

ERIC PETROLEUM CORPORATION

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Substitute Senate Bill 219 Interested Party Testimony of Bruce E. Brocker, President of Eric Petroleum Corporation

Chairman Chavez, Vice Chair Landis, Ranking Member Smith, and members of the Senate Energy and Natural Resources Committee, thank you for allowing me the opportunity to submit written testimony as an interested party in opposition to certain procedural provisions of Substitute Senate Bill 219.

My name is Bruce E. Brocker and 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 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.

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

<u>Sub. Bill 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
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

I. Issues Pertaining to Administrative Appellate Review:

My apology for the belated nature of this testimony, but I did not become aware of these proposed changes until EPC's in-house counsel reported back after attending a CLE course sponsored by the OSBA on November 6, 2025 during which an attorney for the Division of Oil & Gas Resources Management (the "Division") reported on the pending legislation. I was 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 or it may appeal directly to the Franklin County Court of Common Pleas pursuant to R.C. 119.12. It may also appeal directly to the Court of Common Pleas of the county in which the adversely affected party resides. Additionally, there is nonexclusivity 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. The Division desires to shut the door on all of these avenues except the one to the Oil and Gas Commission. Furthermore, 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. It is now optional with the Commission whether or not a hearing will be held.

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 EAP Ohio, LLC/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 many years, 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 likely just 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. So without a hearing they likely get away with this.

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 effectively will not be classified as adjudication orders.

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 does nothing with Ohio’s current unitization laws. It does, however, clarify that if an operator is following an order from ODNR regarding a unit it

is not a breach of lease terms. One Ohio district court is the singular outlier in interpreting leases in this fashion.” 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 following 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 of 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. Bill proponents fail to mention that the headquarters for Utica Shale operations of at least three of the major applicants under R.C. 1509.28 are based in Oklahoma where the courts impose upon a unit operator a fiduciary duty in its dealings with all unit participants. Ohio should not be expected to lessen the standards by which these major producers have to play.

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 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. I can be reached by contacting EPC's office at the address and telephone number provided on our letterhead.