

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND , LLC, a West Virginia limited liability company, **COALQUEST DEVELOPMENT, LLC.**, a foreign limited liability company, **CONSOLIDATION COAL COMPANY**, a foreign corporation, **HORSE CREEK LAND AND MINING COMPANY**, a West Virginia corporation, **NATIONAL COUNCIL OF COAL LESSORS, INC.**, a West Virginia corporation, **PENN VIRGINIA OPERATING COMPANY, LLC**, a foreign limited liability company, **POCAHONTAS LAND CORPORATION**, a foreign corporation, **WEST VIRGINIA COAL ASSOCIATION** a West Virginia non-profit corporation, **WPP LLC**, a foreign limited liability company, and **WOLF RUN MINING COMPANY**, a West Virginia Corporation,

Petitioners,

v.

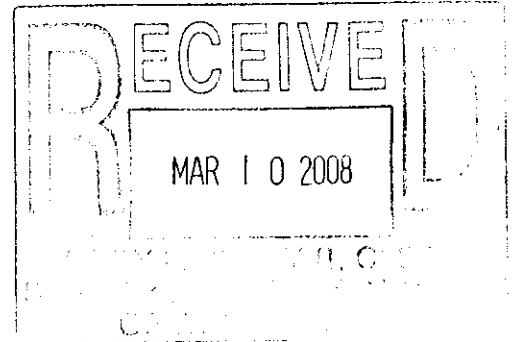
No. 072904

WEST VIRGINIA OIL & GAS CONSERVATION COMMISSION, a state agency, **CHESAPEAKE APPALACHIA, LLC**, a foreign limited liability company, **EASTERN AMERICAN ENERGY CORPORATION**, a West Virginia corporation, and **PETROEDGE RESOURCES (WV), LLC**, a foreign limited liability company,

Respondents.

**BRIEF OF THE
WEST VIRGINIA SURFACE OWNERS' RIGHTS ORGANIZATION
AS AN *AMICUS CURIAE*
IN RESPONSE TO THE REPLY BRIEF OF PETITIONERS.**

Presented by:
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BRIEF OF *AMICUS CURIAE*
IN RESPONSE TO THE REPLY BRIEF OF PETITIONERS.

The Petitioners' reply brief, in Section IV, on page 11, is incorrect when it states that defining Marcellus formation gas wells into statutory shallow wells will cause fewer total Marcellus gas wells to be drilled. The Petitioner's focus only on their circumstances where they are coal operators, and not on Marcellus gas wells drilled elsewhere.

Statutory deep wells can be force pooled by the operator of the discovery well or "the operator of any lands directly and immediately affected by the drilling of such discovery deep well, or subsequent deep wells in said pool." *W.Va. Code* §22C-9-7(a)(1)(1998). An operator who owns the whole pool of gas will usually space wells in the pool without being forced to do so (unless he is primarily a promoter making money primarily on selling and drilling the wells). In most other cases either the operator of the "discovery" well will force pool neighbors to protect from being offset, or the neighbors will force pool the discovery well to keep from being drained. The result will be properly spaced, and therefore fewer, gas wells.

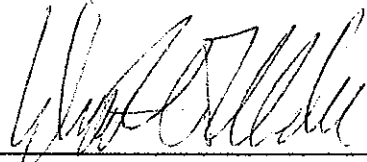
For shallow wells it is *only the coal seam operator* that can force pooling and unitization. *W.Va. Code* §22C-8-3(b)(3). (Coal bed methane wells can also be force pooled but they are not at issue in this case.) So well spacing may only occur if there is a coal seam. Elsewhere there will be no forced pooling/well spacing, and results will occur as illustrated on the attached map of 11 proposed wells, albeit to two formations, on only 105 surface acres that was presented to a former client of counsel. See Appendix #1 attached. And even if

there is a coal seam owner the coal seam operator may not exercise an objection if the coal and the oil and gas are owned or leased by the same party, if the coal has been mined out, etc.

The Petitioners have an argument that defining Marcellus wells as statutory shallow wells may cause fewer wells on tracts where the coal seam operator objects, but even that is not a certain thing. Even in the face of a coal owner objection the driller can show the need for 1500 foot spacing. *W.Va. Code* §22C-8-8(a)(2). The witnesses for the parties seeking the spacing order for which prohibition is sought testified that they had on thousand seven hundred well sites planned based on 1500 foot spacing, which is their current practice. Tr. p. 47. They only want 1000 foot spacing allowed in the order in order to, "allow us flexibility for topography issues, coal owner/surface owner issues, and also we have a lot of existing wells in the area that we would be drilling deeper . . . to Marcellus." Tr. p. 46. So there may not be fewer wells even above a coal seam if the Marcellus wells are defined as statutory shallow wells.

And if this Court is not sufficiently clear on these facts, then this is not a case for original prohibition jurisdiction in this Court.

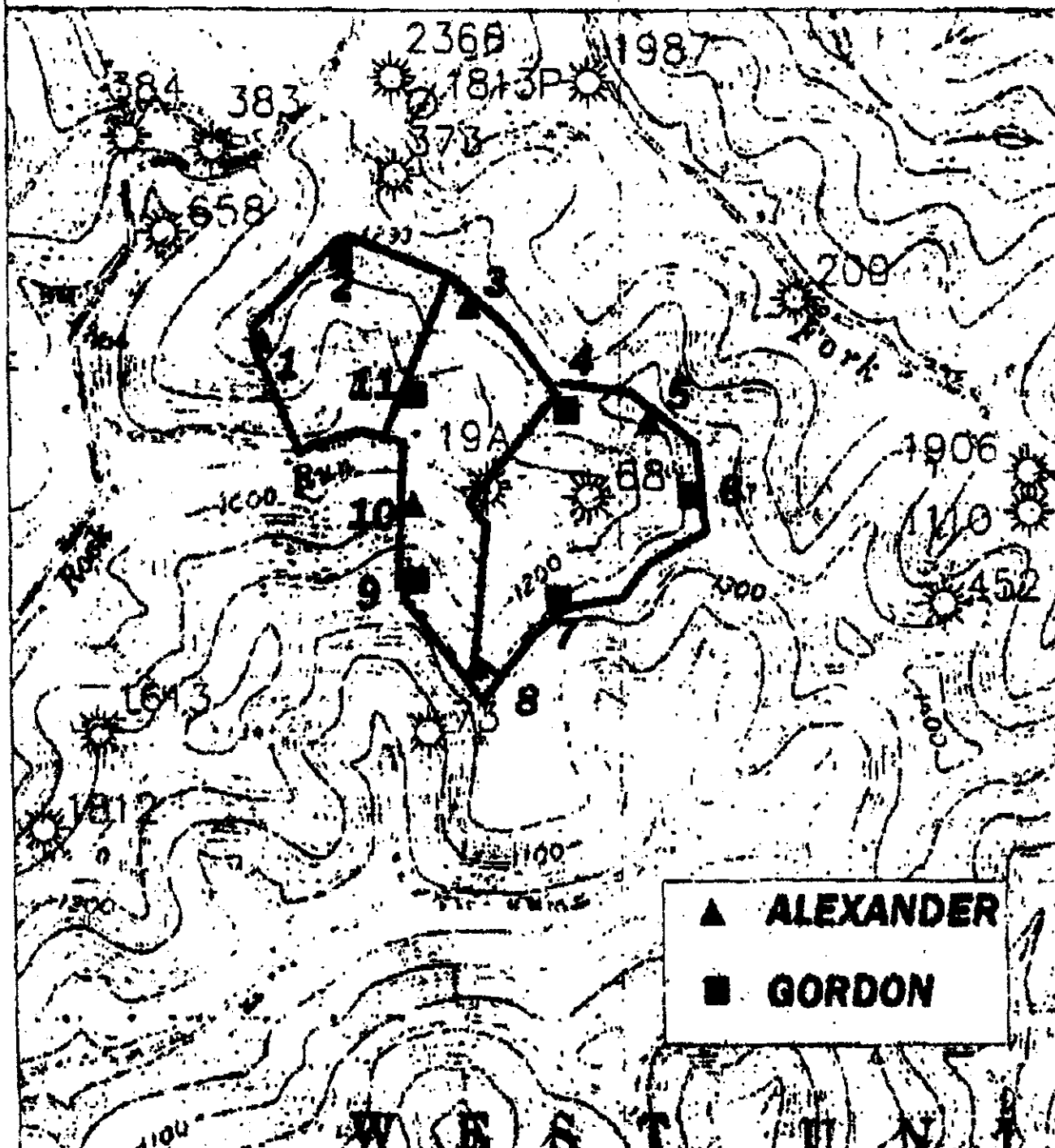
Respectfully submitted this 10th day of March, 2008.



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SPACING



▲ ALEXANDER
 ■ GORDON

<p>OPERATOR</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>050134</p>	<p>TOPO SECTION</p> <p>SMITHBURG 7.5'</p> <p>SCALE</p> <p>1"=1000'</p>	<p>WELL NAME</p> <p>[REDACTED] LEASE</p> <p>DATE</p> <p>05/16/85</p>
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CERTIFICATE OF SERVICE

I, David B. McMahon, counsel for the West Virginia Surface Owner's Rights Organization, do hereby certify that a true and exact copy of the Foregoing Brief of the West Virginia Surface Owner' Rights Organization as an *Amicus Curiae* in Response to the Reply Brief of Petitioners has this 10th day of March, 2008, been served upon the following parties, via U.S. Mail, addressed as follows:

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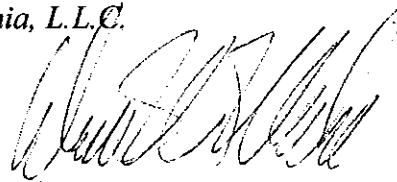
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A handwritten signature in black ink, appearing to read 'David B. McMahon', written over a horizontal line.

David B. McMahon (State Bar ID #2490)