West Virginia Surface Owners' Rights Organization

Surface Owners' News

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~ 2015 Legislative Session Update ~

WV-SORO's Take on Forced Pooling Legislation and Its Fate

by Dave McMahon, wvdavid@wvdavid.net
and Julie Archer, julie@wvsoro.org

The position of WV-SORO has always been that it is not legally or politically realistic to believe that we can stop shale gas drilling. As a result we have been in favor of well spacing (and resulting royalty sharing) legislation that would require drillers to space wells responsibly (and share the royalties from each well among all of the mineral owners being drained by a well) in order to lessen the problems with the "rule of capture." This process that would be created by legislation is sometimes called "forced pooling and unitization" (or in industry jargon, "lease integration" or "fair pooling"). (Note that "voluntary" pooling and unitization provisions are in most leases these days and a mineral owner should get experienced legal advice before signing such a lease.)

WV-SORO has been in favor of "good" forced pooling legislation because it would to some degree decrease the number of well pads and other surface disturbance (and because it would help get the gas out of the ground more efficiently by preventing over-drilling and by preventing waste of isolated "stranded" acreage). Forced well spacing and royalty sharing legislation is complicated and politically difficult, but potentially fairer to almost everyone involved.

A one-page explanation of what should be in a "good" forced pooling bill can be found on our website, www.wvsoro.org.

All the bills introduced by the industry previously have been terrible and we have opposed them. However, things were somewhat different during the 2015 Legislative Session.

House Energy Committee Chairman Woody Ireland (R-Ritchie) initiated "stakeholder meetings" and invited WV-SORO to participate. The other

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WV-SORO, Other Organizations Comment on New Air General Permit

by Dave McMahon, wvdavid@wvdavid.net

Huge well pads and other related production, compressor and/or dehydration facilities are being constructed as a result of the tsunami of horizontal drilling into the Marcellus Shale and other shale formations. These well pads are so much larger than conventional well sites and have so much equipment that remains on site permanently that they are required to get permits for the pollutants they will discharge into the air. These permits are issued by the WV DEP under the authority of the Federal Clean Air Act. Conventional vertical wells sites are much smaller and require much less ancillary equipment, and therefore are not required to get permits under the Act.

It is a big deal for a facility to apply for a permit, and it is a lot of work for the DEP to review and process all the permit applications. So the DEP issues a "general permit" to reduce the burden and workload on the agency by eliminating the need to develop separate permits tailored to each facility. A "general permit" should be a uniform set of requirements established by the DEP. If all of the sources at a facility can comply with and meet that set of requirements, then instead of applying for an individual permit, the facility can apply to be governed by the general permit. A down side is that when facilities apply to fall under a general permit, there is no pubic comment period - on the theory that the public had a chance to comment on the issuance of a general permit.

The new G80-A General Permit attempts to incorporate all applicable air quality regulations into a single general permit. Previous general permits have been issued by the DEP for oil and gas operations. Facilities governed by these older general permits will continue under those general permits, until an operator makes modifications or administrative updates to registrations issued under these permits. New facilities and modifications to existing facilities will fall under the new general permit.

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EQT pad in production. According to EQT's air permit, this Marcellus Shale gas well pad has the potential to emit over 92 tons per year of volatile organic compounds (VOCs), 40 tons per year of emissions that are subject to National Ambient Air Quality Standards, 26,000 tons per year of greenhouse gases and 8 tons per year of "hazardous" air pollutants. This is after the emissions are treated as required by the permit. This site is subject to a surface use trespass case. See Litigation Update on page 5.

Air Permit *(continued from page 1)*

With enormous help from the Group Against Smog and Pollution (GASP) in Pittsburgh, WV-SORO submitted comments on the new general permit. We were joined by the West Virginia Highlands Conservancy, the West Virginia Environmental Council, the Ohio Valley Environmental Coalition, the WV Chapter of the Sierra Club, the Mon Valley Clean Air Coalition, and the Wetzel County Action Group. If you want to read our full comments, please contact us to request a copy or you can view them at www.wvsoro.org.

One of our comments was that the new general permit contains virtually no specific numeric limits on emissions from the facilities, nor does it specify pollution control device efficiencies, limits on equipment capacities, operational or production limitations, or operating parameters necessary to ensure sources achieve and maintain any required control efficiencies or emission limits. In other words, proposed facilities covered under the permit would not be subject to uniform terms and conditions. Instead, it appears that the new general permit would incorporate by reference emission limits and other operating parameters taken directly from the facility operators' permit applications. The result is that emissions limits and operating parameters can vary wildly with no public comment.

We also commented on the permit's lack of specific numeric limits on emissions from reciprocating engines, which are generally among the largest permanent sources of nitrogen oxide (NOx), carbon monoxide (CO), volatile organic compounds (VOCs) and formaldehyde emissions from natural gas facilities. The permit is also fails to require trucks to meet a specific collection efficiency to limit emissions during loading of materials from the facilities.

Finally, we noted that the DEP was limiting itself to provisions of the Clean Air Act. When the Horizontal Well Act passed in 2011, the Legislature required the DEP to do an air quality study and gave the agency the authority to propose new rules based on the study. The study was conducted by the WVU School of Public Health and completed two years ago. Among the study's recommendations was that monitoring of noise, light, dust and other air pollutants should be required at the boundary of natural gas operations or at a nearby residence chosen based on distance, topography and prevailing wind. If monitoring results exceeded acceptable levels recommended by the study as affecting health, then additional actions by the driller should be required. Drillers should monitor these parameters continuously in real time and use Best Available Control Technology (BACT) to limit and reduce emissions. In our comments, we said that the DEP, either as part of the permit or through separate rule making, should implement these recommendations.

Forced Pooling *(continued from page 1)*

stakeholders included two industry groups, the Independent Oil and Gas Association of WV (IOGA) and the WV Oil and Natural Gas Association (WVONGA); three royalty owner organizations (the WV Royalty Owners Association, the National Association of Royalty Owners, and the WV Land and Mineral Owners Association), and the WV Farm Bureau. The final product, HB 2688, was NOT an "agreed to" bill. Instead, it was drafted by the sponsoring legislators to try to give enough benefits to each of the interested stakeholders to get them to support it.

While HB 2688 was far from what such a bill should have been, it had several important provisions for surface owners. First, it provided that the surface above a forced mineral tract could NOT be used for a well pad or other disturbance. Second, it included a process by which surface owners could eventually come to own the unknown or unlocatable mineral interests under their surface, at least of the formation being unitized. (And this would mean that the surface owner might be able to get some of the royalties as well.) Third, royalties for unlocatable mineral interests not yet claimed by surface owners would go to the Abandoned Well Fund to plug some of the many orphaned wells scattered across the state on surface owners' land. Due to these provisions, we agreed to support HB 2688 conceptually with the right to make amendments to clarify the intent of the sponsoring legislators.

As HB 2688 worked its way through the Legislature, we successfully advocated for the adoption of an amendment that solidified the intent of the sponsors that no well pad or other surface disturbance could be placed on the surface above a mineral tract that was forced into a unit under the new statute. For the 30% of our members who own their minerals, we also were also advocated successfully for an amendment to make sure that, when deciding how much royalties, bonuses etc. should be given to a mineral owner who is forced to lease in a unit, the Oil and Gas Conservation Commission can consider more than just other leases in the immediate vicinity. Mineral owner organizations fought hard and successfully for a "no deduction" royalties provision for mineral owners. We were disappointed that mineral owner organizations did not fight harder for better versions of and protections for nearby by minerals owners who could be affected (correlative rights) and some of the more sophisticated compensation provisions.

In the end, HB 2688 died on a tied 49 to 49 vote in the House of Delegates on the last night of the session! It had made it through the House of Delegates previously on a 60 to 40 vote. It then passed the Senate by a comfortable margin of 24 to 10 on the last day of the session. However, the bill had been amended in the Senate and needed to pass the House again before becoming the law. The self-proclaimed "Liberty Caucus" continued to raise anti-government and, usually mistaken, "takings" arguments. In addition, some members of the House of Delegates who had voted for it the first time were under additional pressure from constituents back home. We also heard there was some raw political maneuvering that affected some votes. This combination of factors resulted in the bill no longer having the support needed in the House for the bill to pass.

We would have had mixed feelings if the bill passed. We wanted more protections for both surface owners and mineral owners than what was included in the bill. But we also have mixed feelings that it failed, as we might have been able to build on what was in the bill in future years.

Our hope is that if the bill comes back again, which we expect that it will, that we can get more surface owner provisions included, and that its proponents will try to get a comfortable majority of legislators to support it by moving the balance of the bill more toward surface and mineral owners and away from industry.

Another part of our message to legislators throughout the stakeholder process and in public hearings regarding the forced pooling bill was that if they were going to pass forced pooling for the industry, they also need to implement the recommendations of the Horizontal Well Act studies to help surface owners. These recommendations include measuring the minimum distance that well work could be from homes from the "limit of disturbance" (edge of the well pad), rather than from the center of the well pad. Researchers at WVU also recommended protections with regard to noise, dust, and other air emissions from horizontal drilling sites, such as:

- Fence-line monitoring for these parameters,
- Measurable emission standards for these parameters that can be adjusted using Best Available Control Technology (BACT), and

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~ 2015 Legislative Session Update ~

Legislature Amends Aboveground Storage Tank Act

by Julie Archer, julie@wvsoro.org

During the legislative session, we alerted our members a couple of times about efforts to weaken the Aboveground Storage Tank Act (SB 373), which was passed unanimously last year in the wake of the Freedom Industries chemical leak that contaminated the drinking water of more than 300,000 people in Charleston and surrounding areas. From the time the law went into effect, some lawmakers immediately suggested that implementation of the bill should be delayed and that the legislature should revisit SB 373's so-called "unintended consequences." At the same time, various industries, including the oil and gas and chemical manufacturers began pushing for changes that would exempt thousands of Aboveground Storage Tanks (ASTs) from the bill's inspection and safety mandates.

From our perspective, a positive, if "unintended consequence" of the bill passed last year was that it had the potential to improve inspection of maintenance of tanks that affect or could affect groundwater and the many landowners who rely on private water wells for drinking and other uses.

The bills rolling back the provisions of SB 373 went far beyond what we expected — effectively removing more than 99% of ASTs from regulation under the AST Act, and providing a blanket exemption for tanks associated with the oil and gas industry. The bill also ignored DEP's risk-based rule, which was developed with extensive public input, divided tanks into three levels, and required more stringent protections for tanks that present the highest risks.

Throughout the session, WV-SORO worked with our allies in the environmental community to improve the bill that seemed destined to pass this Legislature. Our ad-hoc coalition was successful in garnering support for a couple amendments that that increased the frequency of DEP's required inspections of Level 1 tanks from every 5 years to every 3 years and strengthened requirements regarding tank owners' responsibility to share information with water utilities. Unfortunately, another amendment that would have tightened up a potential loophole for tanks to be determined in compliance with the Act under weaker standards was not adopted.

Thank you to all who made your voice heard through emails, calls, and/or visits to the Capitol and opposed these rollbacks with us. Your voices made a difference. The bills that were introduced at the beginning of the session were much worse than the bill that finally passed but still exempts tens of thousands of tanks and weakens inspection requirements for those tanks that would remain covered under the Act. Sometimes victory means defending against an even worse defeat.

For more details, check out the Charleston Gazette's coverage of the House debate at http://www.wvgazette.com/article/20150313/GZ01/150319533, and a story from WV Public Broadcasting outlining rollback concerns at http://wvpublic.org/post/four-concerns-about-storage-tank-legislative-rollback.

Last summer, WV-SORO actively participated in the stakeholder process conducted by the DEP to get input on what should be included in its rules implementing the AST Act. Throughout the process, we have been urging DEP to resist industry pressure to include further exemptions for the oil and gas industry and to consider rewriting and strengthening the existing Spill Prevention, Control and Countermeasures (SPCC) Act rules that implement the federal SPCC Act for oil and gas exploration and production in West Virginia. Although DEP was receptive to many of the concerns raised by WV-SORO and our allies, the changes to the Act required the agency to go back to the drawing board. New rules based on the amended AST Act are now out for public comment and will be submitted for legislative consideration in the 2016 session. WV-SORO will be reviewing the revised rules and looking for opportunities to suggest improvements.

Forced Pooling *(continued from page 3)*

- Short and long-term health studies of citizens living near Marcellus wells

A bill to implement these recommendations was introduced by Delegate Barbara Fleischauer (D-Monongalia) and others late in the session and was not taken up. In addition we would also want legislation that would reverse the trend of split estates and give surface owners a chance to own the minerals beneath their land. Our bill granting preference to surface owners at mineral tax sales cleared one committee (the House Energy Committee) for the first time this year but was not taken up by the House Judiciary Committee where it was also assigned.

Photo taken after drilling but before completion that contrasts EQT's Marcellus Shale well pad with the site of a vertical well drilled in 1995 immediately next to it, at left. This site is subject to a surface use trespass case. See details below.

WV-SORO Litigation Update

Surface Use Trespass

In our last newsletter, we reported that a potentially precedent setting case brought to establish that drillers do not have a right to use surface owners' land to drill into neighboring mineral tracts had been settled, and that we were looking for the right test case to take to the Supreme Court. David McMahon, co-founder of WV-SORO, has found and filed another lawsuit with the help of Kristina Thomas Whitaker of the Grubb Law Group in Charleston. The new case is *Crowder and Wentz vs. EQT Production Company*, Civil Action 14-C-64, filed in Doddridge County Circuit Court.

In this new case, EQT placed a 19.7 acre well pad from which it drilled nine wells with a total horizontal bore length of nearly 10 miles. Only 25% of the horizontal bores are within the mineral tract underlying the plaintiffs' surface tract. EQT then proposed placing three additional wells on the pad, none of which had horizontal well bores that were in the mineral tract underlying the plaintiffs' surface. In drilling the nine wells, EQT used 19 million gallons of water. *More details are available in the captions under the pictures above and on page 2.* This case is currently in the discovery phase.

Trespass by "Fracking"

About 30% to 40% of WV-SORO's members own the minerals under their land. In many instances, those minerals are subject to old leases signed by their predecessors -- leases that are still held by production with low royalties and no pooling clauses. Mineral owners should know that a driller who, without a proper lease, "fracks" into their mineral tract from a well bore on a neighboring mineral tract is trespassing, and that driller might be made to pay for the total value of the gas obtained that way.

If gas flows naturally from one mineral tract to a gas well on a neighboring mineral tract, under the "Rule of Capture", the gas belongs to the driller who drilled the well on the second tract, and the royalty belongs to the mineral owner of the second tract. However, WV-SORO has taken the position that if fractures from the horizontal portion of the well drilled on the second tract extend into the minerals underlying the first (neighboring) tract, that is trespassing and the owner of the first mineral tract can sue for the total value of the gas taken, not just the royalty. An order issued by a U.S. District Court judge in the Northern District of West Virginia agrees with us. See "Federal Judge Rules That 'Fracking' into Neighboring Tracts Is a Trespass" on page 15 for more details.

Partition Suits

Where more than one person owns the same land, and the joint owners cannot all agree on what to do with it, the law has always provided that one of the owners can file a "partition" lawsuit against the others. When that happens, the land is either: divided up among the owners by special commissioners appointed by the court; sold on the courthouse steps and the money divided among the owners; or "allotted" to one of the owners who is ordered to pay the other owners its value. For example, think of a farmer with four children who dies without a will and leaves the entire farm to all four. Each has an "undivided" interest in the entire farm. The farm cannot be sold without the signatures of all four.

The same is true with mineral interests. All of the owners' signatures are needed on a lease before the driller can drill. If they cannot all agree to lease, then the mineral interest can end up in court in a partition lawsuit.

Partition suits are not good because ownership of the interests is lost, and the soon to be former owner only receives a one-time payment of a dubious amount and no future royalties. This is one of the reasons we could support the right forced pooling

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Litigation Update

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legislation. As a recent article in the Charleston Gazette detailed, partitions suits are also problematic for a number of other reasons (see http://www.wvgazette.com/article/20150621/GZ01/150629922).

We know that some Circuit Court judges have decided that the lessee/driller cannot bring a partition suit. However, the drillers have gotten around that by buying the mineral interest of one of the heirs. We also know of cases where the commissioners grossly undervalued the property of the person who was being forced to give up the property and that person had to appeal.

Judge Sweeney of Pleasants County issued a helpful decision in a recent partition suit. In that case, one of the owners with an undivided interest in the minerals also owned the entire surface tract. Judge Sweeney said they "would be prejudiced by a sale due to their likely inability to compete for purchase [at the sale] against a large oil and gas producing bidder, which inability to purchase would likely result in the loss of their mineral interest and consequential inability to negotiate for lease terms and conditions to protect their interest in their surface estate." He said, "Given the speculative and uncertain nature of the value of oil and gas mineral interests which are not leased and/or under production and situate in a geographical area which has yet to be developed, a public sale is deficient and inadequate to calculate and equitably reflect the value of such interests, thus creating a substantial risk of prejudice to the owners of not realizing a fair value further respective interests." Judge Sweeney required the parties to the suit to get back together to make sure, after reading his order, that they still disagreed with each other.

Hundreds of partition suits have been filed and, no doubt, many mineral owners have been intimidated into bad deals because they have been threatened with such. With the failure of the forced pooling bill during the 2015 legislative session, we expect even more partition suits to be filed - and we do not believe that this is a good development. Even Judge Sweeney's good decision did not rule out a sale if the parties in that case cannot settle the matter.

If you are sued or threatened, see a lawyer or call us.

Nuisance cases being heard by "Mass Litigation Panel"

A number of “nuisance” cases have been filed in Doddridge, Harrison, Marion, Pleasants, Ritchie and Kanawha Counties against companies drilling and operating wells to the Marcellus and other shale formations.

A "nuisance" case is somewhat different from a case that would be brought by the owner of the surface where a well pad is located. In that case, a surface owner would bring a "trespass" case saying that the driller had no right to use the surface owner's land for the pad to drill into neighboring mineral tracts; or a case saying that the driller's actions on the surface owner were more than "fairly necessary"; or a case saying that the driller's actions were not in the "contemplation of the parties" at the time the lease was signed or at the time the ownership of the surface and minerals were separated by deed (which ever was earliest).

A nuisance case is often brought by the owner of the surface that adjoins or is near the tract where the well pad is located. These suits by neighboring surface owners are usually brought because of the noise, dust or other air pollution, truck traffic, etc. related to the drilling, which interfered with the neighbors' use and enjoyment of their land.

The lawyers for the neighboring surface owners who brought the cases moved to have all the cases decided by one panel of circuit court judges (called a "mass litigation panel") instead being tried separately by different judges in all the different counties. WV-SORO attended the initial hearing where the parties argued whether or not the cases should be heard by the mass litigation panel. The drillers argued that these were not suitable cases for a mass litigation panel because each plaintiff’s (or each set of plaintiffs’) case was different. However, the three judges on the mass litigation panel seemed inclined to hear all of the cases because there were many new issues applying horizontal shale drilling to existing law that needed to be decided uniformly for all the cases before and during trial. If they were tried by different judges in different counties, it could take years for all of these issues to make it to the West Virginia Supreme Court for decisions that would apply statewide, and that would only be on appeals after all of the trials.

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Litigation Update *(continued from page 6)*

Ultimately, the Supreme Court granted the motions for the cases to be heard by the mass litigation panel. The cases are now in the discovery stage according to the lead attorney in the case, Aaron Harrah of Hill, Peterson, Carper, Bee & Dietzler in Charleston. Over 200 plaintiffs' statements have been filed, with interrogatories and depositions to come. Mediation is set for August 26, 27 and 28, 2015, tentatively in the ceremonial courtroom of Kanawha County Courthouse. The first trial of the "Cherry Camp" group of plaintiffs from Harrison County occurred for May 2016. WV-SORO members who feel they may have nuisance cases should contact Mr. Harrah at (304) 345-5667.

Pipeline Companies Threaten, Sue Landowners for Survey Access

Last summer, WV-SORO updated our website when we learned about the proposed interstate pipelines and heard that landowners were being approached by Dominion Resources, Inc., and other companies, about conducting surveys on their land. After we updated our pipeline information, we were told that landowners were getting letters citing a section of West Virginia's eminent domain law and claiming it allows surveyors to come onto people's land before an eminent domain proceeding is initiated or finished. However, even if this statute applies, eminent domain laws in West Virginia may only be exercised for a "public purpose." Being made aware of the letters did not change our advice much. We anticipated that landowners might be sued if they denied access to the surveyors, and after learning of Dominion's plans to sue landowners our advice remains unchanged, as no court has established that the interstate pipelines proposed by Dominion or other companies are for a public purpose.

While we are not aware of Dominion actually bringing suit against landowners in West Virginia, the company has sued landowners in Virginia for survey access along the route of its proposed Atlantic Coast Pipeline. The company filed suit against the landowners in December. Similarly, the builders of the proposed Mountain Valley Pipeline (MVP) took legal action earlier this year against more than 100 individuals and 3 businesses in 10 West Virginia Counties, according to *the State Journal*. The MVP is

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Problems with Partition Suits

1. Letting the suit proceed until you are paid something costs nothing, but getting involved to fight the partition or to make sure the "something" you are paid is a fair amount requires getting a lawyer, etc. and is expensive.

2. The statute is very, very old, and the procedures add expense and often result in very low dollar amounts.

3. Even a good faith appraisal of the valuation of mineral properties is not really reliable since the advent of horizontal drilling to develop shale gas has caused values to go way up and back down quickly and vary from one place to another.

4. Courthouse sales of properties are now dominated by deep pocket drillers, so you usually cannot bid enough to keep your interest and buy the other interests.

5. Whatever payment you receive will only be a one-time payment and you will lose title to the mineral interest and get no future royalties.

6. Fighting the partition can cause other heirs to get dragged into the suit and potentially have their interest in the land auctioned off, which can cause hard feelings in the family.

7. As a result, the filing of a partition suit by a driller - or even the threat of the filing of a partition suit by a driller - can intimidate you into signing a lease that does not have good legal terms and that includes lower financial terms than the companies can afford to pay you.

If you are threatened with partition, before you decide what to do, at least talk to a lawyer. Find out what your options are. You might end up with a better lease offer. Or if you just don't like enabling or profiting from "fracking" by leasing, you can donate your land to a surface owner or environmental group, or you can sign a better lease and donate the money to any charity you want.

Pipeline Companies Threaten, Sue
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a joint venture between EQT Corp. and three other companies. Some landowners are fighting back and have filed complaints challenging the companies' eminent domain authority, arguing that the power of eminent domain can only be exercised in West Virginia if the property is going to be put to public use. However, Derek Teaney, the landowners' attorney argued, "not a single West Virginian will have access to or otherwise use gas carried by the pipeline." According to the materials filed with FERC, the plans for the MVP don't include any gas delivery points other than the pipeline's terminus in Pittsylvania County, Virginia.

If you are sued for denying surveyors access to your property, don't be intimidated! Contact us at (304) 346-5891.

Check out our pipeline resources at http://www.wvsoro.org/resources/advice/#pipelines or call to have information sent to you. Appalachian Mountain Advocates and the Greenbrier River Watershed Association also have resources available for landowners at www.appalmad.org/ and http://wordpress.greenbrier.org/.

Membership Meeting, Wellness & Water a Success

by Julie Archer, julie@wvsoro.org

Thanks to everyone who sweated it out with us (literally) in Salem in August for our membership meeting (we had no idea that the AC wasn't working until we arrived at SIU that morning!). It was great to see so many of you whom I have met over the years, and to finally meet those of you with whom I'd only emailed or spoken with over the phone.

Despite the lack of AC, overall the response we've gotten about the meeting has been positive and there is interest in SORO making this membership meeting an annual event. Folks found the pipeline panel helpful and informative but, for many, the best part was the opportunity to meet and talk with others with shared experiences and learn from each other. We'll be back in touch soon with details on this year's meeting. In the meantime, see Tom Bond's write up about last year's meeting on page 9.

After the meeting, we posted new and updated materials on pipelines and eminent domain on our website, including an updated version of Dave McMahon's pipeline guide. You can access this at www.wvsoro.org or, if you prefer a hard copy of the guide or other materials, please call (304) 346-5891 or email julie@wvsoro.org. Presentations from the pipeline panel are now available on our YouTube channel, http://www.youtube.com/user/wvsoro.

Last fall, we also co-sponsored the third Annual Wellness & Water Conference in October, which was also a success. Starting with the first event in 2012, these gatherings have provided opportunities for members of environmental organizations, allied groups like WV-SORO and other concerned citizens to gather for networking and information sharing opportunities. In addition to WV-SORO, co-sponsors of this event were the Doddridge County Watershed Association, the Ohio Valley Environmental Coalition, People Concerned About Chemical Safety, the WV Chapter of the Sierra Club, WV FREE, the WV Highlands Conservancy and the WV Sustainable Business Council.

We kicked this year's conference off with a concert featuring Andrew McKnight and Colleen Anderson & George Castelle to help raise money for conference scholarships. Those who couldn't be there missed a great concert. *(Thanks to the performers for supporting environmental justice and good time, too, as well as to Paul Epstein for organizing the event.*) The concert was followed by a day-long program focused on the threats to our water from chemical manufacturing & storage, mountaintop removal coal mining, and Marcellus Shale drilling. We explored measures we can take to safeguard our wellness and water with panels featuring scientists and affected residents, informational tables, open-space discussions and our featured speakers: Dr. Rahul Gupta and two Goldman Environmental Prize winners, Helen Slottje and Maria Gunnoe. For a more detailed write up on the event, see the Winter 2014-15 issue of OVEC's Winds of Change newsletter at www.ohvec.org. You can also view video of the conference at http://mobilebroadcastnews.com/NewsRoom/FluxRostrum/Water-Wellness-Conference-Live-Broadcast.

Organizers have decided to take a year off, but are tentatively planning another Wellness & Water conference for April 2016.

In addition to the membership meeting and Wellness & Water Conference, we also co-sponsored four screenings of "Triple Divide," an investigative documentary about impacts from fracking in the Marcellus Shale of Pennsylvania. The documentary is the feature debut of journalists Joshua Pribanic and Melissa Troutman. These screenings were held in conjunction with a nationwide tour by the filmmakers.

WV-SORO Meets in Salem

by Tom Bond, for www.FrackCheckWV.net

The WV Surface Owners' Rights Organization (WV-SORO) held a membership meeting at Salem International University in Salem, WV on Saturday, August 23, 2014. The purpose was to enlist new members, educate members and their guests about issues related to gas drilling and to discuss problems members face. About 70 people were present.

After an introduction by Julie Archer, the first feature was a panel and presentations on pipelines. The three presenters were Nils Nichols of the Federal Energy Regulatory Commission (FERC); Joseph Cochran of the Division of Water and Waste Management, West Virginia Department of Environmental Protection (DEP): and Ed Wade of Wetzel County Action Group (WCAG).

Mr. Nichols is Director of the Division Pipeline Regulation. He said there are three recognized divisions of the gas production industry: 1. Production; 2. Midstream, which takes the gas from the line the producer puts it in and sending it to the company that sells it to the customer; and 3. Distributors, who take the gas from the large volume gas transmission company to the customer, which may be an industry, a gas-fired electrical generator or a homeowner. FERC is mostly concerned with midstream pipelines, which are relatively large diameter lines. The steps FERC uses are: **1.** Determining if there is a need. **2.** Determining alternate routes and then hold "scoping" meetings to determine reaction. **3.** Interpreting findings to determine what best meets public interest. **4.** Holding public meetings and reviewing voluntary easements to minimize eminent domain. **5.** Final Certification. Once FERC approves the project, if agreements cannot be negotiated with landowners, the company may acquire an easement using eminent domain with a court determining compensation. Mr. Nichols indicated that compensation is based on fair market value, but "you have to fight for your rights."

Mr. Cochran said DEP mostly permits smaller short lines of 1 to 3 miles from the well pad to the midstream line. When the application arrives in the office with all the details on the form filled in and if it looks like it will work on paper, the permit is granted. Most of their concern is with new pipelines. Both men indicated once a line is deemed to be able to do its job, it goes through and is seldom rejected.

Ed Wade of WCAG showed pictures of what has happened on pipelines, mostly in Wetzel County. These pictures included drill dust and dust after dynamite blasts in a creek as well as numerous slips in back fill where a pipeline goes up a hill - including one slip that ruptured the gas line. These pictures also showed use of concrete to support pipelines on extremely steep hills, animals in the ditch due to fragmentation of the animal's habitat, placement of a new line on an old right of way, silt, air pollution from a pipeline site, an accidentally burned excavator and open burning. The pipeline brings pig launchers, compressor stations, access roads, noise, odors, lights and (toward the end of its life) leaked gas, and danger of fire and explosion.

After the presentations there was a question and answer session moderated by Dave McMahon. Some questions asked were:

- Will drilling increase the cost of my homeowner's liability insurance?
- What can you do to keep trespassers out after the drilling is done and the pipeline is laid?
- What is the nature of the impairment on my property due to a pipeline?
- If someone comes on my property, is it trespassing? (The answer to this one is, "No, you must tell them to stay out or build a fence around it, or cultivate the ground, or post the land.)

After lunch, many individuals stated the problems that brought them to SORO. [Numerous] complaints were heard [including] issues with leasing … pipelines … [being] prevented from getting to work - very little help from DEP with coal and gas - quality of life - … intimidation … - floodplain issues - … [and much more].

Organizations represented were Doddridge County Watershed Association, FrackCheckWV, Friends of the Hughes, Guardians of the West Fork, Ohio Valley Environmental Coalition, WV Chapter of the Sierra Club, WV Highlands Conservancy, WV Host Farms and Wetzel County Action Group.

There was an overview of SORO history and activities by Julie Archer. Next was a section titled Results and Recommendations from Horizontal Well Act Studies. It was a presentation by David Mahon about research mandated by the Horizontal Well Control Act the legislature passed in 2011.

One of the studies, by Dr. Michael McCawley at WVU, looked at noise, light dust and other air pollution as they relate to how close wells are situated to peoples' homes. The report sited research that

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WV-SORO Meets *(continued from page 9)*
showed an increased risk of cancer for residents within one-half mile of a drilling operation. Another study showed property values were affected if a well was within 1,500 feet in Texas. A sociology research project conducted by WVU showed that landowners reported twice as many problems if one was within 1,500 feet.

Dr. McCawley's research showed that noise, light, dust and other air pollution was not confined to the well site. In response, DEP recommended that the legislature increase the setback distance "to provide for a more consistent and protective safe guard for residence in effective areas." However, the DEP declined to propose any new rules based on the studies, stating that "there were no indication of a public health emergency or threat."

Pit studies showed inspectors only targeted readily apparent problems such as slips and slides, while not recognizing indicators or warning signs that might result in pit failures. Eight out of the fifteen pit studies didn't agree with the engineers' plans, and only one of the fifteen studies had soil conforming to the type specified by the DEP. One concludes that companies can't be trusted.

Next, there was a section titled Moving Forward/Setting Priorities, which involved group discussions. The following questions were asked to frame the discussion: What are the most pressing problems related to oil and gas drilling in West Virginia? What should be done to address the problems? What should SORO do in response to these problems? The facilitator was Gary Zuckett.

Problems indentified included air pollution, water contamination, water use, improper waste disposal, truck traffic and damage to roads. Lack of enforcement and lack of accountability with respect to industry activities and practices, permitting decisions made by the DEP and actions taken by the legislature were also major concerns. Suggested actions that should be taken to these problems included making changes to drilling laws, regulations and enforcement; engaging more citizens in pushing for better regulation and funding for enforcement; and documenting health impacts and environmental problems to help make the case for stronger regulations. Actions SORO could take in response to these issues included public education efforts to get more people involved; continued lobbying and being a voice for landowners at that the legislature; continuing to explore litigation options and filing lawsuits; and providing input, assisting and working with those documenting health impacts.

After the discussion, there was a Wrap-Up and Evaluation session, then dinner. The evening session was a showing of the documentary film "Triple Divide" and a discussion of this film.

Documentary on WV Natural Gas Boom Seeks Support *by Julie Archer, julie@wvsoro.org*

Earlier this year I had the opportunity to see the trailer for a new feature film, "In the Hills and Hollows." The film follows the lives of several residents impacted by fossil fuel extraction, including some of you.

In May, filmmaker Keely Kernan launched a Kickstarter campaign to raise the funds needed to continue filming and begin post production. Through the Kickstarter campaign, Keely raised $15,000 to continue shooting the film throughout the spring and summer of 2015. The Kickstarter campaign ended June 20, but Keely is still working to raise additional funds to complete the project.

Please consider a contribution that will help tell the stories of rural residents who's lives, like many of you, have been impacted by the natural gas boom in West Virginia.

Check it out, pledge if you can, and share the project far and wide --

https://www.kickstarter.com/projects/1800822293/in-the-hills-and-hollows/description

Contributions toward the project can be sent to:

Groundview Media
PO Box 1434
Shepherdstown, West Virginia 25443

Environmental Quality Board Rules in Injection Well Appeal; New Permits Under Consideration

by Julie Archer, julie@wvsoro.org

Last year WV-SORO joined the Natural Resources Defense Council (NRDC), the Plateau Action Network (PAN) and local landowners in asking the state to shut down a problem waste disposal site in Fayette County. This site has a history of violations that threaten the environment, as well as the health and safety of the community. After the appeal was filed, the DEP finally ordered the operator to close two open pits at the site. The pits were being used to store waste fluid and the DEP had received numerous complaints of a foul odor emanating from the pits starting in 2004.

In early April, the WV Environmental Quality Board (EQB) ruled that the Department of Environmental Protection (DEP) violated the law by allowing Danny Webb Construction (DWC) to operate the well without a permit. In its decision, the EQB has given the DEP 30 days to reissue a permit for the site or cease operations. Although the decision is positive in requiring DEP to follow the law requiring operators of these sites to have permits, the EQB entirely ignored our arguments about the risks the site poses to water quality, and the health and safety of community.

Danny Webb Construction has applied for two new permits. A public hearing on the new permits was held on April 21. Because the permits were not issued in time, the DEP ordered DWC to shut down the site on May 8, pursuant to the EQB's ruling. In response, DWC appealed to the EQB for a stay, which was granted a week later.

A follow up hearing on the stay is scheduled for July 9. The parties to the initial appeal are intervening in the case, along with the Fayette County Commission. Area residents are concerned about the continued operation of the well. They are circulating a petition to halt the issuance of new permits for the site and are asking the U.S. Environmental Protection Agency (EPA) and the WV Department of Health and Human Resources to intervene in the case against DWC. You can support their efforts by signing the petition at https://www.change.org/p/petition-stop-permitting-the-lochgelly-underground-injection-control-well.

For more background on the case, including a history of the DWC site, see our Spring 2014 newsletter at www.wvsoro.org.

Wasting Away: Study Details States' Failures to Regulate Oil and Gas Waste

From an Earthworks Press Release:

A new report shows that states ignore the risks of sometimes hazardous oil and gas waste despite EPA's exemption of such waste from federal oversight based on "adequate" state management. *Wasting Away: Four states' failure to manage oil and gas waste in the Marcellus and Utica Shale* examines how Pennsylvania, Ohio, West Virginia and New York neither regulate oil and gas development wastes as hazardous, nor can assure the public that they are protected from exposure to hazardous waste.

"Thirty years ago the Environmental Protection Agency exempted oil and gas waste from federal classification as hazardous, not because the waste isn't hazardous, but because EPA determined state oversight was adequate," said report lead author and Earthworks' Eastern Program Coordinator Nadia Steinzor. She continued, "But our analysis shows that states aren't keeping track of this waste or disposing of it properly. States must take realistic, concrete steps to better protect the public."

Focused on the Marcellus and Utica shale region, *Wasting Away* systematically identifies shortcomings in

existing and proposed state regulation of oil and gas exploration, development and production wastes. It identifies pivotal challenges facing the states, explains five key factors underlying the inadequacy of state oil and gas waste management, and makes concrete

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Wasting Away *(continued from page 11)*

recommendations for states to ensure that the waste is properly handled and drillers are held accountable for the waste they create.

"Drilling waste harms the environment and health, even though states have a mandate to protect both. Their current 'see no evil' approach is part of the reason communities across the country are banning fracking altogether," said Bruce Baizel, co-author of the report and Earthworks' Energy Program Director. "States have a clear path forward: if the waste is dangerous and hazardous, stop pretending it isn't and treat it and track it like the problem it is."

Quotes from West Virginia Groups

"In just the past two years, over 500,000 tons of drill cuttings and shale gas waste products have been buried in the municipal waste landfill in our county. As this report shows, none of it has been properly characterized nor tested for radioactivity. The State of West Virginia has repeatedly chosen to stay willfully ignorant with regard to the radioactive content of Marcellus shale waste. It really does not want the public to know what all is in it." -- *Bill Hughes, Chairman of the Wetzel County Solid Waste Authority*

"Drillers in West Virginia have already placed tens of thousands of tons of Radium-bearing wastes into municipal solid waste landfills and are on track to increase this many times over in the coming years. What this actually means is totally unknown since not one single test is conducted to determine the concentration of Radium in a load of drilling waste before it goes to the landfill. Studies done by the WVDEP have missed the mark in evaluating human and environmental risks. The state has not developed, much less implemented, an effective strategy for safely managing drilling waste." -- *Marc Glass, Principal in Environmental Monitoring and Remediation at Downstream Strategies, LLC*

"With the advent of horizontal drilling, the scale of drilling operations and the amount of waste being generated has increased exponentially. Although West Virginia has taken some steps to improve regulation, the state's approach of permitting horizontal drilling without carefully considering whether current methods of waste disposal are appropriate or adequate has created a problem for which there are no good solutions. Our only options are bad and less bad. From a surface owner's perspective, disposing of drilling waste in landfills is an improvement over on-site burial, but our municipal landfills were never designed for nor intended to accept this type of waste." -- *Julie Archer, Project Manager, West Virginia Surface Owners' Rights Organization*

Read more at: http://tinyurl.com/nedbqrf.

EPA finds drinking water vulnerable to fracking

by Ken Ward Jr., *Charleston Gazette* staff writer

This article was originally published in *the Charleston Gazette* on June 4, 2015. It is reprinted here with permission.

A five-year investigation by the U.S. Environmental Protection Agency of the boom in natural gas drilling and production has identified potentially serious threats to drinking water supplies, but provides no new detailed data that would help to quantify the scope of any contamination that has occurred across the country.

EPA media officials promoted the study as finding that "hydraulic fracturing activities have not led to widespread, systematic impacts" to drinking water. But the actual conclusion of the agency's 998-page report contained a subtle, but important, difference: It said EPA "did not find evidence" of widespread or systematic impacts.

And authors of the EPA study made clear that they lacked enough data to draw strong conclusions about the extent of any damage.

"In particular, data limitations preclude a determination of the frequency of impacts with any certainty," the report said.

Congress ordered the study in 2010, as natural gas production in places like the Marcellus Shale region in West Virginia skyrocketed amid the increased use of a combination of horizontal drilling and hydraulic fracturing, or "fracking." Fracking is part of the process of preparing a well for production by pumping huge volumes of water and chemicals underground to split open rock formations to loosen oil and gas flow.

EPA investigators said that they did find "above and below ground mechanisms" through which various stages of what they called "fracking activities" can "have the potential to impact drinking water resources."

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EPA *(continued from page 12)*

Among those mechanisms: Fracking directly into underground water resources, water withdrawals in areas with or in times of low water availability, spills of various fluids used in or produced by fracking processes, below-ground migration of liquids and gases, and inadequate treatment and discharge of wastewater.

The EPA said its investigators found "specific instances" where one or more mechanisms affected drinking water, including contamination of wells. The agency report said the number of identified cases "was small compared to the number of hydraulically fractured wells," but conceded it wasn't sure why.

"This finding could reflect a rarity of effects on drinking water resources, but may also be due to other limiting factors," the EPA said. "These factors include: insufficient pre- and post-fracturing data on the quality of drinking water resources; the paucity of long-term systematic studies; the presence of other sources of contamination precluding a definitive link between hydraulic fracturing activities and an impact; and the inaccessibility of some information on hydraulic fracturing activities and potential impacts."

And when pressed, EPA officials were not able to point to any statistics listed in the study that counted or attempted to estimate instances of drinking water impacts.

"The study was not, nor was it intended to be a numerical catalog of all episodes of contamination," EPA science advisor and deputy assistant administrator Thomas Burke told reporters during a telephone conference call.

In several key spots, the EPA report makes clear the lack of data to quantify the extent of water pollution problems related to the natural gas boom.

For example, the report says that EPA was not able to come up with nationwide data on the frequency of fracking fluid spills.

EPA used data for two states — Colorado and Pennsylvania — to generate an estimate that spills could range from 100 to 3,700 nationwide annually. But the report conceded that "it is unknown whether these spill estimates are representative of national occurrences."

The EPA report said that investigators found no spills in which fracking fluids made it into groundwater supplies, but then noted, "the data contain few post-spill analyses, so groundwater contamination may have occurred, but have not been identified."

Also, the EPA report bluntly explained that a lack of local water quality data needed to compare pre- and post-hydraulic fracturing conditions "reduces the ability to determine whether hydraulic fracturing affected drinking water resources in cases of alleged contamination."

"Unfortunately there isn't much new material here," said Rob Jackson, a Stanford University environmental scientist who has studied drilling impacts. "EPA didn't do any of the prospective studies they proposed four years ago or hardly any new fieldwork at all. In that sense I think they missed an opportunity."

Industry officials, though, quickly jumped on the conclusions — as outlined in EPA's press statements — that the report found that the gas boom wasn't causing widespread impacts.

"I have no doubt that skeptics and deniers will pretend that EPA's study says something it doesn't," said Steve Everley, a spokesman for the industry group Energy In Depth. "But this study is not just a vindication of the safety of fracking, but also good news for folks who have been inundated with alarmist –- and clearly unsupportable –- headlines for many years."

But Amy Mall, senior policy analyst with the Natural Resources Defense Council, said that the EPA report does show impacts from fracking, despite its very limited scope.

"This study is missing some critical elements, hamstringing its comprehensiveness," Mall said. "Among other things, there are reports industry has not cooperated in providing important information. And field studies of start-to-finish impacts never made it in. Much more science will be necessary to fully understand all of the risks. But despite the holes, it is clear EPA has found impacts — they just cannot be sure how widespread those impacts are."

Reach Ken Ward Jr. at kward@wvgazette.com, 304-348-1702 or follow @kenwardjr on Twitter.

See more at:
http://www.wvgazette.com/article/20150604/GZ01/150609630

Report on Fracking's Most Wanted Id's Top Oil & Gas Companies for Spills & Violations; Finds Only 3 Out of 36 States Publicly Track Companies' Missteps

From a Natural Resources Defense Council press release:

Only three out the 36 states with active oil and gas operations make information about companies' spills and legal violations easily available to the public, according to a report by the Natural Resources Defense Council and FracTracker Alliance.

"People deserve to know what's happening in their own backyards, but too often homeowners aren't even informed if there's a threat to their health," said Amy Mall, report co-author and senior policy analyst at NRDC. "Our representatives have a responsibility to protect the people who elect them, not help keep a dangerous industry shrouded in secrecy. States are falling down on their responsibility to be a watchdog for the people who live there."

Fracking's Most Wanted: Lifting the Veil on Oil and Gas Company Spills and Violations is an investigation into whether information about oil and gas company violations is publicly available nationwide, as well as the accessibility and reliability of the information that does exist. The groups discovered that only Colorado, Pennsylvania and West Virginia post accessible public data about companies' violations. Even that information is often incomplete, misleading, and/or difficult to interpret.

The data that is available in each of these three states reveals significant violations—in number and severity. Incidents include a wide range of dangerous infractions like spills, drinking water contamination, illegal air pollution, improper construction or maintenance of waste pits, failure to conduct safety tests, improper well casing, and nonworking blowout preventers.

The report shows that too often state regulators don't inform landowners or their neighbors when violations occur, and allow companies to continue operating even after repeat violations.

"The limited information that is actually available is eye-opening, both in terms of frequency and the sometimes shocking nature of the impacts when things go wrong," said Matt Kelso, FracTracker's Manager of Data and Technology. "This industry is already immense and rapidly growing. It develops in residential communities, sensitive ecological areas, and everywhere in between. Our research shows the need for increased transparency about the compliance record of the industry, especially given those vulnerable areas and populations."

Top 10 Most Wanted

While there are thousands of oil and gas companies operating around the country, this report analyzed the available public data regarding 68 of the largest companies based on the amount of acreage they have leased nationwide. At the end of 2011, these companies held mineral rights leases covering at least 141 million acres—an area the size of California and Florida combined.

Of these companies, the following 10 had the most violations overall, in order of most to least:

- Chesapeake Energy (669)
- Cabot Oil and Gas (565)
- Talisman Energy (362))
- Range Resources (281)
- EXCO Resources (249)
- ExxonMobil (246)
- EQT Corporation (245)
- Anadarko Petroleum Corporation (235)
- Shell (223)
- Penn Virginia Corporation (186)

Top Violators by State

The following companies stood out as having the most violations in each of the three states with publicly available data:

- Colorado: Chevron (53)
- Pennsylvania: Chesapeake Energy (589)
- West Virginia: EQT Corporation (92)

Improving Transparency & Protections

To better protect public health and the environment, states need to create and enforce policies that require their regulators to disclose essential information about violations to the public, hold violators accountable when something goes wrong, and keep repeat offenders out of communities.

However, even if these improvements are made, many dangerous practices are still legal and would not qualify as a violation, due to weak laws and special exemptions for the industry from protective laws. In order to protect people across the country, Congress must close gaping loopholes in our bedrock federal environmental laws—including the Clean Air Act, Clean Water Act, Safe Drinking Water Act and toxic waste laws.

More Information: http://tinyurl.com/qz6j46z

Federal Judge Rules That "Fracking" into Neighboring Tracts Is a Trespass

by Dave McMahon, wvdavid@wvdavid.net

Mineral owners should know that a driller who, without a proper lease, "fracks" into their mineral tract from a well bore on a neighboring mineral tract is trespassing, and that driller might be made to pay for the total value of the gas obtained that way. The rule of capture applies if the mineral owner's gas migrates to a well bore on a neighboring tract through pre-existing natural porosity and permeability, and the driller next door does not have to pay for that. However, according to a ruling by a federal judge, it is unlawful for a driller to use a horizontal well bore in one mineral tract to inject hydraulic fracturing fluid into, and so take gas from, a neighboring tract without an appropriate lease to the neighboring tract.

The ruling was made by a U.S. District Court judge in the Northern District of West Virginia and therefore is not precedent that other courts would have to follow, as it would be if it were a ruling of a state or federal appeals court. However, there is no appeals court ruling that would bind a West Virginia court to a different ruling, and having a U.S. District Court judge make the ruling will be persuasive to any other judge in the state.

That is particularly true, because the judge stated, "[T]his Court finds, and believes that the West Virginia Supreme Court of Appeals would find, that hydraulic fracturing under the land of a neighboring property without that party's consent is not protected by the 'rule of capture,' but rather constitutes an actionable trespass." *Stone et al. vs. Chesapeake Appalachia, LLC et al.* , No. 5:12-CV-102, PACER Doc 41, 2013 WL 2097397 (N.D.W.Va., April 10,2013)

The ruling helps mineral owners - particularly small mineral landowners - in two ways. First, mineral owners should not allow their arms to be twisted into signing a lease, or an unfavorable lease by landmen telling the mineral owner that the driller will take the mineral owner's gas even if they don't sign the lease. Moreover, if mineral owners who were told this did sign leases with unfavorable terms as a result, these mineral owners might be able to sue.

Second, the ruling helps mineral owners if a driller 'fracked' into their mineral tract when the mineral owner had not signed a lease at all or had not signed a lease or an amendment to a lease that contains a "pooling" clause. If there was no lease, or if there was a lease that does not have a pooling clause and no pooling amendment has been signed, then those mineral owners could sue to be paid by the driller for maybe the full value of the gas removed -- not just the royalty percent.

In the case before the judge, Chesapeake Appalachia, LLC and Statoil USA Onshore Properties, Inc. had a lease for the tract where the well bore was going to be located, plus another old lease for the neighboring tract owned by Marion Stone. However, the lease for Ms. Stone's neighboring tract did not have a pooling provision that would have allowed the tracts to be developed together by horizontal drilling and hydraulic fracturing. Chesapeake and Ms. Stone did not come to an agreement to amend the lease to add in a pooling clause. Chesapeake drilled anyhow and fractured a horizontal well bore that ran only "tens of feet" away from the boundary of Ms. Stone's tract. Chesapeake claimed that the "rule of capture" made it legal for them to take the gas that came to their well bore as a result of "fracking" into the neighboring tract without paying royalty for it, relying on a Texas Supreme Court decision *Coastal v Garza*. Chesapeake asked the judge to dismiss the Stone's case. U.S. District Court Judge John Preston Bailey refused to dismiss the case, saying instead that Chesapeake had trespassed and cited a dissent filed by several of the Texas Supreme Court justices in the Coastal case.

According to the West Virginia judge's ruling, "The Garza [majority] opinion gives oil and gas operators a blank check to steal from the small landowner. Under such a rule, the companies may tell a small landowner that either they sign a lease on the company's terms or the company will just hydraulically fracture under the property and take the oil and gas without compensation. In the alternative, a company may just take the gas without even contacting a small landowner. . . . [T]his Court simply cannot believe that our West Virginia Supreme Court would permit such a result."

The rule of capture, the judge reasoned, was developed as a rule of necessity near the turn of the Twentieth Century primarily as a rule of necessity where gas inevitably migrates on its own from neighboring tracts to the well bore and was difficult to measure. It does not apply where the driller trespassed onto neighboring property using artificial means to stimulate the flow of gas from neighboring tracts.

We have been saying all along that this is what the law is, but there were no court decisions in West Virginia stating that 'fracking' would be a trespass - only the poorly reasoned four to three majority opinion against us from the Texas Supreme Court. Now, a Federal District Court Judge has issued an opinion that agrees with us and the Texas court's three-judge minority regarding what the West Virginia Supreme Court would say if it had the chance. The opinion is still public record and can be cited to persuade other courts, and we think that mineral owners will be able to use the opinion to persuade other judges in other cases and on appeal.

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