

**(PROPOSED COAL & MINERAL MINING PLAN)  
UNDERGROUND & SURFACE  
NOTICE OF MINING OPERATIONS**

Inst # 2000-37886

I THE UNDERSIGNED JERRY F. COLWELL CERTIFIES THAT THE FOLLOWING IS A PROPOSED COAL & MINERAL MINING PLAN. THIS PLAN COVERS UNDERGROUND MINING AND SURFACE MINING. THAT IT COVERS ALL OF THE MINERAL PROPERTIES ATTACHED AS EXHIBIT (A-1). THAT THE SURFACE OWNERS ARE PLACED ON NOTICE. THAT THE MINERALS OWNED COMES FROM A BROAD FORM MINERAL DEED WHICH GIVES THE MINERAL OWNER THE USE OF ALL THE SURFACE AS NEEDED; THE RIGHT TO BUILD ROADS AND RUN RAILROAD TRACKS, BUILD HOUSING FOR THE MINERS AND USE ALL THE TIMBER NEEDED IN ITS MINING OPERATION. SEE EXHIBIT (A-2 AS TO THE MINERAL RIGHTS TITLE.

IT HAS BEEN ESTIMATED THAT UNDERGROUND MINING WOULD PRODUCE REVENUES OF \$250,000,000 AND THE ESTIMATED SURFACE MINING OPERATIONS WOULD PRODUCE REVENUES OF \$49,000,000 ON AND UNDER THE ATTACHED EXHIBIT (A-1) MINERAL PROPERTIES.

THE PROPOSED COAL & MINERAL MINING PLAN WILL BE IN COMPLIANCE WITH ALL STATE AND FEDERAL LAWS THAT GOVERNS UNDERGROUND MINING & STRIP AND/OR SURFACE MINING WHICH ARE ATTACHED AS EXHIBIT (A-3).

THE UNDERSIGNED BELIEVES THAT EACH SURFACE OWNER SHOULD HAVE THE CHOICE OF STAYING IN THE MINING PLAN OR BUYING OUT OF THE PLAN.

I JERRY F. COLWELL WILL SALE TO THOSE SURFACE OWNERS WHICH WISH TO BUY OUT OF THE MINING PLAN THE MINERAL RIGHTS AS FOLLOWS:

\$425.00 PER LOT  
\$450.00 PER ACRE  
\$400.00 PER ACRE OVER 2 ACRES

THERE ARE NO OUTSTANDING COAL, MINERAL, OIL & GAS LEASES ON THE MINERAL PROPERTIES ATTACHED AS EXHIBIT (A-1).

YOU WILL HAVE YOUR ATTORNEY MAKE OUT THE MINERAL QUITCLAIM DEED AND RESERVE TO JERRY F. COLWELL 1/2 INTEREST IN ALL THE OIL & GAS RIGHTS. AFTER YOUR PURCHASE YOU WILL OWN THE MINERAL RIGHTS, LESS 1/2 INTEREST IN THE OIL & GAS RIGHTS. YOU WILL OWN 100 PER CENT OF THE COAL & HARD MINERAL RIGHTS

11/01/2000-37886  
10:26 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
014 C31  
50.00

AND 1/2 INTEREST IN OIL AND GAS RIGHTS. ALL THE UNDERGROUND MINING RIGHTS AND SURFACE MINING RIGHTS WILL BE YOURS.

**MINERAL QUITCLAIM DEED:**

GRANTOR: JERRY F. COLWELL INDIVIDUAL  
P. O. BOX 6415  
GULF BREEZE, FLORIDA 32561

PHONE 850-934-6448  
FAX 850-916-7426  
E-MAIL JFC8944@AOL.COM

DEED AND THE CONSIDERATION PAID SHOULD BE SENT TO;  
AMSOUTH BANK  
ESCROW DEPT.  
TIGER POINT BRANCH  
GULF BREEZE, FLORIDA 32561  
OR

SEND THE DEED, I WILL SIGN BEFORE A NOTARY AND RETURN TO  
YOUR ATTORNEY OR ESCROW AGENT WITH INSTRUCTIONS.

THERE SHOULD BE A PLAT OF THE LOT, SUBDIVISION OR ACREAGE'S  
INCLUDING THE SECTION, TOWNSHIP & RANGE. YELLOW IN THE  
MINERAL RIGHTS BEING CONVEYED TO YOU.

SIGNED THIS 30TH DAY OF OCTOBER, 2000



Frances P Payne  
My Commission CC902685  
Expires January 17, 2004

*Jerry F. Colwell*  
JERRY F. COLWELL

STATE OF FLORIDA

COUNTY OF SANTA ROSA

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY  
APPEARED JERRY F. COLWELL

KNOWN TO ME TO BE THE IDENTICAL PERSON WHOSE NAME IS  
SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO  
ME HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATION  
THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF THIS OFFICE THIS THE 30TH  
OF OCTOBER, 2000.

*Frances P. Payne*  
NOTARY PUBLIC IN AND  
FOR SANTA ROSA COUNTY  
AND/OR THE STATE OF  
FLORIDA.

EXHIBIT (A-1)

SHELBY COUNTY, ALABAMA

FULL MINERAL INTEREST

TOWNSHIP 18 SOUTH, RANGE 1 WEST

Section 13: NE/4; SW/4; W/2 of SE/4; The NW/4 lying SE of top of oak mountain  
Section 26: E/2 of SE/4; SE/4 of NE/4  
Section 31: N/2

TOWNSHIP 18 SOUTH, RANGE 1 EAST

Section 7: entire section  
Section 9: SE/4 of SW/4; SW/4 of SE/4; NE/4 of NW/4

TOWNSHIP 19 SOUTH, RANGE 1 WEST

Section 27: N/2  
Section 32: SE/4

TOWNSHIP 19 SOUTH, RANGE 2 WEST

Section 9: NE/4 of NW/4; S/2 of NE/4; S/2 of NW/4  
Section 12: SE/4 of NE/4

TOWNSHIP 20 SOUTH, RANGE 1 WEST

Section 5: W/2 of SW/4  
Section 6: E/2 of SW/4; SE/4; SE/4 of NE/4  
Section 7: NE/4 of NW/4; NW/4 of SW/4; All that part of section 7 lying south of straight ridge; NW/4 of NE/4  
Section 12: SE/4 of NE/4  
Section 17: E/2 of SE/4 of NE/4  
Section 19: SE/4; S/2 of SW/4  
Section 20: W/2 of W/2 of SW/4  
Section 29: NW/4 of NW/4  
Section 30: S/2 of SW/4; N/2 of NE/4

TOWNSHIP 20 SOUTH, RANGE 2 WEST

Section 1: S/2 of NE/4; S/2 of SW/4; SE/4; NE/4 of SW/4  
Section 3: S/2 of NE/4; SE/4; S/2 of SW/4; NE/4 of SW/4; NE/4 of NE/4  
Section 5: NE/4 of NE/4; NW/4 of NW/4; NE/4 of SE/4; S/2 of SE/4  
Section 7: NE/4 of NW/4; W/2 of NW/4; NW/4 of SW/4; SE/4 of SE/4  
Section 9: entire section  
Section 11: S/2 of NE/4; SE/4 of NW/4; S/2  
Section 12: SE/4 of NE/4; S/2  
Section 13: NW/4; W/2 of NE/4; NW/4 of SW/4;  
Section 15: E/2; SW/4 of NW/4; E/2 of SW/4; SW/4 of SW/4  
Section 17: N/2; SW/4; N/2 of SE/4; SW/4 of SE/4  
Section 19: NE/4 of NE/4; S/2 of NE/4; SE/4 of NW/4; E/2 of SW/4; SE/4  
Section 21: NE/4 of NE/4; SE/4 of NW/4; S/2 of NE/4; S/2  
Section 23: SW/4 of SE/4  
Section 25: E/2 of SE/4; SE/4 of SW/4; SE/4 of NE/4  
Section 26: NE/4; NW/4 of SE/4

Section 29: NE/4 of NE/4; W/2 of NE/4; SE/4 of NW/4; NE/4 of SW/4;  
S/2 of SW/4; W/2 of SE/4  
Section 30: S/2 of NW/4; N/2 of SW/4  
Section 31: E/2 of NE/4; S/2  
Section 33: NE/4 of NE/4; S/2 of NE/4; S/2 of NW/4  
Section 35: N/2 of N/2; SW/4 of NE/4; SE/4

EXHIBIT (A-1)

SHELBY COUNTY, ALABAMA

TOWNSHIP 21 SOUTH, RANGE 2 WEST

Section 5: NW/4 of NE/4; SE/4 of NE/4; NW/4; W/2 of SE/4  
Section 11: SW/4; E/2 of NW/4  
Section 15: NE/4 of NE/4  
Section 21: NE/4 of SE/4  
Section 25: NE/4 of NE/4; W/2 of NE/4; NW/4 of NW/4  
Section 35: NW/4 of NW/4; S/2 of NW/4; NE/4 of SW/4; SW/4 of SW/4

TOWNSHIP 20 SOUTH, RANGE 3 WEST

SECTION 11: SW/4 of NE/4; NE/4 of SW/4; S/2 of SW//4

JERRY F. COLWELL  
P. O. BOX 6415  
GULF BREEZE, FLORIDA 32561  
850-934-6448

**EXHIBIT (A-2)**

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1986-87

Charles D. Edmonson

85-606

v.

Jerry F. Colwell, etc., et al.

Herbert D. Anderson, et al.

85-607

v.

Martha T. Kirkland, et al.

Appeals from Escambia Circuit Court

HOUSTON, JUSTICE.

Two cases were consolidated for trial. A summary judgment was entered for the plaintiffs in the case of Martha T. Kirkland, et al. v. G. I. Drury, et al. and was made final under Rule 54(b), Ala. R. Civ. P.; and a summary judgment was entered for



**EXHIBIT (A-2)**

85-606 and 85-607

the defendant in the case of Charles D. Edmonson v. Jerry F. Colwell, et al. The losing parties in each case appealed and the appeals were consolidated.

The following are all of the pertinent facts insofar as the issues raised by these appeals are concerned. Charles D. Edmonson acquired an undivided interest in certain minerals (title to which was severed from the surface title) in property in Escambia County, Alabama, in 1946. In 1946, Edmonson conveyed a portion of his undivided interest in these minerals to Drury.

On June 3, 1954, Edmonson's interest in these minerals was sold for nonpayment of ad valorem taxes. This interest was purchased by the State of Alabama. The State sold this interest to appellee Jerry F. Colwell on October 6, 1971.

Edmonson commenced this action by filing a petition for redemption against the owners of the Colwell interest (hereinafter "the Colwell group") on December 2, 1983, in which Edmonson sought to have the tax deed from the State Land Commissioner of Alabama to Colwell declared void. The Colwell group answered and filed a counterclaim which denied the allegations of the complaint and set up the affirmative defenses of repose, laches, and the statute of limitations. The counterclaim was amended to state a claim under the Grove Act, § 6-6-560, Code 1975.

On June 2, 1955, Drury's interest was sold for ad valorem taxes. This interest was purchased by the State. In 1968, the State sold its interest to Earl Horton, who sold half of his interest to his father and mother, Escambia County Tax Collector W. H. Horton and Alice A. Horton, and half to Escambia County Probate Judge Reo Kirkland and his wife Martha T. Kirkland (hereinafter "the Horton/Kirkland group").

On January 24, 1984, the Horton/Kirkland group filed an action under the Grove Act against the owners of the Drury interest.

**EXHIBIT (A-2)**

85-606 and 85-607

These suits were consolidated because of common questions of law and fact.

Motions for summary judgment were filed by the Horton/Kirkland group and the Colwell group. The trial court found that the Horton/Kirkland group and the Colwell group were entitled to judgments as a matter of law under the Grove Act; that the Edmonson group and the Drury group were barred from redeeming from the tax sales, which had occurred more than 20 years before they sought to redeem.

There has been no development of the mineral rights either through mining or drilling. Consequently, none of the parties is in actual possession of the minerals.

Justice Maddox, writing for a division of this Court in Shelton v. Wright, 439 So. 2d 55, 57 (Ala. 1983), wrote:

"The Grove Act, as originally enacted, was adopted for the purpose of clearing 'up all doubts or disputes concerning [land titles]'. Williams v. First National Bank of Mobile, 384 So. 2d 89, 94 (Ala. 1980). Thus, consistent with this purpose and the unequivocal plain meaning of the language 'any interest,' we believe the legislature intended to include not just claims involving surface rights, but also those claims related to severed mineral estates."

In Fitts v. Alexander, 277 Ala. 372, 375, 170 So. 2d 808, 810 (1965), this Court held that an action to quiet title under the Grove Act could be brought when (1) neither the plaintiff nor any other person is in the actual possession of the interest claimed in the land; (2) the plaintiff and those through whom he claims have held color of title to the interest claimed in the land for a period of ten or more consecutive years next preceding the filing of the complaint; and (3) the plaintiff or those through whom he claims have paid taxes on the interest claimed during the whole of such period or for a period of ten or more consecutive years next preceding the filing of the complaint.

Even if the appellants are correct in their challenge to the

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85-606 and 85-607

validity of the tax deeds through which the Horton/Kirkland group and the Colwell group claim, these tax deeds are color of title. Bell v. Pritchard, 273 Ala. 289, 139 So. 2d 596 (1962). Any instrument purporting to convey an interest in land may be color of title, however defective or imperfect it is, and no matter from what cause it is invalid, Van Meter v. Grice, 380 So. 2d 274 (Ala. 1980). Therefore, the Horton/Kirkland group and the Colwell group had color of title to the mineral interest which each had claimed for more than ten consecutive years before these suits were filed.

The ad valorem tax burden has been exclusively borne by the Horton/Kirkland and Colwell groups since the original tax sales. All accrued ad valorem taxes were paid on the respective mineral interests by the Horton/Kirkland group and the Colwell group at the time these interests were purchased from the State. Both groups made a one-time payment "in lieu of" ad valorem tax payments, in accordance with § 40-20-35, Code 1975, to the Probate Judge of Escambia County.

Section 40-20-31, Code 1975, levies a mineral documentary tax upon the filing and recording of an instrument conveying a severed mineral interest. Section 40-20-32(3), Code 1975, provides that the tax shall be \$.15 per mineral acre if the primary term of the instrument extends for more than 20 years. Section 40-20-45 provides that this tax shall be in lieu of all ad valorem taxes.

Though the Grove Act is purely statutory and strict compliance with the requirements set forth in it is imperative, payment of a mineral documentary tax in accordance with §§ 40-20-30 through 40-20-37, Code 1975, on a severed mineral interest is sufficient compliance with the ad valorem tax requirement; this principle is consistent with this Court's holding in Shelton v. Wright, supra, that the Grove Act can be used to clear title to



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severed mineral interests. Otherwise, if an owner of minerals paid the mineral documentary tax, as he is required to do to record his mineral deed, and is thereby relieved of any obligation to pay additional taxes, he could not clear title under the Grove Act.

Edmonson and Drury have attempted to retroactively pay ad valorem taxes. This does not negate the "exclusivity" of tax payment by the Kirkland/Horton and the Colwell groups for a period of more than ten years next preceding the filing of the complaints. Shelton v. Wright, supra.

Edmonson sought to redeem this severed mineral interest 29 years after the tax sale and 12 years after the State, which purchased the interest at the 1954 tax sale, sold this interest to Colwell.

Drury sought to redeem this severed mineral interest 28 years after the tax sale and 17 years after this State, which purchased the interest at the 1955 tax sale, sold this interest to Horton.

Edmonson and Drury contend that they are entitled to redeem without limit as to time, under the conditions and purview of § 40-10-83, Code 1975.

We have stated many times that the purpose of § 40-10-83 is to preserve the right of redemption without a time limit, if the owner of the land seeking to redeem has retained possession. Stallworth v. First National Bank of Mobile, 432 So. 2d 1222 (Ala. 1983); Tensaw Land & Timber Co. v. Rivers, 244 Ala. 657, 15 So. 2d 411 (1943). However, when the rule of repose or prescription has been raised in the pleadings (as it was in the instant case), we have stated:

"We think the rule of prescription or repose is operative notwithstanding statements in opinions of this court to the effect that the owner invoking the aid of § 296, Title 51, Code of Alabama [1940], (see: § 3108, Code of 1923), may redeem at any time if he brings

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himself within the conditions and purview of this statute....

"....

"We do not think that the legislature in enacting Title 51, § 296, supra, and in the passage of antecedent statutes of the same import, had any intention of excluding the doctrine from application to proceedings under this redemption statute, nor to disturb its application to belated proceedings to redeem by authority of this law. The rule has been applied so many times and has been the law of this state for so many years, we are unwilling to say that the legislature intended to except its application to proceedings here initiated and to others of like kind without a more definite expression to that effect."

Schwab v. Nonidez, 276 Ala. 308, 310-11, 161 So. 2d 592 (1964).

The record conclusively establishes that the appellants did not attempt to redeem the mineral interests for more than 20 years. Therefore, the trial court did not err in barring the appellants' right to redeem under the rule of repose. Boshell v. Keith, 418 So. 2d 89 (Ala. 1982).

AFFIRMED.

Torbert, C. J., and Maddox, Almon, and Beatty, JJ., concur.

EXHIBIT (A-2)

THE ALABAMA RULE OF PRESCRIPTION OR REPOSE

The Alabama rule of prescription or repose has been consistently recognized as a substance rule of Alabama property law.

The cases are legion which speak to the many nuances and application of the rule.

The premier authority we rely upon is, the case of Boshell v. Keith, 418 So. 2d 89 (Ala. 1982)

In Boshell, the plaintiffs, in A 1980 suit, seek to void a 1958 deed as "void" for fraud.

The rule of repose was plead as a defense bar to the assertion of such a belated claim.

The Alabama Supreme Court held that the rule of repose is:

- 1) similar to a statute of limitation, but broader in scope, not dependent on any specific statutory bar.
- 2) a doctrine that operates like laches but, unlike laches, the only element of repose is time, and its application is not affected by situation as is laches,
- 3) an "absolute bar" to claims that are unasserted for 20 years, it being necessary for the "peace and security of society" that those who have "slept" on their rights lose them.

See Schwab v. Nonidez, 161 So. 2d 592 (Ala. 1964)

State v Mudd, 143 So. 2d 171, 175 (Ala. 1962)

Van Meter v. Grice, 380 So. 2d 274 (Ala. 1980)

H. D. Anderson V. Martha T. Kirkland 85-607 (Ala. 1987)

CODE OF ALABAMA 1975 40 - 20 - 35

SEC. 40 - 20 35, TAX TO BE IN LIEU OF AD VALOREM TAXES, EXEMPTION OF NON PRODUCING LEASEHOLD AND OTHER MINERAL INTEREST.

The mineral documentary tax levied above shall be in lieu of all ad valorem taxes and all nonproducing leasehold interests upon all oil, gas and other minerals in on or under lands lying within the State of Alabama, created or assigned after October 12, 1957. ( H.D. ANDERSON V. MARTHA T. KIRKLAND 85-607 (ALA. 1987)

EXHIBIT (A-2)

THE GROVE ACT

( Code of Alabama, 1975, 6 - 6 - 560, et seq. )

The " Grove Act " has been recently applied to allow quieting of the title to severed mineral interests in the case of Shelton v. Wright, 439 So. 2d 55 (Ala. 1983).

The simple test of the Grove Act is as follows:

- 1 ) Neither party is in actual possession of the interest in real property.
- 2 ) Color of title for 10 years.
- 3 ) Exclusive payment of ad valorem taxes during said 10 year period.

First, as in Shelton, none of the parties to this litigation have been in actual possession of the mineral interest in question,

"First, the trial court found that neither the appellees nor anyone else was in possession of the land, that the lands were undeveloped insofar as minerals rights were concerned, and that no drilling or mining had occurred on the lands"

Second, both Earl Horton and Colwell, and their assigns, have held color of title for more than 10 years prior to the suits. See Bell v. Pritchard, 139 So, 2d 596 (Ala. 1962) and line of cases holding tax deed gives color of title.

Third, ad valorem tax burden has been exclusively paid by Kirkland, et al and Colwell, et al, since the original tax sales.

See Code of Alabama, 1975, 40 - 20 - 35.

Sec. 40 - 20 - 35. Tax to be in lieu of ad valorem taxes; exemption of nonproducing leasehold and other interest from ad valorem taxes.

EXHIBIT (A-2)

" The mineral documentary tax levied above shall be in lieu of all ad valorem taxes and all nonproducing leasehold interest upon all oil, gas and other minerals in, on or under lands lying within the State of Alabama, created or assigned after October 12, 1957. ...."

(Also , see Shelton at page 58 wherein it is held that an attempt to retroactively pay taxes, as Edmonson and the Drury Defendants have attempted, does not negate the "exclusivity" of tax payments by Kirkland/Horton and Colwell, et al, during the preceding 10 years. )



**EXHIBIT (A-3)**

**THE PROPOSED COAL & MINERAL MINING PLAN WILL BE IN COMPLIANCE WITH ALL STATE AND FEDERAL LAWS, BUT NOT LIMITED TO THE FOLLOWING:**

**SURFACE MINING CONTROL & RECLAMATION ACT OF 1977, 1981 (SMARA) .**

**ENVIRONMENTAL PROTECTION STANDARD (30 u.s.c. 1251,1265)**

**PERFORMANCE BOND (30 USC 1289) .**

**STATE LAWS (30 USC 1255)**

**STATE PROGRAMS (30 USC 1253)**

**RECLAMATION OF RURAL LANDS (30 USC 1236)**

**STATE RECLAMATION PROGRAM (30 USC 1235)**

**FILLING VOIDS & SEALING TUNNELS (30 USC 1239)**

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**11/01/2000-37886  
10:26 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
014 CJ1 50.00**