

## **From Presumption to Law: Mineral Ownership Under Colorado Roads and Rights-of-Way**

The Colorado Supreme Court's recent ruling in *Great Northern Properties LLLP v. Extraction Oil and Gas Inc. et al.* (2022SC805) provided much-needed clarity regarding ownership of minerals underlying roads and other rights-of-way in Colorado. It was a significant win for the oil and gas industry and landowners across the state.

For over a century, Colorado courts followed the “centerline presumption” a rule of conveyance providing that a “conveyance of land abutting a highway or street is presumed to carry title to the center of that roadway to the extent that the grantor has any interest therein, unless a contrary intent appears on the face of the conveyance.”<sup>1</sup> Through the years, Colorado courts applied this presumption broadly, and title examiners and land professionals relied on this case law to credit property owners with minerals to the centerline of abutting roads. However, before *Great Northern*, no Colorado case explicitly addressed whether minerals were included in the “bundle of sticks” passing under the presumption.

At issue in *Great Northern* was the ownership of minerals underlying a dedicated road right-of-way adjacent to subdivided lands conveyed by a developer in the 1970s. The 1970s deeds were silent as to the ownership of the right-of-way. In 2019, the developer conveyed its mineral rights underlying the right-of-way to Great Northern Properties, LLLP, who then filed an action against the owners of the adjacent parcels and Extraction Oil & Gas, Inc. to quiet title in the minerals and associated royalties under the road. Great Northern asserted that the centerline presumption only applied to the surface estate. Extraction argued that the presumption applied to all interests owned by the developer in the dedicated lands at the time of the conveyance, including minerals.

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<sup>1</sup> *Asmussen v. United States*, 2013 CO 54, ¶ 18, 304 P.3d 552, 557 (citing *Olin v. Denver & Rio Grande R.R. Co.*, 53 P. 454, 455 (1898)).

Although the acreage of the roads in *Great Northern* may have been minimal, the decision had significant implications for the thousands of acres of dedicated rights-of-way in Colorado subdivisions now accessible by current horizontal drilling methods. A ruling that the centerline presumption did not include minerals would have also impacted a myriad of existing wells and spacing units, requiring a reallocation of thousands of acres of mineral interests and associated royalties across the state from landowners to developers and costly revisions to title opinions and divisions of interest. In addition, identifying and leasing the successors to the original developers – many of whom are defunct corporations or deceased individuals – would be a monumental undertaking.

Ultimately, the Colorado Supreme Court ruled in favor of Extraction Oil & Gas, Inc., holding that the centerline presumption applies if the party claiming an interest in mineral rights under a right-of-way establishes the following:

- (1) The grantor conveyed ownership of the land abutting a right-of-way;
- (2) The grantor owned the fee – to both the surface estate and mineral rights – underlying the right-of-way at the time of the conveyance; and
- (3) No contrary intent appears on the face of the conveyance document.

The Court clarified that the presumption applies whether a right-of-way is statutorily dedicated or dedicated by common law. Further, the Court held that the mineral interest passes to the grantee at the time of the conveyance and is not dependent on the grantor's divestment of all neighboring parcels.

Cheers to Joe Pierzchala, Sam Bacon, and their talented legal team for successfully arguing this case. I know title examiners will miss drafting and landmen will miss reading long-winded title comments on this issue.

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