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Adverse Possession of Subsurface Minerals

BY PAUL N. BOWLES*

INTRODUCTION

While the focus of this Article is on issues involving adverse possession of subsurface minerals, the principles generally applicable to adverse possession of real estate must be examined and stated so that they can be related to cases of adverse possession of subsurface minerals. This Article is not limited to cases and other authorities from the eastern part of the United States, but authorities from that area are emphasized.

I. ADVERSE POSSESSION GENERALLY

Acquisition of good title to real estate by operation of the laws of adverse possession has a long history, and the basic principles are well settled in this country.¹ When all requirements have been satisfied,² the net effect is to extinguish the title of the true owner and vest a new title in the adverse claimant.³ In order to claim title, the adverse claimant must do acts of such a nature and for such a period of time⁴ as will put the true owner on notice

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¹ See, e.g., *Knott Coal Corp. v. Kelly*, 417 S.W.2d 253, 253-57 (Ky. 1967); *Bigham v. Wenschhof*, 441 A.2d 391, 391-93 (Pa. Super. Ct. 1982); *Morgan v. Dillard*, 456 S.W.2d 359, 359-64 (Tenn. Ct. App. 1970).

² See *Pan American Petroleum Corp. v. Candelaria*, 403 F.2d 351, 355 (10th Cir. 1968); *Barrs v. Zukowski*, 169 A.2d 23, 27 (Conn. 1961); *Porter v. Posey*, 592 S.W.2d 844, 849 (Mo. Ct. App. 1979).

³ See *Hearn v. Leverette*, 99 S.E.2d 147, 149 (Ga. 1957); *Russell v. Russell*, 540 S.W.2d 626, 631 (Mo. Ct. App. 1976); *Calvert v. Murphy*, 81 S.E. 403, 404 (W. Va. 1914); *Marky Investment, Inc. v. Arnezeder*, 112 N.W.2d 211, 215 (Wis. 1961).

⁴ Basic to the laws of adverse possession in any jurisdiction are the provisions of the statute of limitations applicable to causes of action to obtain possession of real estate or to oust one who possesses but does not do so under the true owner's title. See, e.g., *Somon v. Murphy Fabrication and Erection Co.*, 232 S.E.2d 524, 528 (W. Va. 1977) (citing W. VA. CODE § 55-2-1, which at the time of the decision, as well as at present, set the statute of limitations for the recovery of real property at 10 years). Since these laws vary from state

that the adverse party is claiming ownership of the real estate. These acts must give the true owner a possessory cause of action against the claimant throughout a period of time equal to that provided for in the applicable statute of limitations.⁵

In all cases there must be some actual possession of the subject real estate by the adverse claimant.⁶ The actual possession must be open, notorious, exclusive, continuous and hostile to the true owner's title and ownership.⁷ There must be physical, on the ground occupancy or use of the land consistent with a claim of ownership.⁸ If possession is confined to the surface only, it must evidence incidents of ownership, such as constructing and using improvements made on the surface, fencing, farming, grazing livestock, cutting timber and like activities.⁹ If the possession and claim of ownership are limited to minerals only, as may be the case where the surface and mineral titles have been severed, then the minerals must be physically possessed in such a manner and to an extent so as to amount to commercial production of the mineral or minerals.¹⁰

The possession, to be adverse, also must be open, visible and notorious, so that the true owner is charged with notice that someone is exercising incidents of ownership that are inconsistent

to state as to time and other requirements, and some states have special statutes or constitutional provisions not applicable generally, no attempt is made in this Article to explain variations unless they are necessary to explain a holding or opinion in a particular case or line of cases.

⁵ See *Noland v. Wise*, 259 S.W.2d 46, 48 (Ky. 1953); *Walton v. Rosson*, 222 S.E.2d 553, 556 (Va. 1976); *Kline v. Kramer*, 386 N.E.2d 982, 988-89 (Ind. Ct. App. 1979).

⁶ *Cowherd v. Brooks*, 456 S.W.2d 827, 830 (Ky. 1970); *Flickinger v. Huston*, 435 A.2d 190, 192 (Pa. Super. Ct. 1981); *Somon v. Murphy Fabrication and Erection Co.*, 232 S.E.2d at 528.

⁷ *Creech v. Miniard*, 408 S.W.2d 432, 436 (Ky. 1966); *Stephenson Lumber Co. v. Hurst*, 83 S.W.2d 48, 53 (Ky. 1934); *Jones v. Vandevolt*, 193 N.E.2d 92, 93 (Ohio Ct. App. 1962); *Nevling v. Natoli*, 434 A.2d 187, 190 (Pa. Super Ct. 1981).

⁸ *Hasty v. Wilson*, 158 S.E.2d 915, 919 (Ga. 1967); *Stephens v. Kidd*, 181 S.W.2d 688, 689 (Ky. 1944); *Goen v. Sansbury*, 149 A.2d 17, 20-21 (Md. 1959).

⁹ *Kubiszyn v. Bradley*, 298 So. 2d 9, 13 (Ala. 1974) (fence, cutting timber, cultivation); *Walden v. Baker*, 343 S.W.2d 797, 798-99 (Ky. 1961) (improvements, fence, garden); *Albert v. Declue*, 526 S.W.2d 39, 40 (Mo. Ct. App. 1975) (fence).

¹⁰ *United Fuel Gas Co. v. Dyer*, 185 F.2d 99, 102 (4th Cir. 1950); 417 S.W.2d at 256; *Brockman v. Jones*, 610 S.W.2d 943, 944 (Ky. Ct. App. 1980); *Mountain Mission School, Inc. v. Buchanan Realty Corp.*, 151 S.E.2d 403, 407 (Va. 1966); *Putnam Co. v. Fisher*, 36 S.E.2d 681, 690 (W. Va. 1945). See KY. REV. STAT. § 381.430 (*Bobbs-Merrill* 1970) [hereinafter cited as KRS]; W. VA. CODE § 55-2-1a (1981).

with the true owner's title.¹¹ The acts must in fact be hostile to the true owner and be done without the true owner's permission and without a recognition of the true owner's title.¹²

Possession must be exclusively that of the adverse claimant and free of possession by the true owner or any others who do not claim by or through the adverse claimant.¹³ This exclusiveness of possession is of particular importance when the adverse claimant must rely upon constructive possession to extend the scope of his or her actual possession and to perfect title to an area defined by color of title. However, it must be kept in mind that an adverse claimant can possess through a tenant, lessee or agent and that the possessions of vendor and vendee, grantor and grantee can be combined or "tacked" to show combined adverse possession for the required statutory period.¹⁴

To effectively vest title, adverse possession must continue for the applicable statutory period. This rule might not require open, actual possession for each day of the statutory period, but it does require such continuity of possession as to give the true owner a cause of action against the adverse claimant at all times during the statutory period.¹⁵

Whether or not an adverse possessor has color of title will affect the extent and validity of the adverse possession. Color of title, while not effective to pass or vest title, purports to do so and is valid upon its face. Generally, this results when the one who creates the color of title has no true title and cannot create a true

¹¹ *Commonwealth v. Stephens*, 407 S.W.2d 711, 713 (Ky. 1966); *D.B. Frampton & Co. v. Saulsberry*, 286 S.W.2d 25, 27 (Ky. 1954); *Porter v. Posey*, 592 S.W.2d at 849; *Leake v. Richardson*, 103 S.E.2d 227, 234 (Va. 1958).

¹² *Cowherd v. Brooks*, 456 S.W.2d at 829; *McCoy v. Kentucky & W. Va. Gas Co.*, 226 S.W.2d 515, 518 (Ky. 1950); *Somon v. Murphy Fabrication and Erection Co.*, 232 S.E.2d at 528-30.

¹³ *Lyle v. Holman*, 238 S.W.2d 157, 160 (Ky. 1951); *Bauer v. Bush*, 193 N.E.2d 529, 531 (Ohio Ct. App. 1962); *Somon v. Murphy Fabrication and Erection Co.*, 232 S.E.2d at 529.

¹⁴ *Kerlin v. Tensaw Land & Timber Co.*, 390 So. 2d 616, 619-20 (Ala. 1980) (tenants); *Martin v. Kane*, 245 S.W.2d 177, 178 (Ky. 1952) (tacking); *Arrowood v. Williams*, 586 S.W.2d 131, 135 (Tenn. Ct. App. 1979) (tacking); *Mahunda v. Thomas*, 402 S.W.2d 405, 490 (Tenn. Ct. App. 1965) (tenants); *State v. Davis*, 83 S.E.2d 114, 125 (W. Va. 1954) (tacking).

¹⁵ *Noland v. Wise*, 259 S.W.2d at 48; *Thompson v. Ratcliff*, 245 S.W.2d 592, 592-93 (Ky. 1952); *Stone v. Conder*, 264 S.E.2d 760, 765 (N.C. Ct. App. 1980).

title.¹⁶ Color of title may result from inadvertence, mistake or deliberate manufacture.¹⁷ It must be in writing, purport to pass title and contain an adequate description of the real estate.¹⁸

An adverse claimant in possession without color of title can perfect title by adverse possession only to the real estate actually possessed or enclosed within such actual possession.¹⁹ Thus, an adverse possessor in actual adverse possession of only one acre of a ten-acre tract can acquire title to no more than the one acre actually possessed. However, if the adverse possessor has color of title, the doctrine of "constructive possession" applies. The doctrine of constructive possession, as applied to adverse possession, usually extends the effect of the actual adverse possession to the outer limits of the land described in the color of title document.²⁰

One must keep in mind the limitations on the application of the doctrine of constructive possession. First, color of title will not extend constructive possession to lands outside those described in the color of title document.²¹ Second, color of title will not extend constructive possession to any part of land which is in the actual possession of the true owner,²² since a true owner in possession is said to possess constructively all of the land not actually possessed by an adverse claimant.²³ Third, actual posses-

¹⁶ *Adams v. Severt*, 252 S.E.2d 276, 279 (N.C. App. 1979); *Wallace v. McPherson*, 214 S.W.2d 50, 53 (Tenn. 1947); *Somon v. Murphy Fabrication and Erection Co.*, 232 S.E.2d at 529.

¹⁷ *Fife v. Barnard*, 186 F.2d 655, 659 (10th Cir. 1951); *Van Meter v. Grice*, 380 So. 2d 274, 280-81 (Ala. 1980).

¹⁸ See *Martin v. Kentucky & W. Va. Gas Co.*, 401 S.W.2d 74, 75 (Ky. 1965); *J. Walter Wright Lumber Co. v. Baker*, 395 S.W.2d 365, 367 (Ky. 1965); *Peterson v. Harpst*, 247 S.W.2d 663, 666-67 (Mo. 1952).

¹⁹ *Commonwealth v. Stephens*, 407 S.W.2d at 713; *Shepherd v. Morgan*, 246 S.W.2d 131, 132 (Ky. 1951); *Rogers v. Burnopp*, 283 A.2d 367, 371 (Md. 1971); *Somon v. Murphy Fabrication and Erection Co.*, 232 S.E.2d at 529.

²⁰ *Shepherd v. Morgan*, 246 S.W.2d at 132; *Goen v. Sansbury*, 149 A.2d at 20-21; *Teson v. Vasquez*, 561 S.W.2d 119, 126 (Mo. Ct. App. 1977); *Somon v. Murphy Fabrication and Erection Co.*, 232 S.E.2d at 529.

²¹ *Teson v. Vasquez*, 561 S.W.2d at 126-27; *Burns v. Crump*, 95 S.E.2d 906, 909 (N.C. 1957).

²² *Lyons v. Bassford*, 249 S.E.2d 255, 259 (Ga. 1978); *Big Run Coal & Clay Co. v. Helton*, 323 S.W.2d 855, 857 (Ky. 1959); *Harmon v. Lowe*, 219 S.W.2d 982, 983 (Ky. 1949); *Inn Le'Daerda, Inc. v. Davis*, 360 A.2d 209, 213-14 (Pa. Super. Ct. 1976). See *Moore v. Brannan*, 304 S.W.2d 660, 671 (Tenn. Ct. App. 1957).

²³ *King v. United States*, 585 F.2d 1213, 1217 (4th Cir. 1978); *Garrison Furniture*

sion by an adverse claimant will not extend constructively to lands owned by a different person upon whose land the actual adverse possession is occurring.²⁴ For example, an adverse claimant with color of title to an adequately described 100-acre tract made up of two or more separately owned tracts, but whose actual possession is confined to one of those tracts, can only acquire title by constructive possession to the tract which was actually possessed.²⁵ The rationale is simple. Possession on Tract A does not give the owner of Tract B any notice of a claim adverse to ownership of B and does not give the owner of B any possessory cause of action against the adverse possessor who does not actually possess any part of B.

Thus, at least two elements must be present during the applicable statute of limitations period for adverse possession to be effective to take title from a true owner and vest it in an adverse claimant: (1) the adverse claimant must do such acts as will give the true owner notice of the adverse claim,²⁶ and (2) the acts must give rise to a cause of action by the true owner to oust the adverse claimant from possession.²⁷ This leads to consideration of at least two special but common sets of circumstances. The first is where one party is the owner of a life estate in real estate and another party is the owner of the remainder estate. Actual possession and use of the surface of the land is adverse to the life tenant's title and gives a possessory cause of action to the life tenant.²⁸ However, such surface use and possession, even under color of title to

Co. v. Southern Enter., Inc., 436 S.W.2d 278, 280 (Ark. 1969); *Inn Le'Daerda, Inc. v. Davis*, 360 A.2d at 214.

²⁴ *Moore v. Musa*, 198 So. 2d 843, 847-48 (Fla. Dist. Ct. App. 1967); *Creech v. Miniard*, 408 S.W.2d 432, 436 (Ky. 1965). See *Chilton v. White*, 78 S.E. 1048, 1050 (W. Va. 1913).

²⁵ *McCoy v. Anthony Land Co.*, 322 S.W.2d 439, 440-41 (Ark. 1959); *Morehead v. Harris*, 137 S.E.2d 174, 181 (N.C. 1964); *Cheek v. Lange*, 209 S.E.2d 520, 522 (N.C. Ct. App. 1974). See *United Fuel Gas Co. v. Dyer*, 185 F.2d at 103 ("The severance of the mineral interests here divided the total interest in the land into separate estates just as truly as if the land had been divided into separate tracts.").

²⁶ *Porter v. Posey*, 592 S.W.2d at 849; *Curtis Fishing & Hunting Club, Inc. v. Johnson*, 200 S.E.2d 542, 545 (Va. 1973); *Somon v. Murphy Fabrication & Erection Co.*, 232 S.E.2d at 528-29.

²⁷ *Noland v. Wise*, 259 S.W.2d at 48; *State v. Moore*, 76 S.E. 461, 463 (W. Va. 1912).

²⁸ See *United Fuel Gas Co. v. Dyer*, 185 F.2d at 103.

fee ownership, is not notice to the separate owner of the remainder estate of any adverse claim to his or her ownership.²⁹ Nor does it give the remainderman a possessory or other cause of action against the surface possessor.³⁰ However, if the surface possessor, or other possessor, begins extracting minerals from the land, those acts are beyond the right of the life tenant. They give the remainder estate owner notice of acts adverse to his or her ownership and also give rise to a cause of action to prevent such possession (extraction) of the subsurface minerals.³¹

The second special situation exists with respect to land owned by co-tenants. Mere use by one co-tenant without consumption of the land is not a trespass against the nonusing co-tenant.³² Nor does it constitute notice of a claim adverse to the ownership of the nonusing co-tenant or give rise to a cause of action against the using co-tenant.³³ However, if one co-tenant gives adequate notice to the other co-tenant of a claim to the whole estate, that co-tenant's exclusive possession thereafter can be held to be adverse to the co-owner and full title can be perfected by such adverse possession.³⁴ Thus, the extraction of minerals by only one co-tenant under claim of right to full ownership of the mineral title would be adverse to the ownership of the other co-tenant, giving the other co-tenant a cause of action against the one who is extracting and depleting the corpus of the land.³⁵

²⁹ *United Fuel Gas Co. v. Dyer*, 185 F.2d at 103; *Piel v. Dewitt*, 351 N.E.2d 48, 55 (Ind. Ct. App. 1976); *McDonald v. Burke*, 288 S.W.2d 363, 365-66 (Ky. 1955). See Annot., 58 A.L.R.2d 299 (1958).

³⁰ *Piel v. Dewitt*, 351 N.E.2d at 55; *Field v. Lloyd*, 453 S.W.2d 570, 574 (Ky. 1970); *Ritchie v. Paine*, 431 S.W.2d 498, 500-01 (Ky. 1968); *Stealey v. Lyons*, 37 S.E.2d 569, 576 (W. Va. 1946).

³¹ *Humble Oil & Refining Co. v. Martin*, 298 F.2d 163, 168-69 (5th Cir. 1961), cert. denied, 371 U.S. 825 (1962); *Givens v. Givens*, 387 S.W.2d 851, 852 (Ky. 1965); *Miller v. Bowen Coal & Mining Co.*, 40 S.W.2d 485, 489 (Mo. Ct. App. 1931).

³² *Thaxton v. Beard*, 201 S.E.2d 298, 303 (W. Va. 1973).

³³ *Daugherty v. Breeding*, 553 S.W.2d 299, 303 (Ky. 1977); *Cary-Glenden Coal Co. v. Warren*, 198 S.W.2d 499, 502 (Ky. 1946); *Rutledge v. Rutledge*, 132 S.E.2d 469, 474-75 (Va. 1963).

³⁴ *Jenks v. Jenks*, 294 So. 2d 147, 150-51 (Ala. 1974); *Johnstone v. Johnson*, 248 So. 2d 444, 448 (Miss. 1971); *Collier v. Welker*, 199 S.E.2d 691, 694 (N.C. Ct. App. 1973).

³⁵ *Nevling v. Natoli*, 434 A.2d 187, 190 (Pa. Super. Ct. 1981); *Dotson v. Branham*, 90 S.E.2d 783, 786-87 (Va. 1956); *Thaxton v. Beard*, 201 S.E.2d at 303. The extraction of

The foregoing is not intended to be an exhaustive discussion of all aspects of adverse possession of land. It does highlight most of the basic adverse possession issues and serves as background for the following discussions which are directed to specific issues involving adverse possession of subsurface minerals, both before and after severance of title.

II. ADVERSE POSSESSION OF SUBSURFACE MINERALS

A. *No Severance of Titles*

1. *Actual Possession of Surface Only*

Assume that a tract of land, including subsurface minerals, is owned in fee simple by one true owner (or a group of common owners). Then assume that a stranger to the true owner's title enters into actual possession of part of the surface of that tract under claim of ownership; while in actual possession, the stranger performs acts which will qualify him or her as a full adverse possessor, thus entitling him or her to a perfected new title at the expiration of the applicable statutory period. The issue here is the extent to which such an adverse possessor will be able to acquire and perfect title to subsurface minerals.

If the adverse possessor has no color of title to the land, surface or minerals, the general principles of the law of adverse possession of real estate apply. The adverse possessor will acquire fee title to that part of the surface and to the minerals underlying that part of the surface, actually and adversely possessed.³⁶ The extent of active possession will define the areas of the claim. To that extent, the adverse possessor will be deemed to have possessed the *subsurface* minerals along with *surface* possession and will perfect title to those subsurface minerals.³⁷

If the adverse possessor of the surface has good color of title, his or her actual possession of the surface or a part thereof will be

minerals by a co-tenant constitutes waste, which, by statute in most jurisdictions, can be prohibited by nonconsenting co-tenants. See Annot., 2 A.L.R. 993, 997 (1919), *supplemented in* Annot., 41 A.L.R. 582 (1926) (timber).

³⁶ *Hellier Coal & Coke Co. v. Bowling*, 272 S.W.2d 651, 653 (Ky. 1954); *Interstate Coal & Iron Co. v. Clintwood Coal & Timber Co.*, 54 S.E. 593, 598-99 (Va. 1906).

³⁷ *United Fuel Gas Co. v. Dyer*, 185 F.2d at 103.

extended constructively to the outer bounds of a color of title unless such constructive possession is otherwise restricted.³⁸ If the adverse possessor is in actual possession of the surface only and the color of title purports to give a good fee title to the true owner's whole tract (provided that possession is open, hostile, exclusive and continuous for the required statutory period) the adverse possessor can perfect title to the surface *and* the subsurface minerals underlying the same surface.³⁹ But if the true owner is in actual possession of any part of the surface, the adverse possessor's color of title is ineffective to extend surface possession, and the adverse possessor will perfect title only to that part of the surface actually in his or her exclusive possession. However, the adverse possessor will perfect title to the subsurface minerals underlying the surface area actually possessed.⁴⁰

When the claimant possesses the surface under color of title to the fee ownership and the true owner has no actual possession of any part of the surface but has actual possession of one or more of the subsurface minerals, e.g., underground mining of subsurface solid minerals from an entry on another tract, that actual possession of subsurface minerals by the true owner will prevent the surface possession of the adverse claimant from extending constructively to subsurface minerals. Therefore, the adverse surface possession will perfect title to the surface only and not to the subsurface minerals.⁴¹

Any surface possession by the true owner related to conducting mineral extraction activities, such as constructing a road or well site, drilling an oil and gas well, equipping a producing well and laying pipelines to handle production, not only would prevent the adverse surface possessor from acquiring title to subsurface minerals on the tract, but also would constitute surface possession by the true owner so as to destroy any constructive possession of the surface. The surface possession by the adverse claim-

³⁸ See *Hunsley v. Valter*, 147 N.E.2d 356, 356, 360 (Ill. 1958).

³⁹ *Whittington v. Cameron*, 52 N.E.2d 134, 137-38 (Ill. 1943); *Hellier Coal & Coke v. Bowling*, 272 S.W.2d at 652-53. See Annot., 35 A.L.R.2d 124, §§ 3-10 (1954).

⁴⁰ *Hunnicut v. Peyton*, 102 U.S. 333, 368 (1880); *Paepcke v. Kirkman*, 55 F.2d 814, 815 (5th Cir. 1932); *Vance v. Guy*, 31 S.E.2d 766, 768 (N.C. 1944) *rev'g* 27 S.E.2d 117 (N.C. 1943); *Inn Le'Daerda v. Davis*, 360 A.2d at 213-14.

⁴¹ *Brennan v. Pine Hill Collieries, Inc.*, 167 A. 776, 777 (Pa. 1933).

ant would not be exclusive, and the constructive possession by the true owner from such surface activities would extend to any part of the tract not actually possessed by the adverse claimant.⁴²

It also follows that any constructive possession of subsurface minerals by an adverse claimant who possesses the surface only, even though under color of title to the fee, is ineffective against one who actually possesses any subsurface minerals but is not the true owner.⁴³ In this situation, the stranger's possession of the minerals prevents constructive possession established by adverse possession of the surface from being exclusive. Thus, title to all the subsurface minerals could not be perfected by actual possession of the surface only.

Even though the true owner has not severed the surface ownership from the subsurface mineral ownership, an adverse claimant who possesses the surface under color of title which purports to give surface ownership *only* cannot perfect title to subsurface minerals by such surface possession. This results because the color of title does not extend to subsurface minerals and the surface possession cannot extend by constructive possession to subsurface minerals whose ownership is outside the scope of the color of title.⁴⁴

2. *Actual Possession of Minerals Only*

Assuming that a tract of land is owned in fee with no separate ownership of surface and minerals by one owner or a group of common owners, and the owner or owners do not actually possess any part of the land, either surface or minerals, can title to the subsurface minerals be perfected by only such adverse possession of the surface as is incidental to actual possession by mining or other extractions of the subsurface minerals? The answer is a well settled "yes."⁴⁵ However, there must be actual possession of

⁴² *Hunnicut v. Peyton*, 102 U.S. at 368; *Vance v. Guy*, 31 S.E.2d at 768. See 3 AM. JUR.2d *Adverse Possession* §§ 50-53 (1962 & Supp. 1981).

⁴³ *Collins v. Smith*, 372 P.2d 878, 881 (Okla. 1962); *Diem v. Diem*, 372 P.2d 19, 23 (Okla. 1962).

⁴⁴ *McCoy v. Lowrie*, 253 P.2d 415, 417 (Wash. 1953); *White Flame Coal Co. v. Burgess*, 102 S.E. 690, 692 (W. Va. 1920).

⁴⁵ See, e.g., *Diederich v. Ware*, 298 S.W.2d 643, 645-47 (Ky. 1956); *Thompson v.*

the subsurface minerals in such a manner and for such a period of time as will satisfy all the elements required for adverse possession.⁴⁶ As a practical and legal matter it would seem that there also must be some evidence on the surface of mining, extraction or other actual possession of subsurface minerals before it can be asserted that the true owner has obtained or can be charged with notice of any claim adverse to ownership of the subsurface minerals.⁴⁷ Actual possession of subsurface minerals necessarily contemplates some extraction activities, whether they are mining solid mineral substances or drilling for and producing gaseous or liquid mineral substances.⁴⁸

If such actual possession is not under some color of title, it is difficult for the adverse claimant to obtain title to any part of the minerals in place; the mere act of extraction converts the mineral substance from real property to personal property, and actual possession of the mineral existed only so long as the extraction process was being performed.⁴⁹ Under a strict view, one can argue that the adverse possessor without color of title is never more than a trespasser and the true owner will not lose title to any minerals still in place; instead, the true owner will have a cause of action in tort against the adverse possessor for damages done to the real estate or, under an implied contract theory, an action to recover the value of the minerals removed within the applicable statute of limitations period.⁵⁰ However, successful arguments might be made that mining activities carried on for the statutory period in an area defined by the mining activities will perfect title to the minerals remaining in place within the

Ratcliff, 245 S.W.2d 592, 592-94 (Ky. 1952); *Ball v. Autry*, 427 P.2d 424, 426-28 (Okla. 1966); *Thomas v. Young*, 117 S.E. 909, 911-12 (W. Va. 1923). See Annot., 35 A.L.R.2d 124, § 11 (1954).

⁴⁶ *Kinder v. La Salle County Carbon Coal Co.*, 141 N.E. 537, 541-42 (Ill. 1923); *Thompson v. Ratcliff*, 245 S.W.2d at 592-94; *Stark v. Pennsylvania Coal Co.*, 88 A. 770, 771 (Pa. 1913); *Lloyd v. Mills*, 69 S.E. 1094, 1095-97 (W. Va. 1911).

⁴⁷ *Brizzolara v. Powell*, 218 S.W.2d 728, 729 (Ark. 1949); *Stark v. Pennsylvania Coal Co.*, 88 A. at 771; *Thomas v. Young*, 117 S.E. at 910-11.

⁴⁸ *Payne v. Williams*, 414 N.E.2d 836, 841 (Ill. App. Ct. 1980); *Thomas v. Young*, 117 S.E. at 913; *Lockwood v. Carter Oil Co.*, 80 S.E. 814, 817 (W. Va. 1913).

⁴⁹ See *White v. Miller*, 139 N.Y.S. 660 (App. Div. 1912).

⁵⁰ See *Piney Oil & Gas Co. v. Scott*, 79 S.W.2d 394 (Ky. 1934); *Blacksburg Mining & Mfg. v. Bell*, 100 S.E. 806 (Va. 1919).

area so defined.⁵¹ It also has been indicated that adverse possession by the establishment of oil and gas well operations without color of title will perfect title to the oil and gas in place within the area that can be drained by the adverse claimant's well or wells.⁵² Perhaps a result more consistent with the law of adverse possession would give the adverse oil and gas well possessor only the right to continue production using the same well location and related appurtenances but would not give perfected title or ownership in any oil and gas in place. If the adverse claimant perfects title to oil and gas in place within the drainage area of the well, the true owner will be prevented from drilling into the same drainage area; but if the adverse claimant perfects only a right to maintain the adverse well, the true owner could not be prevented from drilling an offset well into the same drainage area.

If an adverse possessor of only subsurface minerals possesses with color of title and general principles of the law of adverse possession of real estate are followed, then the adverse possessor might be able to perfect title to the minerals in place to the extent of the color of title.⁵³ Also, if one true owner owns surface and all subsurface minerals in fee, actual possession of one mineral by an adverse claimant under color of title to all minerals might perfect the adverse claimant's title to all minerals.⁵⁴ The same result follows if a true owner owns all minerals but no surface and an adverse claimant possesses only one mineral but has color of title to all minerals. However, if the subsurface minerals are separately owned, or if the adverse possessor's color of title is limited to only one or specified minerals less than all, the title perfected will be limited, depending upon true ownership of the minerals, color of possession and actual possession.⁵⁵ For example, actual adverse possession of coal accompanied by color of title to the

⁵¹ See *Kinder v. La Salle County Carbon Coal Co.*, 141 N.E. at 542; *Piney Oil & Gas Co. v. Scott*, 79 S.W.2d at 400.

⁵² See *Diederich v. Ware*, 288 S.W.2d at 646-47.

⁵³ See *Blacksburg Mining & Mfg. v. Bell*, 100 S.E. 806 (Va. 1919); *White Flame Coal Co. v. Burgess*, 102 S.E. at 690. See also *Lee, Working Part of a Mineral Estate as Adverse Possession of the Whole*, 46 Ky. L.J. 67 (1957-58).

⁵⁴ Cf. *Hollman v. Johnson*, 80 S.E. 249 (N.C. 1913) (true owner of only the surface but, under color of title to minerals, successfully adversely possessed all minerals by actual possession of only one mineral).

⁵⁵ See *Kentucky Block Cannel Coal Co. v. Sewell*, 249 F. 840 (6th Cir. 1918).

coal, oil and gas should not adversely affect the true owner's title to any of the other minerals.

Limitations on the extent of constructive possession that accompanies actual possession apply to subsurface minerals in the same way as to real estate generally. Therefore, actual and exclusive possession by an adverse claimant of subsurface minerals under color of title will not be extended beyond the area of actual possession if the true owner also is in actual possession of any part of the same minerals.⁵⁶ Further, actual possession of subsurface minerals under color of title to a larger area will not be extended by construction to any part of the same tract of minerals actually being possessed by any other adverse possessor.⁵⁷

B. *Severance of Titles by the True Owner*

For purposes of this discussion, a severance of titles exists when the paper title to the surface of a tract of land is held by one owner or claimant and the paper title to subsurface minerals is held by another owner or claimant. In addition, severance can occur when paper title to only one or more minerals, but not all, is held by one owner and the paper title to other subsurface minerals is held by another, with or without actual or claimed ownership of any part of the surface of the same land.

1. *Possession of Surface Only*

It is universally held that, after surface ownership has been severed from ownership of subsurface minerals, an adverse possessor who commences possession of the surface of land and limits possession to such surface possession shall not be deemed to be in possession of the subsurface minerals, regardless of the surface possessor's color of title. No matter how long such surface possession continues, it will not take title from the true owner of the minerals.⁵⁸ It does not matter whether the adverse possessor of

⁵⁶ See note 40 *supra* and accompanying text.

⁵⁷ See note 43 *supra* and accompanying text.

⁵⁸ *United Fuel Gas Co. v. Dyer*, 185 F.2d at 102; *Knott Coal Corp. v. Kelly*, 417 S.W.2d at 256; *Mountain Mission School, Inc. v. Buchanan Realty Corp.*, 151 S.E.2d at 407.

the surface has notice or knowledge of the prior severance of the surface and mineral titles by the true owner.⁵⁹ This principle and the cases supporting it are consistent with rules of law applicable to adverse possession of real estate generally.

Surface possession by the adverse claimant is notice to the owner of the possessor's claim and gives to the surface owner a possessory cause of action; it is not notice to the subsurface mineral owner of any adverse claim to his or her title, and surface possession alone does not provide a separate mineral owner with a possessory cause of action against the surface possessor.⁶⁰ Further, even though the surface possessor may have good color of title to the subsurface minerals, possession of the surface only will not be extended constructively to the underlying minerals owned by one other than the owner of the surface.⁶¹

In Kentucky, after the surface and mineral titles have been severed, the owner in possession of the surface is said to hold possession of the subsurface minerals as trustee for the true subsurface mineral owner.⁶² This rule results from the provisions in a Kentucky statute⁶³ on this subject. However, the net results of the Kentucky cases are consistent with holdings in other jurisdictions.

If an adverse claimant commences adverse possession prior to the severance of the surface and mineral titles by the true owner and such adverse possession is confined to surface possession only, but is not restricted by color of title to surface only, then continued possession for the required statutory period will perfect title to the surface *and* subsurface minerals in spite of a severance

⁵⁹ *United Fuel Gas Co. v. Dyer*, 185 F.2d at 102.

⁶⁰ *Id.* at 103. See *Payne v. Williams*, 414 N.E.2d at 842; *Scott v. Laws*, 215 S.W. 81, 82 (Ky. 1919).

⁶¹ *Uphoff v. Trustees of Tufts College*, 184 N.E. 213, 216 (Ill. 1932). See *Asher v. Gibson*, 248 S.W. 862, 866 (Ky. 1923).

⁶² *Ward v. Woods*, 310 S.W.2d 63, 64 (Ky. 1958); *Diederich v. Ware*, 288 S.W.2d at 645; *Piney Oil & Gas Co. v. Scott*, 79 S.W.2d at 397. See Comment, *Breaking the Trust: Adverse Possession of Subsurface Minerals Under Kentucky Law* in this issue of the *Kentucky Law Journal* for an extensive discussion of Kentucky's treatment of the surface owner as trustee for the subsurface minerals owner.

⁶³ See *McPherson v. Thompson*, 261 S.W. 853, 854 (Ky. 1924); KRS § 381.430 (1972).

of titles by the true owner.⁶⁴ This is the result in the majority of the jurisdictions that have considered the matter.⁶⁵ It is consistent with the law of adverse possession of real estate as generally applied—possession of the surface is constructively extended to subsurface minerals, no part of which is actually possessed by the true owner. The mere subdivision of the true owner's title and ownership unaccompanied by actual possession by the true owner or his or her grantee does not amount to an ouster of the adverse possessor. Under these facts, it also seems that the true owner of the minerals after severance would have a possessory cause of action against the adverse surface possessor because, under the circumstances, the surface possession is adverse to the mineral owner.

*Perkins v. Southern Coal Corp.*⁶⁶ indicates that a contrary result might be obtained. The court in *Perkins* seems to say that, after a severance is effected by the true owner, no amount of surface possession is adverse to the title of the separate owner of the subsurface minerals. However, the statements of the court in the *Perkins* case appear to be dicta only and the authority cited by the court as the basis for its dicta does not support the court's stated conclusion.⁶⁷

2. *Possession of a Mineral or Minerals Only*

Assuming that there has been a severance of surface and mineral titles prior to the commencement of any adverse possession of the surface, no amount of adverse possession of the surface only will perfect title to the underlying minerals in the surface possessor. However, it is possible that the separate owner of a mineral or minerals can lose title to an adverse possessor.⁶⁸ To acquire title to the subsurface minerals by adverse possession, an

⁶⁴ *Ates v. Yellow Pine Land Co.*, 310 So. 2d 772, 773-74 (Fla. Dist. Ct. App. 1975); *Wallace v. Neal*, 11 S.W.2d 1002, 1003 (Ky. 1928); *Cargill v. Buie*, 343 S.W.2d 746, 750 (Tex. Civ. App. 1960).

⁶⁵ See Annot., 35 A.L.R.2d 124, § 20 (1954).

⁶⁶ 96 F. Supp. 8, 13 (S.D. W. Va. 1951).

⁶⁷ Case Comment, *Adverse Possession—Effect of Severance of Minerals After Adverse Possession Commenced*, 54 W. VA. L. REV. 76 (1951-52).

⁶⁸ *Vorhes v. Dennison*, 189 S.W.2d 269, 271 (Ky. 1945). See *Piney Oil & Gas Co. v. Scott*, 79 S.W.2d at 394; *Smith v. Pittston Co.*, 124 S.E.2d 1 (Va. 1962).

adverse claimant must satisfy all the elements necessary for perfection of title by adverse possession.⁶⁹ The claimant must actually possess the subsurface minerals under circumstances that will give the true owner notice of the adverse claim and a possessory cause of action against the adverse claimant.⁷⁰

If all subsurface minerals are owned by one owner and the adverse possessor has no color of title, the adverse possessor probably cannot perfect title to any subsurface minerals in place; at most, the adverse possessor's extraction of minerals gives the true owner a cause of action in tort or under an implied contract theory. However, if the adverse possessor had good color of title, actual possession of any particular subsurface mineral or minerals is extended by construction to *all* subsurface minerals.⁷¹ For example, actual adverse possession of coal only as against an owner of the coal, oil, gas and other minerals may be extended by construction to the oil, gas and other minerals if the color of title of the adverse claimant covers the coal, oil, gas and other minerals. Presumably, actual possession of only one mineral puts the true owner on notice of an adverse claim to the entire mineral ownership, not just notice as to the one mineral actually being possessed.⁷² On the other hand, if subsurface minerals are owned by separate owners, actual possession of only one mineral does not constitute notice to the other owners of an adverse claim to their respective ownerships nor does it give them a possessory or other cause of action against the adverse possessor.⁷³

It is arguable that one who has no true title to oil and gas but who possesses, or attempts to possess oil and gas, commits a trespass against the owner of the surface and any subsurface strata

⁶⁹ *Letcher County Coal & Improvement Co. v. Marlowe*, 398 S.W.2d 870, 873 (Ky. 1965) (quoting *Vorhes v. Dennison*, 189 S.W.2d at 271); *Mohoma Oil Co. v. Ambassador Oil Corp.*, 474 P.2d 950, 960 (Okla. 1970).

⁷⁰ *Mohoma Oil Co. v. Ambassador Oil Corp.*, 474 P.2d at 960; *Hassell v. Texaco, Inc.*, 372 P.2d 233, 235 (Okla. 1962); *Wallace v. Elm Grove Coal Co.*, 52 S.E. 485, 487 (W. Va. 1905). See *Vorhes v. Dennison*, 189 S.W.2d at 271 (occasional mining insufficient).

⁷¹ See *Hollman v. Johnson*, 80 S.E. at 249. Cf. *Diederich v. Ware*, 288 S.W.2d at 647 (principle applied to fugacious minerals).

⁷² See notes 20, 38-39 *supra* and accompanying text.

⁷³ *Kentucky Block Cannel Coal Co. v. Sewell*, 249 F. at 848. See *Piney Oil & Gas Co. v. Scott*, 79 S.W.2d at 394.

penetrated in the course of drilling and maintaining an oil and gas well. If such trespass is continued for the required statutory period, the owner of the surface and penetrated subsurface strata will have allowed the adverse claimant to establish surface and subsurface easements by prescription,⁷⁴ even though the adverse possessor will not have acquired any fee title to the surface or subsurface strata by the drilling and producing activities.⁷⁵

C. When "Severance" Is By Adverse Claimant

If one not the true owner of a tract of land claims title under good color of title and purports to separate this "title" to the surface and subsurface minerals by a grant of the minerals prior to actual possession of any part of the land, the purported severance is not a true severance.⁷⁶ After such an ineffective severance, possession of the surface only by the adverse claimant will amount to constructive possession of the subsurface minerals and will perfect title to both surface and minerals if such surface possession qualifies as true adverse possession and satisfies the required statutory period.⁷⁷ The title of the mineral grantee will be perfected by the doctrine of estoppel by deed since the adverse claimant's perfected title will relate back to the original entry. The original entry will have been made prior to the grant, and the after-acquired title will serve to feed a grant of the minerals.⁷⁸ The fact that the adverse possessor goes into possession of the surface under what purports to be a title relating to surface only (because of a prior purported grant of the minerals) does not restrict the pos-

⁷⁴ For cases relating generally to prescriptive easements, see *Georgia Power Co. v. Gibson*, 173 S.E.2d 217 (Ga. 1973); *Lyle v. Holman*, 238 S.W.2d at 157; *Berkeley Dev. Corp. v. Hutzler*, 299 S.E.2d 732 (W. Va. 1976); *Town of Paden City v. Felton*, 66 S.E.2d 280 (W. Va. 1951).

⁷⁵ See notes 70-71 *supra* and accompanying text.

⁷⁶ See *Tennessee Coal, Iron & Ry. v. Brewer*, 92 F.2d 804 (5th Cir. 1937), (noted in *Recent Decisions, Adverse Possession—Severance of Minerals and Surface—Adverse Possession as Affecting Title to the Minerals*, 37 MICH. L. REV. 308 (1938-39)); *Kilpatrick v. Gulf Prod. Co.*, 139 S.W.2d 635 (Tex. Civ. App. 1940); *Stoebuck, Adverse Possession of Severable Minerals*, 68 W. VA. L. REV. 274 (1966).

⁷⁷ See notes 38-39 *supra* and accompanying text.

⁷⁸ See *Tennessee Coal, Iron & Ry. v. Brewer*, 92 F.2d at 804; *American Petrofina, Inc. v. Warren*, 156 So. 2d 729 (Miss. 1963); *Stoebuck, supra* note 76, at 279.

essor's color of title and claim of title to surface only, because the true color of title is the purported title prior to the ineffective severance.⁷⁹

The case is much clearer if the adverse possessor who commences possession of the surface under good color of title to fee ownership thereafter purports to sever the surface and mineral titles by a grant or reservation. Assuming there was no severance by the true owner prior to the time the adverse claimant commenced surface possession, it is universally held that continued possession of the surface by the original adverse claimant or his or her grantee will perfect title to surface and minerals against the true owner of both.⁸⁰

If there is no surface possession by an adverse claimant or if such possession is not continued for the required statutory period, a grantee of the minerals from an adverse claimant without true title can perfect title to the subsurface minerals only by actual possession of such minerals. He or she may use the adverse claimant's void grant as color of title to extend by construction the actual possession of subsurface minerals.⁸¹ Apparently, adverse possession of the surface by an adverse claimant who also is a purported grantor of the minerals and whose possession is effective as to subsurface minerals can be tacked to the actual possession of his or her grantee. Tacking the grantor's interest to that of the grantee's for the required statutory period allows the mineral grantee to perfect title to the minerals even though surface possession has not been sufficient to allow any one adverse claimant to individually perfect title to the surface.⁸²

D. *Adverse Possession by Co-Owner*

Special attention must be given to those cases where a true co-owner of real estate attempts to acquire full ownership of property by adverse possession as against co-owners and the

⁷⁹ See notes 38-39 *supra* and accompanying text.

⁸⁰ See *Pierson v. Case*, 133 So. 2d 239, 243-44 (Ala. 1961); *Wallace v. Neal*, 11 S.W.2d at 1003; *Temples v. First Nat'l Bank of Laurel*, 123 So. 2d 852, 856 (Miss. 1960); *Kilpatrick v. Gulf Prod. Co.*, 139 S.W.2d 653, 656 (Tex. Civ. App. 1940).

⁸¹ See notes 45-48, 68-70 *supra* and accompanying text.

⁸² See notes 14, 38-40, 43 *supra* and accompanying text.

world. As a general rule, the mere possession or use of real estate by one co-owner is not adverse to the ownership of co-owners.⁸³ This is true whether the possessing co-owner is an original co-owner or whether the possessing co-owner is a grantee of one or more, but less than all, co-owners.⁸⁴

It is well settled that one co-owner can acquire full title by adverse possession if the right combination of facts and circumstances exists.⁸⁵ First, there must be some act or acts amounting to an ouster of all other co-owners.⁸⁶ Second, the fact of the ouster and the claim of full ownership must be brought to the attention of the other co-owners either by actual notice or by some act or acts that amount to notice.⁸⁷ The ouster, claim and notice are much more difficult to accomplish when an original co-owner seeks to establish full title by adverse possession against others who acquired title with the adverse claimant. One of the problems of such an original owner is lack of color of title to full ownership. The cases demonstrate that a clearer case can be made if one co-owner purports to grant full ownership to a party; the grantee thereby obtains and goes into possession under color of title to full ownership.⁸⁸

If surface and mineral titles have not been severed and the adverse claimant possesses and uses the surface only, he or she can perfect title to subsurface minerals in the same manner and to the same extent as has been previously discussed with respect to surface possession by a stranger to the true title. However, in the case of a co-owner in possession of the surface only, but under claim of full title, the acts of surface possession and any other acts

⁸³ *Ramey v. Ramey*, 353 S.W.2d 191, 193 (Ky. 1962); *Cary-Glendon Coal Co. v. Warren*, 198 S.W.2d 499, 501 (Ky. 1946). See generally Annot., 82 A.L.R.2d 5 (1962).

⁸⁴ See, e.g., *Hoagland v. Fish*, 238 S.W.2d 133, 136 (Ky. 1951).

⁸⁵ See *Ramey v. Ramey*, 353 S.W.2d at 191; *Dixon v. Henderson*, 267 S.W.2d 869 (Tex. Civ. App. 1954).

⁸⁶ See *Gill v. Fletcher*, 78 N.E. 433 (Ohio 1906); *Silver Surprise, Inc. v. Sunshine Mining Co.*, 547 P.2d 1240 (Wash. Ct. App. 1976), *aff'd*, 558 P.2d 186 (Wash. 1977).

⁸⁷ *Pan Mutual Royalties v. Williams*, 365 P.2d 138, 140 (Okla. 1961); *Brooks v. Shaw*, 159 S.W.2d 206, 209-10 (Tex. Civ. App. 1942); *Silver Surprise, Inc. v. Sunshine Mining Co.*, 547 P.2d at 1252-53.

⁸⁸ See *Saulsberry v. Maddix*, 125 F.2d 430 (6th Cir.), *cert. denied*, 317 U.S. 643 (1942); *Laing v. Gauley Coal Land Co.*, 153 S.E. 577 (W. Va. 1930); 3 AM. JUR.2d *Adverse Possession* § 174 (1962).

must be such as to amount to an ouster of and notice to the co-owners in order to perfect a full title.⁸⁹ Whether there has been an ouster and sufficient notice is largely a question of fact. However, it seems that the extraction of minerals by an adverse possessing co-owner amounts to waste, which is beyond the right of a co-owner in possession. Such acts of waste committed without accounting to the other co-owners for their respective shares of the products or proceeds therefrom are good evidence of acts of ouster and claim of full ownership; they could very well provide notice to other co-owners of the possessor's claim of full ownership.⁹⁰

The same principles apply when surface and mineral titles are severed and the minerals are owned by co-owners. As previously noted, to acquire title to subsurface minerals by adverse possession there must be some actual possession of the minerals. This requires actual extraction of minerals, openly and for the prescribed statutory period. The mineral extraction process constitutes acts evidencing full ownership and affords notice to other co-owners of a claim of full ownership.⁹¹

E. *Adverse Possession Against Remainder Interests*

As a general proposition, when land is owned by successive owners, the life tenant is entitled to possession and use of the land for the duration of the life estate, and the remainderman has no right of possession until termination of the life estate.⁹² Consequently, mere possession of land by the life tenant is not possession which is adverse to the title of the remainderman, nor is it notice to the remainderman of an adverse claim. The remainderman has no cause of action which would start the running of the applicable statute of limitations.⁹³ The same is generally held to

⁸⁹ *Cary-Glendon Coal Co. v. Warren*, 198 S.W.2d at 500; *Dixon v. Henderson*, 267 S.W.2d at 872; *Russell v. Tennant*, 60 S.E. 609, 613 (W. Va. 1908). See 3 AM. JUR.2d *Adverse Possession* § 174 (1962).

⁹⁰ See *Dixon v. Henderson*, 267 S.W.2d at 869.

⁹¹ See notes 46-47 *supra* and accompanying text.

⁹² See generally 51 AM. JUR.2d *Life Tenants and Remaindermen* § 27 (1970) and cases cited therein.

⁹³ *McDonald v. Burke*, 288 S.W.2d 363, 365-66 (Ky. 1955); *Barnett v. Barnett*, 142 S.W.2d 975, 977 (Ky. 1940); *Stealey v. Lyons*, 37 S.E.2d 569, 576 (W. Va. 1946).

be true even though a stranger to the true title possesses the surface, for there is no act adverse to the title of the remainderman, no notice of an adverse claim and no cause of action accruing to the remainderman.⁹⁴

However, if a life tenant or an adversely possessing stranger does more than possess and use the surface of land, for example, extract minerals, then they commit acts outside the scope of ownership of a life tenant and give notice of an adverse claim to full ownership, thereby giving to the remainderman a cause of action for waste.⁹⁵ Thus, the actual extraction of minerals by a life tenant, or by a stranger to the true title, evidences actual possession of the minerals, constitutes waste as to the remainderman, puts the remainderman on notice of a claim adverse to his or her ownership and gives the remainderman a cause of action against the trespasser.⁹⁶ Under these circumstances, the remainderman must act to protect his or her ownership within the time allowed by the applicable statute of limitations.

CONCLUSION

The foregoing discussion has demonstrated that concepts applicable to adverse possession of subsurface minerals are generally the same as those that apply to adverse possession of all real estate. However, one must be aware of special requirements that must be satisfied in order to perfect title to subsurface minerals by adverse possession, particularly when there has been a severance of the true title between surface and subsurface minerals.

The perfection of good title by adverse possession serves many useful purposes in the law. In those jurisdictions where senior and junior grants came from the state or commonwealth covering the same or some of the same land and in those areas where descriptions of land were vague or not carefully drawn,

⁹⁴ See notes 28-30 *supra* and accompanying text.

⁹⁵ See note 31 *supra* and accompanying text. See also 3 AM. JUR.2d *Adverse Possession* §§ 226, 227 (1962).

⁹⁶ *Humble Oil & Refining Co. v. Martin*, 298 F.2d at 168-69; *Rupel v. Ohio Oil Co.*, 95 N.E. 225, 226 (Ind. 1911); *Moore v. Vines*, 474 S.W.2d 437, 439 (Tex. 1971). See 78 AM. JUR.2d *Waste* § 24 (1975).

adverse possession serves to solidify land and mineral ownership. Further, there may be some public, social and economic justification in rewarding, with good title, those who take possession and use real estate for its intended use, including the extraction of subsurface minerals.

