

# In N.D. you can talk to the dead

In North Dakota one can give legal notice by mail to a deceased individual, even though he long ago went to that



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The North Dakota Supreme Court, in ruling on the Dormant Mineral Act, stated that "...no reasonable inquiry was required where the surface owner mailed the notice of lapse to the mineral interest owners' address which was of record in 2007, even though the mineral interest owners had died in 1980 and 1999, respectively." When an individual who owned mineral interests in North Dakota dies, they and their heirs may be out of luck if death never kept up the "current address" in the county recorder's office.

The Supreme Court in an important recent case called Capps also stated, "...the address of record need not be the mineral interest owner's correct address for the mailing of the notice of lapse to satisfy the statutory requirement." In other words, a landowner may serve a notice to recover mineral interests by US mail when mailed to the deceased's last address in the records and thereby

obtain minerals formerly owned by the deceased.

Both the legislature and the courts are attempting to make it easier for surface owners to clear title and reclaim lost mineral rights. The Supreme Court in Capps held that "this Court made it clear that when the mineral interest owners of record are deceased, the notice must still be mailed to the address of the deceased owners of record." In my practice I have done this. The postman must think I am nuts. This rule derives from the intent to encourage mineral development and extraction.

The Court ruled that the surface owner was not required to conduct a reasonable inquiry into an actual address of a mineral owner even when the owner knew they were deceased. The Court determined that it was immaterial whether the surface owner had actual knowledge of the death of the party notified by mail

the party who was the record owner of the mineral interests and the person to whom the statutory notices had been mailed. The Court stated that any heirs of the deceased would have received notice if the deceased had recorded notice of their current addresses. The Court also held that the constitutional safeguards of due process and adequate notice do not apply to the non-litigation Dormant Mineral Act used by the landowners in the Capps case.

The Capps case illustrates the growing body of law that makes it easier to develop and reclaim mineral rights.

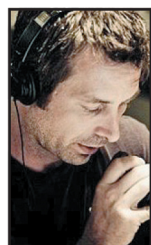
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great oil patch in the sky. It is something out of a Charles Dickens novel. You can communicate and give notice to the dead. A landowner seeking to claim mineral interests may recover the deceased's mineral interests by giving notice by US mail to an address long ago abandoned — and legally so, according to the Dormant Mineral Act.

# For some it will be bankruptcy

This past summer, economist and author Robert Bryce predicted the merger and acquisitions activity in 2015 would



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prices stay at these levels."

Bryce added if energy prices do not turn around in the short term, long term viability will not be an option for some.

"For some it will simply be bankruptcy or being absorbed by another company," Bryce said. "All indications are that oil prices will stay low some many more months to come and given that we will probably see more mergers and acquisitions."

With Dow and Dupont merging and Halliburton acquiring Baker Hughes, it appears megadeals are becoming more common. Bryce doesn't necessarily disagree with that observation, but believes those deals get all the headlines while deals by smaller firms still happen.

"Whether those deals will happen by the super majors or by the large independents it is hard to say at this point," Bryce said. "But I think the key for any deal is going to be the strength of the balance sheets of the acquirer and acquiree."

Whether the company is big or small doesn't seem to have as much weight as their debt and cash flow Bryce believes.

"You have a lot of companies that, again, are very heavily leveraged and their cash flows are not going to be sufficient to make up and handle their debt loads," Bryce said. "I think it is going to be the companies that have enough capacity on their balance sheets and have

significant cash flow are going to be the ones that will be able to make acquisitions. Whether they are large or small, it all depends."

Advancements in technology is the reason size doesn't matter. The savings and efficiencies made in energy tech has been significant enough to change the way oil and gas do business.

"Technology is a key factor in almost any business but what is obvious now is that throughout the upstream space the technologies that really lead to the shale revolution now are being perfected by the shale players," Bryce said. "Those are going to be the keys and the emphasis is going to be more squarely focused on capital efficiency, labor efficiency and equipment efficiency. All these technologies combined are going to be the keys to the industry going forward."

It appears the energy industry will continue to pick low hanging fruit while looking for good deals elsewhere.

"You will see more high grading, that is drillers are going to drill their best prospects first," Bryce said. "But I think it is also worth remembering that this slump that we are seeing in domestic oil prices and gas prices is part of a broader cycle that's global."

Bryce reminds us that low prices are occurring pretty much commodity wide, not just in oil and agriculture.

"Remember it was about four or five years ago now that iron ore going into the Chinese market for close to \$200-a-ton, today those prices are under \$40," Bryce said. "Look at LNG going into the Asian market, about 14 months ago they were at about \$12.50, today the near month spot price on the JK Marker is about \$6.50 and going out into June and July it is about \$6."

At the end of the day, the energy economist and author looks back at 2008 as the peak of the commodity upcycle and doesn't see a revival anytime in the near future.

"Now we are in a downdraft with these commodities that could last for a good long while," Bryce said.

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settle down and pick up again in 2016. He was right. Shortly after Bryce's prediction, Anadarko Petroleum backed out of its bid to buy Apache and other rumored companies like Devon and EOG started selling mineral rights rather than other M&A activities.

Last week, I had the opportunity to catch up with the Manhattan Institute's Bryce and revisit the mergers and acquisition topic for this year. According to Bryce, M&A activity for 2016 is heating up and the trends indicate bigger and larger deals afoot.

"I think the themes are still the same," Bryce said. "You have a lot of companies in the upstream that are heavily indebted. They are facing cash flow crises. For some of these companies have very few options in the near term if oil and gas