROY assessment is an assessment of the minerals underlying the entirety of the 363.88 Parent Tract.

proceeds among certain identified nieces. (PA 397-400). Pursuant to such direction, John J. Klug, as executor of Joseph Nolte Jr.'s estate, conveyed the Subject Property to R. Robinson Chance Jr. by deed dated October 10, 1972 (the "1972 Deed"). (PA 402-406). That deed expressly excepts "all the coal, oil, gas and other minerals heretofore conveyed or reserved[.]" (PA 403). This includes the Oil and Gas Interests vested in Theresa Wiegand, Joseph Wiegand Jr., Mary Nolte, and Christina Nolte. Petitioners concede that no oil and gas rights were conveyed to R. Robinson Chance Jr. through this deed. *Opening Brief* at 11.

The 1973 Land Book shows the assessment in the name of Joseph Nolte Est. for "227.48 LYNN CAMP" crossed out with a notation "to R. Robinson Chance Jr. DB 432 p. 361" and an assessment entered in the name of R. Robinson Chance Jr. for "222.4 A LYNN CAMP" with a notation "From John Kleg, Esq., DB 432 p. 361 (Joseph Nolte Est) per survey Stegman & Schellhase." (PA 277-279). *The 1972 Deed is the only conveyance into Mr. Chance*.

c. The Chance Royalty Assessment.

The taxes associated with the ROY assessment went delinquent in 1972 and were subsequently redeemed in 1974. (PA 277-281). In 1975, the ROY assessment reappeared on the land books in the name of R. Robinson Chance, Jr. with a notation "See Joseph Nolte Heirs DB 432 P. 361 per Mr. Chance." (PA 409-412). *There are no conveyances into Mr. Chance (other than the 1972 Deed) to explain this change*.



d. The Watkins Deed.

In 1982, Mr. Chance conveyed all of his right, title and interest in the Subject Property (being all of the interest conveyed to him through the 1972 Deed) to Daniel B. Watkins and John L. Turcato (the "Watkins Deed"). (PA 414-417). The fee assessment for "222.4 A LYNN CAMP" was thereafter assessed in the name of the new owner, Daniel B. Watkins. (PA 293-309).

5. The Tax Sale.

Even though Mr. Chance conveyed all of his right, title, and interest to the Subject Property in 1982 through the Watkins Deed, the ROY assessment remained on the land books in the name of R. Robinson Chance, Jr. for another eight years. The 1990 ROY assessment in the name of R. Robinson Chance went delinquent in 1991 and was subsequently sold at tax sale to James Prendergast on November of 1991. A tax deed was thereafter issued on April 5, 1993 (the "Tax Sale Deed"). (PA 293-311; 425-435).

The Tax Sale Deed describes the "ROY" interest conveyed to James Prendergast as *"[b]eing the same oil and gas reserved unto R. Robinson Chance, Jr."* in the Watkins Deed (emphasis added). (PA 427) But, critically, R. Robinson Chance, Jr. did not reserve any interest when he conveyed the Subject Property to Daniel B. Watkins. (PA 414-417). As there was no reserved interest, there was no interest for the State to assess and no interest for which the State could attach a tax lien.

6. Petitioners' Competing Title Claim.

Petitioners claim that, by deed dated June 23, 2021, James Prendergast's heirs conveyed to WFM an undivided seventy percent (70%) interest in the oil, gas and minerals within and underlying 363.88 acres (*i.e.,* the Parent Tract), described as "*being the entirety of the land formerly*

held by Joseph Nolte" ("Petitioners' Deed").[3] According to Petitioners, this deed is for 363.88 acres (*i.e.,* the Parent Tract) not 222.40 acres as Petitioners' claim to own in this case. The validity of the Petitioners' Deed is wholly dependent on the validity of the Tax Sale Deed.

From the date of the Tax Sale Deed (*i.e.,* 1993) through the date of the Petitioners' Deed (*i.e.,* 2021) neither James Prendergast, his heirs, nor anyone claiming under him, recorded any instrument in the county clerk's office asserting ownership of the Oil and Gas Interests. Meaning, that for over twenty-eight (28) years *after* the Tax Sale Deed, the Nolte Descendants' title to the Oil and Gas Interest went unchallenged until the recording of the Petitioners' Deed on July 21, 2021 and the delivery of WFM's August 25, 2021 correspondence to SWN titled "Wrong oil and gas owners credited by SWN and unleased acreage." (PA 359-366).

B. Procedural History.

Petitioners, Plaintiffs below, filed their Complaint on or about August 26, 2022, seeking to quiet title to the Oil and Gas Interests and recover damages for trespass and conversion. (PA 14-48). As previously explained, Petitioners' claims are wholly dependent on the Tax Sale Deed. (PA14-48). Specifically, Petitioners allege that their predecessor-in-interest, James Prendergast, obtained title to the Oil and Gas Interests through the Tax Sale Deed. (PA 26-27).

By Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment entered February 24, 2025 ("Circuit Court Order"), Circuit Court Judge Jason A. Cuomo ruled in Respondents favor by finding that (a) the Nolte Descendants are the true and rightful owners of the Oil and Gas Interests; (b) the ROY Assessment and the tax sale precipitating the Tax Sale Deed is void; (c) the Tax Sale Deed is set aside; (d) all subsequent purported conveyances or transfers of the Oil and Gas Interest flowing from the Tax Sale Deed,

[3] Petitioners cite to the 2021 deed on numerous occasions yet failed to include a copy of the deed in the appendix record as required under Rule 6 of the Rules of Appellate Procedure.

whether by deed, will, or intestacy, are likewise void. (PA 484-496). The circuit court certified the Circuit Court Order as a final appealable order pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure. (PA 495).

Under West Virginia law, when the circuit court grants summary judgment to one party and that ruling effectively ends the entire case (meaning nothing remains to be done but to enforce the judgment), it constitutes a final judgment. W. Va. Code § 58-5-1 (1925). This final judgment is the trigger for an appeal. W. Va. R. Civ. P. 54(b). A circuit court's decision to grant summary judgment is reviewed *de novo. Syl. pt. 3, Findley v. State Farm Mut. Auto. Ins. Co.,* 213 W. Va. 80, 89, 576 S.E.2d 807, 816 (2002). This means the appellate court gives no deference to the circuit court's findings and makes its own independent review of the record and the law. *Id.*

III. SUMMARY OF THE ARGUMENT

This Court should affirm the summary judgment order issued by the circuit court for at least three reasons. *First*, there is no dispute that the Tax Deed conveys a mineral interest that Mr. Chance never owned to begin with, and further limits the interest conveyed to a non-existent interest (*i.e.,* "ROY"). A tax deed cannot convey property interests that the delinquent taxpayer never owned, much less without adequate notice to the persons who actually owned the interests. *Second*, the underlying assessment supporting the Tax Sale Deed did not identify the owners of the interests or adequately describe those interests. *Third*, taxes on the Oil and Gas Interests were separately assessed and paid on the entire fee interest of the property, which renders an assessment on the "ROY" interest void.

IV. STATEMENT REGARDING ORAL ARGUMENT.

Respondents request Rule 20 oral argument because this case presents issues of fundamental importance – particularly with respect to the sanctity of property rights and the ability of tax deeds to divest persons of property rights without proper notice.

V. STANDARD OF REVIEW.

The circuit court granted Respondents' motion for summary judgment as to Respondents' declaratory judgment cause of action and denied Petitioners' competing motion for partial summary judgment. Therefore, this Court's review of the circuit court's decision is *de novo. See Syl. pt. 3, Findley v. State Farm Mut. Auto. Ins. Co.,* 213 W. Va. 80, 89, 576 S.E.2d 807, 816 (2002) (rulings on summary judgment motions are reviewed *de novo*); *see also Cox v. Amick,* 195 W. Va. 608, 466 S.E.2d 459 (1995) (a circuit court's entry of a declaratory judgment is reviewed *de novo*).This *de novo* review allows the appellate court to consider all legal arguments raised by the parties at the trial court stage to ensure the overall correctness of the final judgment. In *Canfield v. W. Va. Div. of Corr.,* 217 W. Va. 340, 344, 617 S.E.2d 887, 891 (2005), the West Virginia Supreme Court of Appeals held that it "may, on appeal, affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment." *See also Murphy v. Smallridge*, 196 W. Va. 35, 36-37, 468 S.E.2d 167, 168-69 (1996) ("An appellate court is not limited to the legal grounds relied upon by the circuit court, but it may affirm or reverse a decision on any independently sufficient ground that has adequate support."); *U. S. Steel Mining Co., LLC v. Helton*, 219 W. Va. 1, 3 n.3, 631 S.E.2d 559, 561 (2005) ("A reviewing court may affirm a lower tribunal's decision on any grounds."); *Yourtee v. Hubbard*, 196 W. Va. 683, 690, 474 S.E.2d 613, 620 (1996) ("In reviewing an appeal of a circuit court's order, we look not to the correctness of the legal ground upon which the circuit court based its order, but rather, to whether the order itself is correct, and we will uphold the judgment if there is another valid legal ground to sustain it.").

VI. ARGUMENT.

Petitioners concede that no instrument of record exists that conveys the oil and gas rights relevant hereto to R. Robinson Chance, Jr., whose purported rights were purchased at tax sale by James Pendergrast and later acquired by Petitioners. *Opening Brief* at 11. Petitioners further concede that the Nolte Heirs never received the legally required notice of the tax sale. *Opening Brief* at 8-9, 12. Yet Petitioners nonetheless contend that the Nolte Heirs received sufficient notice, and the Tax Sale Deed conveyed the Oil and Gas Interests (the oil and gas interests owned by the Nolte Heirs, but *never* Mr. Chance) because Mr. Chance was, in Petitioners' version of things, the agent of the Nolte Heirs under a "group assessment" theory. *Opening Brief* at 11-14. Petitioners have put forth no factual evidence or legal support for these contentions. Petitioners' contention completely ignores the fact that West Virginia's black letter law requires the parties to specifically request an agency relationship (*i.e.*, a group assessment). As set forth more fully below, Petitioners' complete lack of factual or legal support for these contentions renders them meritless.

A. The Tax Deed purports to convey property interests that Mr. Chance never owned, and thus could not be properly assessed in his name.

Under West Virginia's tax deed statutory scheme, "the estate acquired by the state and sold by it" is limited "to the exact estate against which the taxes were assessed." *State v. Black Band Consol. Coal Co.*, 113 W. Va. 872, 877, 169 S.E. 614, 616 (1933) (holding that "title which a purchaser acquires from the state under a forfeiture sale is not an unqualified fee simple carrying everything from the surface to the center of the earth, it is merely a new title *for the estate which was vested in the former owner for whose tax delinquency the property was proceeded against* by the state") (emphasis added). A tax deed purchaser is only vested with "all such right, title, and interest in and to the real estate as was, *at the time of the execution and delivery of the deed*, vested in or held by the state." W. Va. Code § 11A-4-33 (emphasis added).

Here, the Tax Sale Deed expressly provides that "the *royalty* purchased by James Prendergast" is "*the same oil and gas reserved unto R. Robinson Chance, Jr.*, by deed dated December 14, 1982, and recorded in Deed Book 502 at page 160, Marshall County records." For clarity, the Tax Sale Deed expressly limits the property conveyed thereby as being the *same* oil and gas reserved in the Watkins Deed. (PA 180-190). Mr. Chance, however, reserved no interest whatsoever in the Watkins Deed. (PA 176-179). Rather the Watkins Deed excepted "all of the coal, oil and gas and other minerals *heretofore conveyed or reserved*, and is further subject to the mining rights heretofore granted or conveyed by the said Joseph T. Nolte, deceased[]" *Id.* (emphasis added). In no way could the statement that the conveyance "is made subject to the mining rights heretofore granted or conveyed by the said Joseph T. Nolte, deceased," be read as a severed interest that was assessed in the name of Mr. Chance.

Petitioners affirmatively conceded before the circuit court that Mr. Chance failed to reserve any interest in the Watkins Deed, and that Mr. Chance did not own the Oil and Gas Interests at any point in time.

> [Petitioners] acknowledge and concede that the undivided one-fourth (1/4) interest once owned by Joseph Nolte, Jr. was never severed from the surface estate of the Subject Property. This case is not about whether the tax deed in question conveyed any interest R. Robinson Chance, Jr. once owned in the oil and gas. *It did not*. This case is not about whether R. Robinson Chance, Jr. reserved any oil and gas in and under the land in question. *He didn't*.

(PA 439-440) (emphasis added).[4] Mr. Chance's lack of ownership in the Oil and Gas Interests was a key basis for the circuit court's ruling:

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[4] Petitioners' Response to Defendants' Motions for Summary Judgment at FN 2, p. 8 (PA 445).

Importantly, the Watkins Deed is the source of title by which AMP Fund II, LP ("AMP") and Family Tree Corporation ("Family Tree") derived their 25% oil and gas interest which Petitioners expressly concede is "not affected or impacted by the tax sale" and the 25% interest acquired through the Watkins Deed is "not at-issue or covered by the tax sale issues." *See* email from John Whipkey dated March 11,

> As R. Robinson Chance, Jr. was the person being assessed for the ROY assessment and *did not own any interest in the Property of any kind whatsoever, including without limitation, any interest in the oil and gas underlying the Property* when the ROY assessment became delinquent, the ROY assessment was illegal and void. Because the ROY assessment is illegal and void, the Tax Sale Deed is illegal and void.

(emphasis added). (PA 494). Petitioners offer no cogent explanation for how a tax deed can convey property interests that a delinquent taxpayer does not own. Thus, Petitioners' concession that Mr. Chance lacked ownership in the Oil and Gas Interests is fatal to their argument that the Tax Deed constitutes a valid of conveyance of those Oil and Gas Interests.

B. The 1990 ROY assessment in the name of Mr. Chance was an invalid assessment of the Subject Oil and Gas because Mr. Chance did not own the interest, which was also inadequately described.

W. Va. Code § 11-4-1 requires that each entry on the land book must contain the name of the *owner(s)*. Notably, it is the name of the owner, no one else, that must be contained in the entry. In *Collins v. Reger*, 62 W. Va. 195, 57 S.E. 743 (1907), the Court stated that "[n]othing could be more calculated to mislead and prejudice the owner than to omit his name from the assessment roll or the delinquent or sales return. *such assessment and sale has been held void and of no effect as against the title of the true owner.* *Id.* 62 W. Va. at 199 (emphasis added). *See Male v. Moore*, 70 W. Va. 448, 74 S.E.2d 685 (1912) (if the party to whom the property is listed is *not the true owner, any assessment of the valuation or taxes thereon is invalid*); *Thaxton v. Beard*, 157 W. Va. 381, 201 S.E.2d 298 (1973) (holding that a tax deed must be supported by a valid assessment or rendered void). *See Male,* 70 W. Va. at 447. Unless the provisions of the statute are strictly complied with,

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2022 (emphasis added) (PA 419); Petitioners' Response to Defendants' Motion at FN 2, p. 8, states that "[Petitioners] acknowledge and concede that the undivided one-fourth (1/4) interest once owned by Joseph Nolte, Jr. was never severed from the surface estate of the Subject Property." (PA 445).

the tax deed will be ineffectual to deprive the owner of his rights to redeem. *Koontz v. Ball*, 96 W. Va. 117, 122 S.E. 461 (1924).

In addition, W. Va. Code § 11-4-2 requires that there must be a "local description" of the estate or interest in land being assessed. An assessment that does not adequately identify the land is void. *Mosser v. Moore*, 56 W. Va. 478, 481, 49 S.E. 537, 538 (1904). The West Virginia Supreme Court of Appeals discussion in *Mosser* is instructive for the purposes of analyzing the sufficiency of the assessment:

> The test is this: Is the description sufficient to identify the land and give notice to the owner of the assessment, or is it so defective that it might probably mislead the owner? *Notice, or at least the means of knowledge, is an essential element of every just proceeding which affects rights of person or property*. . . . It is essential to the validity of an assessment of real estate that it contain a *description of the property sufficiently accurate and certain to enable the owner readily to identify it as his*.

(emphasis added) (internal quotations omitted).

As Petitioners concede, Mr. Chance owned no interest in the Oil and Gas Interests in either 1975, when he was first assessed, or in 1990, when the taxes went delinquent and the tax lien was purchased by Mr. Prendergast. (PA 282-304). In fact, Mr. Chance owned no interest in the Oil and Gas Interests at any point in time. Not only was the 1990 ROY assessment in the name of Mr. Chance misleading and insufficient to provide notice because it was entered in the name of a non-owner, the description itself prevented the owner (or anyone else) from identifying what, if any, land it related to.[5] Therefore, the 1990 ROY assessment in the name of Mr. Chance is invalid for

[5] It is commonly known that assessors would often create a new entry on the land books based on production reported by operators. They often described that entry as "ROY." Although there has been great debate as to whether or not this practice is allowable under the law, it may help explain the original purpose of the "ROY" assessment in the name of the Nolte Heirs. By way of background, documents obtained from the Department of Environmental Protection Office of Oil and Gas ("WVDEP") show that in 1906 a well was drilled on the 136.40 acre portion of the Nolte Farm. The well was subsequently owned and operated by Reed Oil Company. Reed Oil attempted to rework the well on February 15, 1971 but encountered iron

failure to meet the legal requirements necessary for a valid assessment and thereby renders the Tax Sale Deed void as it is based on an invalid assessment.[6] Accordingly, the circuit court properly held the Tax Sale Deed void in granting Respondents' motion for summary judgment.

Petitioners argue that Mr. Chance acted as an agent or lien holder on behalf of the Nolte Heirs under "group assessment" theory. *Opening Brief* at 11. This argument fails because a group assessment must be in the name of the property owner, and there is no evidence that Mr. Chance otherwise took the required steps to secure a lien for payment on taxes on behalf of others.

As required by W. Va. Code § 11-4-9, absent a *request* for a "group assessment" an assessment of real property entered on the land book must be in the name of the *owner*.[7] Petitioners concede that Mr. Chance did not own the Oil and Gas Interests yet Petitioners nonetheless argue

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piping left down hole many years prior and, after fishing and attempting to pass the iron unsuccessfully, drilling and reworking were abandoned on February 23, 1971. Although the well was not commercially viable after the abandonment, it did produce enough to supply two residences located on the Nolte Farm with free gas. In November 1971 Reed Oil applied for a release of its bond. However the WVDEP initially denied the application and required that Reed Oil offer the well back to the landowners to continue their use. (A requirement set forth in *Wellman v. Tomblin*, 140 W. Va. 342, 84 S.E.2d 617 (1954)). The well ceased production in 1971, the same year that Joseph T. Nolte died. The following year the taxes went delinquent, and the assessment was put in the name R. Robinson Chance, Jr. All of this is to say that the "ROY" assessment was at least as likely, if not more likely, to relate to the royalties generated from the 1906 well as to anything else. Again, Petitioners bear the burden of proof of establishing what it related to (because it is so patently deficient on its face), and Petitioners cannot do so. (PA 467).

[6] In furtherance of this point, Petitioners were unable to determine the land by which the ROY assessment allegedly related to as evidenced by Petitioners' Deed and the chain of title recitations contained in WFM's landowner demand letters. (PA 359-366, 368, 370-371). Petitioners' Deed purports to convey the oil, gas and minerals underlying 363.88 acres Parent Tract, not the 222.40 acres that the Petitioners' assert the Tax Sale Deed covered. This meant that Petitioners did not know what was actually conveyed by the Tax Sale Deed and described the larger tract out of caution (*see* FN 3, p. 8 above). (PA 27).

[7] W. Va. Code § 11-4-9 provided, in part, as follows:

> When any person becomes the owner of the surface, and another or others become the owner of the coal, oil, gas, ore, limestone, fireclay, or other minerals or mineral substances in and under the same, or of the timber thereon, the assessor shall assess such respective estates, or any undivided interest therein, ***to the respective owners*** thereof, ***or to groups of same requesting such group assessment***, at their true and actual value (emphasis added).

that the 1990 ROY assessment in the name of Mr. Chance was somehow proper and applicable to the Oil and Gas Interests because Mr. Chance acted as an "agent" for the Nolte Heirs' "group assessment." *Opening Brief* at 11. (PA 438). Again, Petitioners' argument is meritless. W. Va. Code § 11A-1-9 provides, in part, as follows:

> One who pays taxes on the interest of any other person shall be subrogated to the lien of the state upon such interest. *He shall lose his right to the lien, however, unless* within thirty days after payment he shall file with the clerk of the county court his claim in writing against the owner of such interest, together with the tax receipt or a duplicate thereof. The clerk shall docket the claim on the judgment lien docket in his office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

(emphasis added).

Here, there is no evidence that the Nolte Descendants requested a group or joint assessment and there are no liens or judgments of any nature found of record in the County Clerk's Office that show Mr. Chance took any of the actions necessary to secure a lien as specifically required under W. Va. Code § 11A-1-9. Petitioners' agency argument therefore fails as a matter of law.

C. The 1990 ROY assessment is a duplicative/double assessment that is void.[8]

[8] Petitioners wrongly assert that the Alexander Respondents and the SWN Respondents put forth conflicting and/or contradictory arguments below and that the SWN Respondents did not argue or assert that the Tax Sale Deed is void as a duplicative assessment. *Opening Brief* at 9. Petitioners also falsely assert that the SWN Respondents put forth an argument that worked against the Alexander Respondents in their cross-motion for summary judgment. *Id*. A review of the record shows that the SWN Respondents actually (in addition to the arguments they asserted) adopted and incorporated the Alexander Respondents' duplicative assessment argument in their circuit court filings. (PA 464-466). Petitioners further submit that because the circuit court held the Tax Sale Deed void ab initio based on an invalid duplicative assessment and "made no mention" of SWN Respondents' cross-motion for summary judgment, the circuit court "presumably found it moot" and therefore Petitioners would "focus on the issues raised by the Alexander Respondents and endorsed by the Circuit Court Order." *Id*. Not only is this recitation of SWN Respondents' argument inaccurate, but this Court is also well within its right to endorse an alternative argument (such as the one advanced below by the SWN Respondents) in support of the holding that the Tax Sale Deed is void ab initio.

Well-established West Virginia jurisprudence provides that a duplicate tax assessment that is improperly assessed as an undivided interest, to an owner of a fractional interest, is void and conveys no right or title in the interest assessed. *Jarrett v. Osborne*, 84 W. Va. 559, 101 S.E. 162, 165 (1919). *See also See Syl. pt. 4, Boggess v. Scott*, 48 W. Va. 316 (1900). There can be no valid sale made by a sheriff of a tract of land as delinquent for the nonpayment of taxes where there has been no legal assessment of such taxes. "A deed made pursuant to a tax sale under a void assessment is void." Syl. pt. 4, *Blair v. Freeburn Coal Corp.*, 163 W. Va. 23, 253 S.E.2d 547 (1979). "In case of two assessments of the same land, under the same claim of title, for any year, one payment of taxes, under either assessment, is all the State can require." Syl. pt. 2, *State v. Allen*, 65 W. Va. 335, 64 S.E. 140 (1908).

When a mineral estate has never been separately assessed, it is assumed to be assessed with the surface, even when the surface owner and mineral owner are different. *Northeast Nat. Energy, LLC v. LT Realty Unlimited, LLC*, 250 W. Va. 500, 905 S.E.2d 179 (2024)("[o]ur caselaw clearly establishes that when a mineral estate has never been separately assessed, it is assumed to be assessed with the surface, even when the surface owner and mineral owner are different"). There is a presumption of entry of lands for taxation and payment of the taxes thereon, in favor of the owner and persons claiming under him. *Id.*, 250 W. Va. at 506-08. *Northeast* further found that because the subject oil and gas was presumptively assessed with the surface estate, and the surface owner paid her taxes, they never went non-entered or unpaid, and thus were never forfeited or sold to the State. *Id.*, 905 S.E.2d at 186-87. Accordingly, Northeast concluded that the interest could

not be, and was not, subsequently conveyed in a tax deed because the interest was never subject to a tax sale.[9] *Id.*, 905 S.E.2d at 188.

In *Orville Young, LLC v. Bonacci*, 246 W. Va. 26, 866 S.E.2d 91 (2021), the court found that the tax deeds were void as the petitioners' predecessors in interest had paid the property taxes, the taxes were not delinquent, and no tax lien had attached to the mineral estate that could have been sold at a tax sale. *Bonacci*, 246 W. Va. at 21-22, 866 S.E.2d at 100-01 (2021); Syl. Pt. 4, *Collingwood Appalachian Minerals III, LLC v. Erlewine*, 248 W. Va. 615, 889 S.E.2d 697 (2023) ("a deed made pursuant to a tax sale under a void assessment is void.").[10] *See also State v. Guffey*, 82 W. Va. 462, 95 S.E. 1048, 1049 (1918) ("And according to these decisions presumptively when there has been no separate assessment of estates in timber, coal, oil, gas or other interests in land, without a different showing, they are deemed to have been included in the entry of the land."); Syl. pt. 4, *Wildell Lumber Co. v. Turk*, 75 W. Va. 26, 83 S.E. 83 (1914) ("There is a presumption against forfeiture of title for nonentry for taxation and nonpayment of taxes"); Syl. pt. 5, *Kiser v. McLean,* 67 W. Va. 294, 67 S.E. 725 (1910) ("oil and gas which have been severed in title from that of the land under which they lie, it will be presumed that the land was assessed and taxed as a whole at the time of the severance, that it has since been carried on the land books in the same manner, and

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[9] SWN Respondents further cite to the analysis of assessed values as provided for in the Alexander Respondents' *Motion for Summary Judgment* and their *Reply in Further Support of Motion for Summary Judgment*. (PA 465).

[10] The Court in *Bonacci* included the following footnote as to this specific point:

> We agree with the circuit court that our case law and the governing statute clearly state that duplicate assessments on a single parcel of property are not permitted . . . given the invalidity of the duplicative assessment, the tax deeds issuing from the attempt to recoup the invalid, duplicative assessment are void.

that the taxes have been paid on the land as a whole, when the contrary does not appear."); Syl. pt. 5, *Sult v. A. Hochstetter Oil Co.*, 63 W. Va. 317, 61 S.E. 307 (1908).

If the 1990 ROY assessment in the name of Mr. Chance were found to be an assessment of the Oil and Gas Interests of the Nolte Descendants, then the 1960 tax records show that there were two assessments of the same oil and gas in entries appearing next to each other. (PA 265). Joseph Nolte was assessed in fee for his 222.40 acres, in which he held a portion of the oil and gas rights. *Id.* Those same oil and gas rights fell within the devised Parent Tract of 363.88 acres. The same taxpayer cannot be assessed twice for the same interest. *Northeast*, 905 S.E.2d at 186 (2024). The land books reveal that all of the divided tracts (Lots 1, 2 and 3) were separately assessed as fee interests. (PA 191-312). The same records also show that there were no discounts or reductions to account for a separate assessment of mineral rights. As such, the ROY assessment was a double assessment as proven by the undisputed evidence on the face of the land book records.

Petitioners repeatedly stress that the absence of a distinct and separate assessment of the oil and gas proves that the ROY assessment in the name of Mr. Chance was an assessment of the Oil and Gas Interests. Petitioners' assertion is simply conjecture given the vague nature of the ROY assessment and given Petitioners' failure to present documents or other evidence supporting their speculative assertion. Petitioners fall far short of overcoming the conclusive presumption that the land was taxed as a whole and has since been carried on the land book in the same manner and the taxes paid thereon.

V. CONCLUSION.

For these reasons, as supported by the record and well established West Virginia jurisprudence, the assessment underlying the tax sale is void and the tax sale itself served to transfer nothing (if, as articulated above, there was anything to transfer, which is denied). Accordingly, the Tax Sale Deed (which purported to transfer a non-existent interest) and the tax

sale underlying the same, being premised upon a duplicative, invalid, and erroneous assessment wholly incapable of providing notice as to *who* or *what* was being taxed, are void ab initio and of no legal effect. Because of these inescapable facts, Petitioners' entire case falls short, and the Circuit Court Order should be affirmed.

Submitted this 26th day of June, 2025.

/s/ *Tiffany M. Arbaugh*
Timothy M. Miller, Esquire (WVSB #2564)
Robert M. Stonestreet, Esquire (WVSB # 9370)
Tiffany M. Arbaugh, Esquire (WVSB # 9982)
Babst Calland Clements & Zomnir, P.C.
300 Summers Street, Suite 1000
Charleston, WV 25301
tmiller@babstcalland.com
rstonestreet@babstcalland.com
tarbaugh@babstcalland.com
Counsel to SWN Production Company LLC and Equinor USA Onshore Properties, Inc.

/s/ *Andrew G. Jenkins (w/permission)*
Andrew G. Jenkins (WVSB #11279)
Jenkins Legal Group
77 South Washington Street
Waynesburg, PA 15370
andrew@jenkinslegalgroup.com
Counsel for Mineral Acquisition Company, I, L.P. and MAC I(YC) L.P.

/s/ *Jeffery D. Kaiser (w/permission)*
Jeffery D. Kaiser (WVSB #12284)
Andrew R. Thalman (WVSB #11108)
Phillips, Gardill, Kaiser, & Altmeyer, PLLC
61 Fourteenth Street
Wheeling, WV 26003
jeffkaiser@pgka.com
andrewthalman@pgka.com
Counsel for Lynn E. Cook, Mary K. Mc Keets, Frances J. Putharich, Amy C. Murray, and Suzanne Thompson

CERTIFICATE OF SERVICE

I certify that, on June 26, 2025, the foregoing **SWN RESPONDENTS' JOINT BRIEF** was filed with the File and Servexpress system and served upon the Petitioners' and Respondents' counsel of record via email and upon the *pro se* Respondents by placing a true and correct copy in the United States Mail, addressed as follows:

Edmund L. Wagoner, Esquire
Matthew B. Hansberry
Hansberry & Wagoner, PLLC
265 High Street, 3rd Floor
Morgantown, WV 26505
(304) 470-2056
eddie@hanswag.com
matt@hanswag.com
Counsel for Petitioners, Cortia Pendergast, Mary Lou Buckman, Grace Hoyt, Connie Sue Gandee, Eugene Prendergast, Frank Prendergast, Melissa Ulik, Lori Gulling, Elizabeth Prendergast, Julya Prendergast, Dawn Miruka and Paul Prendergast

John R. Whipkey, Esquire
Clark Hill PLLC
1290 Suncrest Town Centre
Morgantown, WV 26505
(304) 233-5599
jwhipkey@clarkhill.com
Counsel for Petitioner, Winged Foot Minerals, LLC

O. Gay Elmore, Jr., Esquire
121 Summers Street
Charleston, WV 25301
elmorelaw@aol.com
Counsel for Defendant, Sue E. Johnson

Christian E. Turak, Esquire
Gold, Khourey & Turak, L.C.
510 Tomlinson Avenue
Moundsville, WV 26041
cet@gkt.com

S. David Wilharm, Esquire
Rokisky, McCune, Wilharm & Blair, PLLC
3200 Main Street
Weirton, WV 26062
dwilharm@rokiskylaw.com

Daniel J. Guida, Esquire
Guida Law Offices
3374 Main Street
Weirton, WV 26062
guidalaw@comcast.net
Counsel for Defendants, Mary Elizabeth Alexander, Mary A. Barkley, Kevin Blatt, individually and as Trustee of the Blatt Family Irrevocable Trust Dated April 1, 2011, Thomas Blatt, Paul E. Blatt, Lawrence E. Blatt, Jr., Joseph J. Blatt, William J. Blatt, Jr., Richard P. Blatt, Michael J. Blatt, Steven Blatt, Teresa Church, Laura M. Dolan, Patrick A. Frohnapfel, Lisa Frohnapfel, David P. Frohnapfel, Lynn Frohnapfel, Christina M. Frohnapfel, Mary Ann Goddard, Joseph A. Hohman & Mary L. Hohman, Trustees of the Hohman Revocable Living Trust Dated August 8, 2014, Bertha Klug, Nancy Koontz, Lisa M. Lantz, Edna McCombs, Constance S. Miller, Mark H.J. Miller, Matthew Louis Nicholas Miller, Margaret Julia Agnes Miller, Kevin Mysliwiec, Mary Josephine Nice, Barbara Pancake, Linda Ruckman, Mary Stine, Robert Francis Villers, Kenneth A. Wiegand, Leonard L. Wiegand, Robert L. Wiegand, Charles A. Wiegand, David Paul Wiegand, John G. Wiegand, Margaret Wilson, Daivd L. Wilson, Mary Catherine Miller Wright, Robert F. Yeager, Michael P. Yeager, Michael Young, and Rosemary Lewis

Joseph Canestraro, Esquire
Marshall County Prosecuting Attorney
600 7th Street
Moundsville, WV 26041
jcanestraro@marshallcountywv.gov
Counsel for Marshall County Sheriff as Conservator for Brenda Garcia

Master Mineral Holdings I, L.P.
c/o CT Corporation System
5098 Washington Street West, Suite 407
Charleston, WV 25313-1561

Abigail I. Burkey
14560 Hatfield Road
Rittman, OH 44270

Vemuri Home & Garden, LLC
P.O. Box 6154
Wheeling, WV 26003

Nancy Lipscomb
1334 Lola Street
Akron, OH 44305

Agnes Haskins
785 East Pleasant Home
Wooster, OH 44691

Jeffrey W. Silchuk
797 Denshire Drive NW
Canal Fulton, OH 44614

Catherine Laier
5416 Peninsula Dr. NW
Canton, OH 44718

Rosemary Lewis
16685 Lake Circle Drive, Unite 1017
Fort Myers, FL 33908

Judy Wiegand
5931 Freitag Street NW
Canton, OH 44718

/s/ *Tiffany M. Arbaugh*
Tiffany M. Arbaugh (WVSB #9982)