



## West Virginia Surface Owners' Rights Organization

# Surface Owners' News

Volume 2, Issue 1

[www.wvsoro.org](http://www.wvsoro.org)

Winter 2009



WVSORO members line up to address the Legislative Study Committee, January 11, 2009 in Charleston.

### Legislative Study Committee Hears from Landowners, Industry

by Norm Steenstra III, [norm@wvsoro.org](mailto:norm@wvsoro.org)

During the January legislative interim meetings in Charleston, we had the opportunity to make the case for the [Surface Owners' Bill of Rights](#). The committee heard from landowners about their problems dealing with drillers. The industry was given equal time. We would like to extend a special thanks to WV SORO members Jim Farrell, Nancy Powers, Chris Opitz, Judy Good, John Snyder and Bart Garrett for sharing their stories with the committee and to WV SORO members who trekked to Charleston to show their support.

Our speakers provided first hand accounts of the needless destruction of timber, lost home sites, mindless road building and ruined pastures caused by drillers and see that the problems caused by the drillers are affecting real people. (Audio is available at [http://www.wvsoro.org/news/2009/01\\_11.html](http://www.wvsoro.org/news/2009/01_11.html).

Thanks to WV SORO member John Mace, who recorded the meeting..) We received positive feedback from the committee members we spoke with after the meeting. Putting a face on the issue and having a room packed with concerned citizens was a huge boost for our efforts to get the rights we deserve. Thanks, also, to those of you who took the time to contact your legislators prior to the committee

meeting. **Your calls and e-mails are making a difference — keep them coming!**

Industry had just one speaker, Phil Reale, a lobbyist. He spoke for 30 minutes, often repeating himself and continuing with the untruths that the industry has been using to oppose our bill. He highlighted his “presentation” with an attack against Dave McMahon, stating that Dave was “creating a new business to make money off the industry.” Dave has been lobbying for more than 25 years for causes like ours and I am proud to be working with him on this issue. More than one legislator commented that Mr. Reale lobbies for whoever pays him the most, so obviously, this was another industry tactic to try to stall our proposed bill. Therefore, it is important for everyone to keep contacting your legislators and educating them about the need for additional protections and rights for West Virginia landowners.

Unfortunately, there were not enough committee members present at the January meeting to take action on either of the two bills (our proposed bill and a "committee " bill modeled after legislation passed recently in New Mexico) explained by committee staff earlier in the meeting. We just have heard that both bills may be presented to the entire [Joint Judiciary Committee](#) when they meet on February 8. This means we need to keep the pressure on committee members to support OUR [Surface Owners' Bill of Rights](#).

If your legislator(s) serve on the [Joint Judiciary Committee](#) and you haven't contacted them, please do so. A few personal contacts from constituents can make the difference in whether or not our bill is recommended by the committee. (A list of committee members along with their county and phone number can be found on page 2.) We encourage those of you who can to attend the committee meeting February 8 at 2PM in the House Government Organization Committee meeting room (215-E) at the State Capitol in Charleston.

## Joint Judiciary Committee Members

If your legislator(s) serve on the committee and you haven't contacted them, please call before February 8 and ask them to support OUR [Surface Owners' Bill of Rights](#). For more information, see Norm's article on page 1. Home numbers are listed where available, (W) indicates a Work number and (C) is a Capitol office number.

### Senate Members

Sen. Jeff Kessler (D-Marshall), Chair 843-1386  
Sen. Clark Barnes (R-Randolph) 338-6383  
Sen. Richard Browning (D-Wyoming) 682-4643  
Sen. Don Caruth (R-Mercer) 384-9642  
Sen. Truman Chafin (D-Logan) 235-6123  
Sen. Frank Deem (D-Wood) 295-6593  
Sen. Dan Foster (D-Kanawha) 344-1060  
Sen. Mike Hall (R-Putnam) 757-8249  
Sen. Evan Jenkins (D-Cabell) 523-1365  
Sen. William Laird (D-Fayette) 357-7849 (C)  
Sen. Joseph Minard (D-Harrison) 622-6488  
Sen. Corey Palumbo (D-Kanawha) 746-7933  
Sen. Ron Stollings (D-Boone) 369-6194  
Sen. Herb Snyder (D-Jefferson) 725-6174 (W)  
Sen. Bob Williams (D-Taylor) 357-7995 (C)  
Sen. Jack Yost (D-Brooke) 737-2720  
Sen. Mike Oliverio (D-Monongalia) 292-3339 (W)

### House Members

Del. Carrie Webster (D-Kanawha), Chair 342-1013  
Del. Larry Barker (D-Boone) 369-3367  
Del. Bonnie Brown (D-Kanawha) 744-4334  
Del. Mike Caputo (D-Marion) 278-5419  
Del. John Ellem (R-Wood) 863-0375  
Del. Michael Ferro (D-Marshall) 340-3111 (C)  
Del. Barbara Fleischauer (D-Mon.) 296-7035 (W)  
Del. John Frazier (D-Mercer) 340-3396 (C)  
Del. Bill Hamilton (R-Upshur) 472-1966  
Del. Mark Hunt (D-Kanawha) 346-9561  
Del. Tal Hutchins (D-Ohio) 242-7536  
Del. Patrick Lane (R-Kanawha) 340-3275 (C)  
Del. Linda Longstreth (D-Marion) 366-5251  
Del. Harold Michael (D-Hardy) 538-6881  
Del. Tim Miley (D-Harrison) 848-0102  
Del. Cliff Moore (D-McDowell) 448-2838  
Del. John Overington (R-Berkeley) 274-1791  
Del. Robert Schadler (R-Mineral) 788-4024  
Del. Patti Schoen (R-Putnam) 415-0411  
Del. Alex Shook (D-Monongalia) 685-9094  
Del. Kelli Sobonya (R-Cabell) 733-9169  
Del. Sally Susman (D-Raleigh) 252-1156  
Del. Bob Tabb (D-Jefferson) 728-2214  
Del. Danny Wells (D-Kanawha) 344-4778  
Del. Bill Wooten (D-Raleigh) 253-2222 (W)

## Harrison County WV SORO Holds Constituent Meeting; Organize One in Your Area

In early January our Harrison County WV SORO group hosted a constituent meeting with area legislators, giving residents an opportunity to voice their concerns about the current drilling activity in the area, get a better understanding of legislators' positions on the [Surface Owners' Bill of Rights](#) and educate legislators so they will be better to address these issues during the upcoming legislative session. Nearly 30 landowners attended, along with Delegates Ron Fragale and Richard Iaquina.

The meeting was a success and the delegates appreciated being invited and having the opportunity to hear people's concerns. They understood this was largely an issue of people being treated fairly and indicated that they hoped it would be taken up early in the legislative session and that steps would be taken to ensure that landowners were treated better. (Reporter Glynis Board covered the meeting for West Virginia Public Broadcasting. Visit <http://www.wvpubcast.org/newsarticle.aspx?id=7356> to listen.)

Thanks to everyone who came out on a dreary night to attend the meeting. Special thanks to Sharon & Joe Marshok and Nancy Powers for planning the meeting.

We would like to hold similar meetings around the state prior to and during the legislative session. Helping arrange a meeting between WV SORO members and legislators in your area is something you can do locally to help with your efforts to expand and strengthen surface owners' rights. If you are willing to help organize a meeting please e-mail Julie ([julie@wvsoro.org](mailto:julie@wvsoro.org)) or Norm ([norm@wvsoro.org](mailto:norm@wvsoro.org)) or call us at (304) 346-5891.

## Upcoming Events



**February 8-10, 2009**

**WV Legislative Interim Meetings in Charleston**

**Sunday, February 8, 2009**

**Presentation on Surface Owners' Bill of Rights  
2PM Room 215-E, State Capitol, Charleston**

**Wednesday, February 11, 2009**

**2009 Legislative Session Begins**

**Tuesday, March 17, 2009**

**Surface Owners' Rights Day at the Legislature  
(Date Tentative ~ More Details Coming Soon)**

## Newsletter Correction: "Finding Value for Lost Timber"

At least two WV SORO members who are foresters contacted us regarding some inaccuracies in our fall newsletter. The following is an excerpt from one letter we received in response to the article "Finding Value for Lost Timber":

*The values listed for hardwood pulpwood are simply unrealistic in West Virginia's timber markets. I have been working as a forester in WV for nearly a decade and have never sold or even heard of anyone paying \$50-\$100 per ton for hardwood pulpwood. The highest rates that I am aware of are around \$36/ton for soft hardwood pulpwood, **but this is a delivered price.** Landowners generally receive a stumpage rate, which is the value minus the cost of harvesting and freight. Stumpage values range anywhere from \$1.00/ton for hardwood pulp (oak, hickory, hard maple, locust, etc.) to \$5.00/ton for soft hardwood pulp (poplar, soft maple, cucumber, basswood, beech, etc.). Furthermore, \$300/MBF International Rule is a bit inflated also. I believe you are once again referring to a log value. Timber does not attain this value until it has been delivered to a manufacturing facility, then being a value added product. There are many variables that are taken into consideration when appraising the value of a stand of timber. These variables must be considered before the final value is obtained. The local markets, species composition, access, operability, size of the trees, logger availability etc...*

Landowners are encouraged to visit the [WV Division of Forestry website](#), (click on "Landowner Assistance," which has a [list of private Consulting Foresters](#), as well as has links to the Society of American Foresters Certified Forester program and the [Association of Consulting Foresters \(ACF\) website](#). We also have a short list of experts, including foresters, who are willing to consult with and provide services specifically for surface owners' at the WV SORO website, [www.wvsoro.org](http://www.wvsoro.org).

Members should get professional advice from a registered forester who has experience in gas well timber damage appraisals and expert witness testimony. We want to make sure our members, others have accurate information when entering into negotiations, etc., and we apologize for the inaccuracies we printed previously.

### WV SORO E-Updates & Action Alerts: Join Our E-List Today



If you use email, but haven't given us your e-mail address, we hope you will do so. Here's why: Email updates are faster, more frequent, and often discuss something that needs action before paper mail can get to you. Our e-list also lets us get you important information like the newsletter correction in a more timely fashion. We promise we will not fill up your inbox, and we won't give your address to anyone else. Sign-up today. Send your e-list inquiries and updates to [info@wvsoro.org](mailto:info@wvsoro.org).

### Updates & Additions to *Surface Owner's Guide* Available at WV SORO Website

We recently reorganized the ["Advice for Common Situations"](#) page of the website into subheadings of updates and additions to [the WV Surface Owner's Guide to Oil & Gas](#). The page also includes a new link to the DEP website to find out what [violations](#) have been issued against a particular driller. This will help people know what driller they are dealing with and potentially help them block new permits to drillers with a current violation. We've also added a link to the [new state "guidance" to drillers](#) for required steps to avoid the breaking of Marcellus facing ponds.

In addition to updates to *the Surface Owner's Guide*, we have also added a variety of new resources to the website on water use and hydraulic fracturing to our page on the Marcellus Shale, as well as information on the recent problems reported on Monongahela River.

Finally, we've added new experts and lawyers to our ["referral" page](#), and on the home page, we have photos of several of the educational meeting we held around the state over the past year.

If you have ideas for our web site, let us know.

## **WV SORO Succeeds Because of YOU ~ Please Renew Your Membership**

by Norm Steenstra III, [norm@wvsoro.org](mailto:norm@wvsoro.org)

We would like to thank everyone who recently joined or renewed their WV SORO membership. We also appreciate the various contributions you have given us over the past year. It's hard to believe it has been a year since the last legislative session, when we first introduced the Surface Owners' Bill of Rights. During that time, WV SORO has been laying the groundwork to push for the changes needed to give us more rights and protections.

We will be sending out another round of renewal letters shortly. (If you received a letter from us last fall and have not yet renewed we hope you will do so.) Everything that we have accomplished thus far is due to the support of you, our members. So please renew your membership, so that we can continue to work together towards strengthening West Virginia's oil & gas laws and gaining the rights and protections that we deserve.

We greatly appreciate your generosity and enthusiasm for this issue that hits us all so close to home. Your continued support will help us to grow our organization to push for the changes needed to give us more rights and ensure that we receive fair compensation for our losses and inconveniences. As always, feel free to contact us with any of your questions or concerns. THANK YOU!

## **Tawney Gas Royalties Case Settled, New Leases Allow Companies to Deduct Expenses**

The settlement in a case over gas royalty disputes that prompted a \$400 million jury verdict against Chesapeake Energy Corp. has officially been settled. In the *Tawney* case, the jury found Chesapeake guilty of shortchanging landowners by deducting production costs from the royalty payments owed to them. An [October 24, 2008 article](#) in the *Charleston Gazette* explains the settlement, which is generally very good for the mineral owners. More news about when and how the money will be distributed can be found in a [November 15, 2008 article](#) in the *Times Record & Roane County Reporter*. Links to both articles can

be found on the news page at [www.wvsoro.org](http://www.wvsoro.org).

If you are a mineral owner whose wells are owned by Columbia Natural Resources, LLC (formerly Columbia Natural Resources, Inc.), NiSource Inc., Columbia Energy Group and Chesapeake Appalachia, L.L.C., visit <http://cnrsettlement.com/> or call 1-888-925-4968 for more information. In addition to Chesapeake, four other gas producers had been named in separate suits, including Dominion Resources. Dominion will pay up to \$50 million to 25,000 oil & gas owners to resolve a lawsuit alleging that the company cheated them out of natural gas royalties. More information on the Dominion class action can be found at [www.dominionclass.com](http://www.dominionclass.com) or by calling 1-866-475-7755.

Unfortunately, while questions about royalty payments have been settled in these lawsuits, for other royalty owners, [problems may just be starting](#). Companies are now using new leasing provisions to continue the practices that got them in trouble in the *Tawney* case. Read more at [www.wvsoro.org](http://www.wvsoro.org).

## **Marcellus Well Spacing Consolidated, Moved to McDowell County**

As we noted in our fall newsletter, the WV Coal Association and others filed a motion to dismiss WV SORO's appeal in Kanawha County stating that WV SORO does not have "standing." WV SORO filed a response to the dismissal motion on the grounds that we can act on behalf of our members, that they have a property interest involved in the appeals and a constitutional right to be heard. We did not expect the Coal Association motion and our response to be ruled upon until Judge Murensky decided whether the cases should be consolidated into McDowell County or Kanawha County. He heard oral arguments on that motion on November 10, 2008, and said he would send out a written decision soon. On January 14, 2009, Judge Murensky issued an order transferring the Kanawha County case to McDowell County where both cases will now be heard. He did not rule on the standing issue. Visit [www.wvsoro.org](http://www.wvsoro.org) for more information and background on the appeal.

## Marcellus Development Draws Attention of State and Federal Lawmakers

by Julie Archer, [julie@wvsoro.org](mailto:julie@wvsoro.org)

As concerns continue to grow over the increasing number of wells to the Marcellus Shale, state and federal lawmakers are taking a closer look at the water intensive drilling and fracturing techniques being used to develop wells to the formation. It can take as much as 5 million gallons of water to frac a Marcellus well, which in turn produces millions of gallons of contaminated wastewater that must be stored on site before it is disposed of. The water used in this hydro-fracing process contains chemicals that the industry is not required to disclose, but organizations like the [Oil & Gas Accountability Project](#) and the [Endocrine Disruption Exchange](#) say contain highly toxic substances (See [http://www.wvsoro.org/news/2008/12\\_04.html](http://www.wvsoro.org/news/2008/12_04.html)) that have show up in groundwater at natural gas sites in the West. This raises serious questions about the long-term consequence of the use and disposal of these large amounts of water. Where will the water come from and how will it be treated, stored and disposed of to ensure that water supplies are not depleted or tainted?

At the state level, the [Legislative Oversight Commission on Water Resources](#) has heard several presentations on water use and water quality over the past several months. The Commission's interest seemed to increase last fall following reports of water quality problems on the Monongahela River in Pennsylvania. The problems were traced to gas well brine and wastewater that treatment plants had accepted but could not fully treat. The problem was aggravated by seasonally low river flows. Questions seem to remain about whether drilling in West Virginia contributed to the problem, but it highlighted the need to develop a long-term plan for disposing of gas well drilling water to prevent future problems. (See *the State Journal*, <http://www.statejournal.com/>, for a series of State Journal articles on drilling the Marcellus. For information on problems on the Monongahela, see <http://www.uppermon.org/>.)

Since the problem occurred, the Commission has heard from Division of Natural Resources (DNR) fisheries biologist Frank Jernejcic, DEP officials and most recently from representatives of Trout Unlimited (TU) who summarized the water issues TU is concerned about because of the Marcellus play. (The Winter 2009 edition of [Trout magazine](#) featured an informative article on the development of the

Marcellus and the potential impacts on coldwater fisheries and trout streams in Appalachia.) Despite all the concerns raised, the Commission has yet to make any recommendations. On February 9, the Commission will hold its last meeting before the 2009 legislative session begins.

At the national level, the response to has been more proactive. Congresswoman Diana DeGette and Congressman John Salazar, from Colorado, and Congressman Maurice Hinchey, from New York have coauthored a bill that would close a legislative loophole which exempts hydraulic fracturing for oil & natural gas exploration and drilling from regulation under the Safe Drinking Water Act (SDWA). The bill would reinstate basic federal standards for hydraulic fracturing under the SDWA and enable the U.S. Environment Protection Agency (EPA) to protect drinking water supplies in states with little or no regulations. Those concerned safeguarding our drinking water from any chemicals associated with natural gas drilling should contact West Virginia's congressional delegation and urge them to support this effort.

**Rep. Alan Mollohan** (D-District 1)  
2302 Rayburn House Office Building,  
District of Columbia 20515-4801  
Phone: (202) 225-4172  
Fax: (202) 225-7564

**Rep. Shelley Moore-Capito** (R-District 2)  
2443 Rayburn House Office Building,  
District of Columbia 20515-4802  
Phone: (202) 225-2711  
Fax: (202) 225-7856

**Rep. Nick Rahall** (D-District 3)  
2307 Rayburn House Office Building,  
District of Columbia 20515-4803  
Phone: (202) 225-3452  
Fax: (202) 225-9061



WV Surface Owners' Rights Organization  
1500 Dixie Street  
Charleston, WV 25311  
www.wvsoro.org

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