



A Surface Owner's Journey through the Legislative Halls in Charleston

by Jim Farrell, upshursoro@hotmail.com

My name is Jim Farrell. My wife and I own the surface rights of a 146-acre farm in north central West Virginia. This winter, I appeared several times before the West Virginia Legislature to give testimony regarding how a gas driller legally bullied us and how the current state rules and regulations failed to protect us. Through the help of WV SORO, along with several other surface owners, we were able to get our similar stories on the record. Unlike other states with a full-time legislature, it is a tricky and time-sensitive process to get any legislation on the calendar here in the part-time political world of West Virginia, especially when your opposition is the gas and oil lobby.

The most pleasant aspect of working with the SORO staff has been their commitment; they do not have an ulterior motive. However, that did not stop a lobbyist and opposing counsel from going on the record to accuse SORO attorney Dave McMahon of promoting this legislation for his own gain. Personally, I have only observed altruism. When I attempted to hire Mr. McMahon, he declined so he could instead concentrate on the legislative session. Later that night, he e-mailed me with free advice and a referral to an unassociated attorney.

Before I retired, I was a union official and had some experience with political wheeling and dealing to protect the jobs of the union membership. So, it was not unexpected to see the gas and oil industry opposing any rule changes proposed by SORO. This is a standard tactic of not letting the other side get a foot in the door, as the door may never close again. However, SORO does not want anyone to lose his or her job. My theory is that extended pre-drilling notice to surface owners will

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WV SORO members meet with Ramey Barker, Administrative Assistant to Senate President Earl Ray Tomblin, during our 2009 Lobby Day.

Legislative Wrap-Up: Bill of Rights Stalls, but Some Good News

We wish we had good news to report about the passage of the Surface Owners' Bill of Rights. Although we thought the odds were in our favor this session, unfortunately, the oil and gas industry managed to influence leadership in both houses to keep the bill off committee agendas.

Several things contributed to our lack of progress this year, among them:

The triple committee reference in the Senate had us changing directions in the middle of the effort. On the House side, procedural snafus and new early deadlines for moving bills out of committees made our bill run out of time sooner than anticipated. The precipitous fall in the fortunes of the oil and gas industry caused by the economy and other factors made many in the legislature hesitate to do anything. Although some individuals and local chapters of the Farm Bureau have been helpful, the state leadership of the Farm Bureau failed to take any action that we could observe to get a bill passed, even though we worked hard to get their

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actually save both the state and the industry money by preventing frivolous objections during the comment period.

Because of the current economic conditions, many legislators are reluctant to make new regulations that might cost private industry money. However, I believe the SORO staff has done a great job debunking any myths regarding "costs" to the drilling industry. I would have been happy with clarification, updating and improvement of the existing rules as a compromise. Unfortunately, as the session wound down, so did the commitment of a major ally to actively support us, which allowed even the weaker compromises to go dormant.

Some legislators will never be convinced that our proposed rules will serve their constituents well. They believe the industry income to the state far outweighs the quality of life issues experienced by a small number of residents. However, contrary to media reports, recent advances in drilling technology will continue to increase the profitability of drilling new wells in West Virginia. In addition, natural gas demand and price will improve under the current federal administration.

Because of the high demand for their time, it is extremely difficult to get an appointment with every elected official before they leave Charleston. Many of our legislators are still undecided or uncommitted. This summer, we need you and your neighbors to catch them at your local parades and festivals and speak to them about surface rights. Speak loudly. I guarantee you that someone will overhear you and jump in with their own tale of woe.

Help Us Help You

by Norm Steenstra III, norm@wvsoro.org

We would like to thank everyone who recently joined or renewed their WV SORO membership. Your financial support helps us work to improve West Virginia's oil and gas laws to give landowners more say in the location of wells and access roads, and other matters related to oil and gas drilling on your property.

Your participation helps us help you. Here are a few things you can do to help us pass the "Surface Owners' Bill of Rights" and get you the rights you

deserve:

1. Keep Contacting Legislators ~ We have gotten some feedback from legislators, stating that they have heard from constituents about the problems West Virginia surface and mineral owners face. Great work, but keep contacting them — we must keep the pressure on. Make sure that your delegate(s) and senators know who you are, how you have been treated, and what you expect from them — such as championing the Surface Owners' Bill of Rights.

2. Share Your Story ~ We would like to put together a list of surface owners who are willing to talk to the press about what has happened to them. We will be trying to persuade the press to visit these surface owners, so please contact us, either by mail or phone, if you are interested in sharing your story. This is an effective way to shed even more light on oil and gas industry abuses.

3. Start a Local Group ~ We want to get better organized at the local and county level. This has been done with great success in the Harrison/Doddridge County area, due to the great work of Sharon Marshok and Nancy Powers. Let us know if you can organize a regional group.

4. Plan a Local Meeting ~ Last year we traveled around the state and held more than a dozen meetings to educate landowners and organize to fight for the changes needed to protect our farms and woodlands. Is this something that would be helpful in your area? Let us know if you can help organize meetings, participate in phone trees to pass along information or submit an occasional article for the newsletter.

5. Help Us Grow ~ Finally, please encourage more surface and mineral owners to join or renew their memberships. We greatly appreciate your generosity and determination in getting legislation passed to strengthen West Virginia's oil and gas laws. Our efforts so far would not have been possible without your support. Please help us expand our organization so we can be a more effective voice for West Virginia surface owners.

As always, if you have any questions or concerns, please contact us.

Legislative Wrap-Up

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support. Finally, we could not get the legislative leadership lined up and energized, and the “interim bill” sapped important sponsors.

It often takes three or more years to get significant new legislation passed. It took that long to get our current notice and damage compensation requirements. We thought the examples of abuse and problems experienced by our membership across the state would convince lawmakers to pass the Surface Owners’ Bill of Rights this year. Although the legislature failed to act, we all must continue to fight for the rights we deserve, and make sure the legislators know that we will not give up until they pass this needed legislation.

The good news is that we were able to kill an industry-backed bill that would have made things even more difficult for West Virginia surface owners. Under SB 474, surface owners would potentially have to contend with even more well sites and access roads on their land.

The bill would have eliminated the basis for WV SORO's appeal on well spacing for wells drilled to the Marcellus Shale formation. There would be no limit on how close together the wells could be placed unless there is coal under the same land and the coal owner objects.

Although we stopped the bill this session, this issue will keep coming up. What is really needed is well spacing and royalty sharing (or “pooling and unitization”) for all wells. Spacing gas wells means that fewer wells need to be drilled (on fewer surface owners) to drain gas from the same area. In the long run, fewer wells will get more gas from the same acreage because the natural pressure that forces the gas out is not depleted as quickly. Drilling fewer wells to get more gas costs less and benefits everyone — royalty owners, investors, responsible drillers and consumers. Fewer wells for the same gas also means less surface damage and less risk of groundwater pollution and other environmental problems.

Thanks again for your support. Keep fighting!

Julie Archer, Dave McMahon,

Norm Steenstra III & Gary Zuckett

The WV SORO Lobby Team

Please Renew Your Membership

It’s hard to believe we are fast approaching our two-year anniversary. With your help, we have built an organization with members in 51 West Virginia counties, 24 states and 3 foreign countries. We have traveled the state to educate landowners about their rights and to organize them to fight for the changes needed to protect their farms and woodlands. We have also had a strong presence at the State Capitol, pushing to get more rights for West Virginia landowners and to ensure we receive fair compensation for our losses.

Most recently, we reintroduced our “Surface Owners’ Bill of Rights” during the 2009 legislative session and organized a successful lobby day attended by concerned landowners from around the state.

If you received a renewal letter from us recently and haven’t yet renewed your membership, we are asking you to do so now to support ongoing efforts to get needed protections for West Virginia surface owners.

We will continue lobbying for your rights during any special sessions and interim meeting of the legislature and plan to bring the “Surface Owners’ Bill of Rights” back to the legislature in 2010, with a stronger push for passage.

As always, feel free to contact us with any of your questions or concerns. Thank you!

WV SORO Comments on DEP Marcellus "Guidance" Document

The fracturing process used in drilling and producing Marcellus Shale wells is a leap forward in technology, surface disturbance, water use and water disposal. In a meager response to the threats these fracturing techniques pose to our land and water resources, the Department of Environmental Protection (DEP) announced, via a press release in March, that it had issued a draft “guidance” document that will not have the force of law.

This level of response from DEP is inadequate in addressing the need for stronger statutory regulations in the areas focused on in the guidance — water use and withdrawal, site construction, and wastewater disposal. WV SORO did not want to be silent on these issues and submitted comments to DEP. To read the guidance document and WV SORO’s and others’ comments on its shortcomings, visit www.wvsoro.org.

WV Congressional Delegation Needs to Hear from You

by Julie Archer, julie@wvsoro.org

For two years, we have lobbied the West Virginia Legislature and had bills before the various committees that would strengthen surface owners' rights. Although we will continue to push for passage of the "Surface Owners' Bill of Rights," it's important to remember that the Legislature isn't the only body that can pass laws to help surface owners.

Members of Congress could introduce legislation (or support legislation sponsored by others) that would address surface land issues, as well as other issues associated with drilling for natural gas which has contaminated ground water, polluted the soil and created a number of problems across the country.

West Virginia is ground zero for the Marcellus Shale play. West Virginians stand to lose not only their surface land and forests, but also their right to clean water and a healthy environment because of the numerous exemptions granted to the oil and gas industry under the Energy Policy Act of 2005.

So far, the response to these threats at the national level has been more proactive than that of the West Virginia Legislature or the DEP. Last fall, Representatives Diana DeGette and John Salazar of Colorado, and Representative Maurice Hinchey of New York introduced legislation to protect drinking water from oil and gas development -- including ending hydraulic fracturing's exemption to the Safe Drinking Water Act (SDWA). In June, DeGette, Hinchey and Representative Jared Polis of Colorado introduced the Fracing Responsibility and Awareness of Chemicals Act (FRAC ACT) in the US House of Representatives. In addition to closing the loophole in the SDWA that exempts hydraulic fracturing, the FRAC ACT would also require public disclosure of the chemicals used in the process. Senators Charles Schumer of New York and Robert Casey of Pennsylvania have introduced companion legislation.

It should come as no surprise that the industry is gearing up to defeat these proposals and has launched a multimillion-dollar lobbying and public-relations campaign to defend the practice of hydraulic fracturing. Washington is swarming with industry lobbyists. We need to ask our

representatives to sponsor and support legislation to protect our land and water resources. Please contact members of West Virginia's congressional delegation and share your concerns.

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***Editors note:** Special thanks to WV SORO member Sally Snyder whose passionate and heartfelt letter to Rep. Nick Rahall inspired this article. Portions of Sally's letter were incorporated into the article. Thanks, Sally!*

Request for Information

WV SORO members George Monk and Molly Schaffnit are collecting information on chemicals used to drill and fracture natural gas wells in West Virginia. This information will be passed on to the Endocrine Disruption Exchange (www.endocrinedisruption.com) so that the group can create an analysis for our state.

What is most needed are copies of actual Material Safety Data Sheets (MSDS), but product names and makers will also help.

George and Molly are also seeking information about situations where the state's landspraying waste management program has gone wrong. Landspraying is where the operator sprays the liquid pit waste onto uncultivated ground.

They are also looking for information about problems with pits, or events like blowouts where gas and liquid come out near the wellhead or elsewhere.

George and Molly want to hear from you. You can email them at gmonk@citynet.net or leave a message at 304-993-8491 and they'll get back to you.

Judge Allows WV SORO to Intervene in Well Spacing Suit

by Julie Archer, julie@wvsoro.org

and Dave McMahon, wvdavid@wvdavid.net

On June 2, 2009, McDowell County Judge Rudolph Murensky issued an order allowing WV SORO to intervene in a case challenging state agency rulings on well spacing. The case will decide whether Marcellus Shale gas wells can be drilled as close to a mineral tract boundary as the driller wants, as well as how closely Marcellus wells can be placed to each other. WV SORO is concerned that the rulings will result in unnecessary wells being drilled on surface owners land, and that the wells will produce total less gas for royalty owners, investors and consumers.

In the case of *Blue Eagle Land Company vs. West Virginia Oil and Gas Conservation Commission*, Pocahontas Land Corporation, the West Virginia Coal Association and others filed an appeal of the rulings in McDowell County Circuit

Court, taking the position that Marcellus gas wells are not statutory "deep wells." The Blue Eagle appeal also takes the position that the Commission did not have jurisdiction to order spacing on the wells, but if it did, that the minimum spacing should have been more than 1,000 feet.

WV SORO agrees with the Blue Eagle appeal petition that the wells should be spaced further apart than 1,000 feet. However, if Blue Eagle wins on the point that the Commission did not have jurisdiction, then there will not be any well spacing for Marcellus Shale wells unless there is coal under the same land and the coal owner requests it.

All other Marcellus wells could be drilled as close to a mineral tract boundary as the driller wants, legally stealing gas from neighboring mineral owners. Drillers would also be able to drill wells so close together that they drain the same area. This results in more wells being drilled on surface owners and wastes reservoir pressure so wells produce less total gas. Each additional well site causes forest fragmentation, results in some soil erosion and possible stream sedimentation, and increases risks groundwater and other features of the environment. With 1,000 foot spacing, a surface owner with 100 acres could have as many as nine wells drilled on their land. WV SORO wants the wells to be a minimum of 1,500 feet apart, and preferably 3,000 feet apart.

Previously, WV SORO filed its own petition challenging the rulings in Kanawha County Circuit Court. The Blue Eagle petitioners moved to dismiss that case. WV SORO filed a response on the grounds that it can act on behalf of its members and that they have a property interest involved in the appeals and a constitutional right to be heard. The judge's ruling on the dismissal has not yet been received. However since WV SORO has been allowed to intervene in the Blue Eagle appeal, the dismissal of the companion appeal will not make a significant difference.

Visit www.wvsoro.org for more information on the appeal, including links to copies of court filings and rulings (see "Well Spacing for Marcellus Formation Wells," under "Current Events") or to view a slide show that explains well spacing and royalty sharing and why it is needed.



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WV-SORO Day at the Legislature



WV SORO members talk with Delegate Larry Barker, Chair of the House Energy, Industry and Labor Committee, during our 2009 Lobby Day.

turned out for WV SORO Day at the state Capitol. Everyone got a chance to meet or leave notes with their Delegate(s) and Senators. Our group also spent time in the afternoon trying to meet with the Speaker of the House and President of the Senate, other legislative leaders and committee chairs.

WV SORO Day was capped off with a press conference covered by three local TV stations and Bristol Broadcasting. WV SORO members Jim Farrell (Upshur County) and Rich Niehaus (Marshall County) spoke in support of the Surface Owners' Bill of Rights and did one-on-one interviews with the media afterward. Thanks Rich and Jim for sharing your stories.

We extend a big thanks to all who attended. Our efforts to “balance the scales” for surface owners were greatly enhanced by your presence.

Concerned landowners from around the state