

Eric Petroleum Corporation

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S.B. 219 Opposition Testimony of Bruce E. Brocker, President of Eric Petroleum Corporation

Chair Robb Blasdel, Vice Chair Fischer, Ranking Member Rogers, and members of the House Natural Resources Committee, thank you for allowing me the opportunity to submit testimony in opposition to certain procedural provisions of Senate Bill 219.

My name is Bruce E. Brocker. I have over forty (40) years' experience in the oil and gas industry, and have been the President of Eric Petroleum Corporation ("EPC") since 1983. I am also the manager of Eric Petroleum Utica, LLC ("EPU"), and Trustee of the Brocker Royalty Trust No. One u/a/d 10/15/2010. EPC is an Ohio corporation that operates approximately 600 conventional oil and gas wells in northeastern Ohio. Both EPC and EPU participated as a working interest owner with Chesapeake Exploration, LLC in the drilling of 163 Utica Shale wells between 2011 and 2018.

Additionally, I would like to note that I have lived here in Ohio most of my life. I live in Canfield; I own property and mineral rights throughout the state. I come to you today as not only the owner of an Ohio oil and gas business, but also as a fellow land and mineral rights owner.

As previous testimony before you has so eloquently pointed out, Ohio is one of the leading producers of both natural gas and oil. Because of this, we must be at the forefront of oil and gas law in the United States. What concerns me today is the erosion of a meaningful process for land owners and mineral interest owners to appeal Orders created by the Chief of the Division of Oil and Gas Resources Management of the Ohio Department of Natural Resources.

My testimony today is directed at the following procedural changes in the Bill:

| <u>S.B. 219 Page Reference</u> | <u>R.C. Section Proposed to be Changed</u> | <u>Proposed Change Opposed by EPC</u> |
|---------------------------------------|---|---|
| 24 | R.C. 1509.03(B)(1) | Exempts Chief's Orders from the APA with the result that they would no longer be appealable adjudication orders under Chapter 119 |
| 25 | R.C. 1509.03(D) | Same |

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| 73 | R.C. 1509.28(I) | Unnecessarily Provides a Unit Operator with a Breach of Contract Claim Defense |
| 81 | R.C. 1509.36 | Further Restricts an Adversely Affected Party's Appeal Rights by Deleting Nonexclusivity Provision |
| 84 | R.C. 2305.041(B) | Statute of Limitation Change Conflicts with Principle that Oil and Gas Leases Terminate by Operation of Law, Not as a Result of a Contract Breach |

While other provisions of this bill have been discussed at length, both before the Senate Energy Committee and here before you, these provisions have received little discussion. I do not believe that Sen. Landis mentioned the Oil and Gas Commission, nor appeals, in his testimony before you, and the Ohio Oil and Gas Association only mentions it in one sentence, merely stating that S.B. 219 “makes changes to the appeals framework for the Oil and Gas Commission.” I highlight them now to bring to your attention the serious changes that will occur if S.B. 219 is passed as it is written right now.

Issues Pertaining to Administrative Appellate Review:

First, I am particularly alarmed that the Division desires to strip a Chief's Order of its classification as an adjudication order subject to the provisions of R.C. Chapter 119.

Currently, an adversely affected party may seek appellate review of a Chief's Order in several ways. It can appeal to the Oil and Gas Commission pursuant to R.C. 1509.36, it may appeal directly to the Franklin County Court of Common Pleas pursuant to R.C. 119.12, or it may also appeal directly to the Court of Common Pleas of the county in which the adversely affected party resides. Additionally, there is language in R.C. 1509.36 that clarifies that the Oil and Gas Commission is not the *only* forum to which an appeal can be taken. This bill would shut the door on all of these avenues except the one to the Oil and Gas Commission. This change comes after the Division was successful during the budget bill process this past summer in having the legislature delete the provision in R.C. 1509.36 that guaranteed an adversely affected party a hearing before the Oil and Gas Commission. Consequently, it is now optional, and totally at the discretion of the Commission whether or not a hearing on an appeal is even held at all.

So why all of the pressure from the Division to limit appellate review of Chief's Orders? It is my belief that it is because the majority of Chief's Orders now being issued deal with the granting of applications for unit operations pursuant to R.C. 1509.28, and the provisions of those unit plans are increasingly coming under public scrutiny. As an example, one of the standard provisions of

a statutory unitization order of the Chief approves the adoption of the Unit Plan submitted by the applicant-operator. The Unit Plan establishes the risk penalty to which a nonconsenting working interest owner is subject before he will be entitled to participate in revenue distributions. The major operators such as Ascent Resources—Utica, LLC and EOG Ohio, LLC, formerly EAP Ohio, LLC or Encino Energy, have been including a 500% penalty in the Joint Operating Agreement (“JOA”) that is a part of the Unit Plan. The applicant testimony at the hearing required by R.C. 1509.28 has recently been to the effect that the unit wells will payout in anywhere from one to three years, but will not achieve five times payout for decades, if ever. The provision is, in other words, confiscatory. If that were not enough, the Chief has also approved the use by Ascent Resources—Utica, LLC of the following JOA provision Article XVI(O):

Any Person not a party to this agreement at the time that a proposal is sent for the Initial Well pursuant to Article XVI.N or for a subsequent operation pursuant to Article VI.B, as may be applicable, shall not be entitled to make an election to participate in, and shall be deemed to be a Non-Consenting Party with respect to, that proposed operation. For the avoidance of all doubt, in the event there are no parties to this agreement other than Operator at the time that the Division has issued a drilling permit for the Initial Well, no Person other than Operator shall be entitled to participate in the Initial Well, and any Person becoming a party to this agreement thereafter and acquiring an interest in the Initial Well shall be deemed to be a Non-Consenting Party with respect thereto. Similarly, with respect to any operation subsequent to the drilling of the Initial Well, in the event there are no parties to this agreement entitled to receive a proposal under Article VI.B at least 30 days prior to the commencement of such operation, no Person other than Operator shall be entitled to participate in such operation, and any Person becoming a party to this agreement thereafter and acquiring an interest in such operation shall be deemed to be a Non-Consenting Party with respect thereto.

In other words, the Chief empowers the unit operator to decide who may participate in the drilling of unit wells, notwithstanding title and contract rights to the contrary. Because the unit operator controls the election process for participation and has had its 500% penalty blessed by the Chief, it knows that it can effectively exclude any working interest owner from ever sharing in production revenue. The Division attempts to evade scrutiny of this and other important unitization issues by asking the legislature to curtail the appellate rights now available under R.C. Chapter 119 and R.C. 1509.36.

This is especially concerning in light of the change made to R.C. 1509.36 through the passage of H.B. 96, relevant provisions of which became effective September 30, 2025. Before its passage, EPC raised concerns to various House and Senate members that deletion of the hearing requirement in R.C. 1509.36 was problematic. We pointed out that Ohio Supreme Court precedent concerning administrative appeals in general dictates that “[t]he review of proceedings of administrative officers and agencies, authorized by Section 4(B), Article IV of the Ohio Constitution, contemplates quasi-judicial proceedings only,” and “[p]roceedings of administrative officers and agencies are not quasi-judicial where there is no requirement for notice, hearing and the opportunity for introduction of evidence.” *M. J. Kelley Co. v. Cleveland*, 32 Ohio St.2d 150, 150, 290 N.E.2d 562 (1972). We noted our concern that the removal of the hearing requirement might render Commission review of Chief’s Orders subject to attack on

jurisdictional grounds. Now the Division goes a step further and proposes that the Chief's Orders not be classified as adjudication orders. Essentially what all this adds up to is the likelihood that adversely affected parties, such as mineral interest owners, will never have an opportunity to be heard or have any meaningful day in court. Without a hearing, and because the orders would no longer be adjudication orders if S.B. 219 is enacted, the Courts will have nothing to review. No record will be made, and the Courts will potentially not have jurisdiction to hear the cases to begin with. So, a landowner could have their minerals taken with little or no recourse. Why strip their rights to appeal to their local courts?

II. R.C. 1509.28(I) Contract Excuse

The proponent testimony of the Ohio Oil and Gas Association ("OOGA") filed in this matter states that "The bill clarifies that operators acting under a valid ODNR unitization order are not in breach of lease terms – a correction prompted by a single outlier court decision." I assume that OOGA was referring to the Fifth District's decision in *Am. Energy - Utica, LLC v. Fuller*, 5th Dist. Guernsey No. 17 CA 000028, 2018-Ohio-3250. The Fifth District found the operator's use of R.C. 1509.28 to be a breach of the lease's unitization clause. The Court did not, however, find the establishment of a statutory unit improper. The existing language in R.C. 1509.28(I) already adequately protects unit operators:

The operations conducted pursuant to the order of the chief shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the chief.

There is no reason to go the further step endorsed by OOGA of excusing the unit operator from a breach of the lease. For example, if a lease containing a unit size limitation that was bargained for by the landowner is statutorily pooled, the Chief should use his authority under R.C. 1509.28(E)(9) to make an adjustment of correlative rights to compensate for the diminution of the landowner's rights. Forcing landowners into a unit should mean that the operators of the wells should have an *increased* fiduciary duty towards the landowners, not less of a duty towards them, as S.B. 219 proposes. Bill proponents fail to mention that due to a change in the structure of the Ohio Oil and Gas Association, big operators pay more into OOGA's coffers, and therefore have a much larger say in what OOGA does and does not support. From their testimony, OOGA would have you believe that they represent "all segments of Ohio's oil and gas industry," but that is not fully the truth. I assure you they do not represent Eric Petroleum, and they do not represent the smaller oil and gas companies throughout Ohio. Additionally, their largest contributors are not Ohio corporations, nor are they headquartered in Ohio. It is evident based upon these proposed legislative changes that these large out of state companies are not concerned about changes to Ohio laws, such that it makes things more difficult for adversely affected Ohio citizens to protect their rights. They seemingly only care about the money and resources they can acquire from Ohio landowners before they leave for greener pastures. Ohio should not be expected to lessen the standards by which these major producers have to operate at the expense of Ohio citizens and landowners. Again why strip Ohio Citizens of the right to protect their rights by appealing to their local county courts? This bill as written would strip landowners of such rights and give the Chief of the Division way too much authority and power over Ohio

property owners. Additionally, it will allow big oil companies to trample upon the rights of Ohio landowners, and will allow them to rewrite leases that were previously bargained for with those landowners. Why??

III. Proposed Change to Statute of Limitation

The proposed change to R.C. 2305.041 appears to be a ruse to encourage people to think of the termination of an oil and gas lease as a breach of contract issue. It is not. An oil and gas lease is a fee simple determinable interest in real estate and it terminates by operation of law when there is no longer performance under the secondary term of the lease. “Termination of a lease pursuant to its habendum clause is not the result of a breach of the lease when nothing in the lease obligates the lessee to maintain the lease into the secondary term or for any period of time once the secondary term commences.” *Browne v. Artex Oil Co.*, 158 Ohio St.3d 398, 2019-Ohio-4809, ¶ 38. There is no reason to muddy the water of precedent by adopting this ill-conceived fix of classifying the termination of a fee simple determinable interest in real estate as a breach of contract. If the 21-year statute of limitation for actions to quiet title involving oil and gas leases needs to be adjusted, it should be done in R.C. 2305.04, not in R.C. 2305.041. OOGA’s proponent testimony states that the bill “reduces the statute of limitations for terminating a lease from 21 years to six years.” Again, however, a lease terminates by operation of law. An action to quiet title pursuant to R.C. 5303.01 is utilized to remove clouds on title that may be occasioned by the failure of the lessee to release a lease of record. Suppose a purchaser of property finds the notation of an unreleased lease in his title commitment, the lessee can no longer be located, and that purchaser desires to file a quiet title action to remove the cloud on title. Does this legislature really want to limit that individual’s ability to remove that cloud on title to a six year period? I suggest that the better course is to leave the current structure in place.

IV. Closing

Mr. Chairman, and members of the Committee, thank you for the opportunity of presenting the testimony of an interested party who is opposed to many of the procedural provisions of the bill and for your further attention to these issues. I respectfully request that the Committee delete the procedural changes referenced above from the final version of Substitute Senate Bill 219. I would be happy to address any questions the Committee may have.