



West Virginia's
Surface Owners' Rights Organization

**A Forced Horizontal Unitization/Pooling/Integration Bill
 Is ONLY a Good Idea IF:**

(Revised August 2015)

Pooling bill
 (9/21/2015
 draft)

1. It is part of a **comprehensive bill** that includes not only provisions that the industry wants, but changes to the statutes to protect surface owners -- including changes that were shown to be needed by the studies on noise, air, etc. that were required by Marcellus Shale bill in December, 2010.¹

No!

2. It provides that **no horizontal drilling pad, access road or other surface disturbance can be put on the surface of the tract** that is forced to be in a horizontal drilling unit/pool. This prohibition has to apply whether the surface owner does or does not also own the minerals.² That is in the existing Code in the "deep well" pooling statute.³

yes

3. The driller must already have to have **80% of the horizontal drilling unitization/pooling rights leased voluntarily.**⁴

yes

4. The driller must **pay the forced mineral owner at least the most favorable royalty terms being paid to others in the unit** who have been signed up voluntarily, including a bonus and royalty -- and ideally they should get the bonus and royalty that industry members pay to each other. That way all citizens will get paid the true value of what they are signing.⁵

close

5. Where the mineral owner has already signed a lease, the driller forming a unit has to pay the mineral owner a royalty and pay the lessee a working interest override and/or a participating or non-participating working interest payment. **If the mineral owner being forced into a horizontal unit has not signed a lease, the mineral owner should get the royalty and the override and/or the participating or non-participating working interest.**⁶

yes

6. If the tract forced into the unit is in "heirship", and some of the owners cannot be found, their **interests in all of the minerals in the acres included in the unit, and the unclaimed payments may be claimed by the surface owner** similar to the way they do under West Virginia Code §55-12A-1 et seq. "Lease and Conveyance of Mineral Interests Owned by Missing or Unknown Owners or Abandoning Owners". If not, then the unclaimed money should go to the orphan well plugging fund.⁷

yes
 First 3 years then

7. It provides only for **single well units**, not multiple well units (multiple well pads are OK).⁷

no

8. It provides that a **neighboring mineral owner whose acreage is near the drilling unit has notice and opportunity to join the unit** if the neighbor can show that their gas will also be drained by the horizontal well for which the unit was created.

yes

9. It only allows for forced unitization for producing natural gas from the **particular acreage and formation** or formations from which the horizontal well will actually drain gas.⁸

yes

10. Well bores should have to be **far enough inside the unit boundaries** that they are not draining gas from outside the unit. It should give the commission the power to prevent **new well bores being drilled outside the unit** from being so close they can drain the unit, or so far away that it would leave **un-drainable acreage in between** the new well and the unit.⁹

yes
 ?

11. The Commission making the decision has to have **members representing all parties.**

Yes!

Notes

1. Those are still being formulated, but they include:
 - a. Provisions that the D.E.P. should have placed in rules for air, noise, light, dust etc.
 - b. When severed minerals under surface owner are sold at a tax sale, give the surface owner the right to step into the shoes of mineral owner (for a fair price).
 - c. Provisions to deal with excess amounts of low level radioactive drilling waste being placed in local landfills.
 - d. Minor cleanups of Horizontal Well Act regarding notices, statutes of limitations etc.

2. It would be a “taking” for the statute to allow a surface owner’s land to be used to produce oil and gas from a mineral tract that is not the mineral tract underlying the surface tract. See Williams, Howard R. & Meyers, Charles J., *Oil and Gas Law*, Matthew Bender, "Conduct of Operator Injurious to Others" §§218.4 and 218.6.

3. W.Va. Code §22C-9-7(b)(4) and (b)(1) (last sentence).

4. This assures 1) that a clear majority of mineral owners think this is the right time/market to drill, and 2) avoids fights over what mineral lessee gets to drill the wells.

5. If the driller does not have to pay the forced owner the most he is paying those voluntarily joining the pool, then the driller will lease the cheapest tracts (or use old tracts held by production under old low-paying leases) and force everybody else to lease below current market values. Often the royalty on the cheapest tracts, or those held by production, will be the old “standard” 1/8th with expenses deducted -- which is unfair for mineral owners for horizontal wells in the current market.

6. The mineral owner should not have to choose between royalty and working interest as some of our current forced pooling statutes do!

If the forced party gets a right to a working interest payment and does not help pay for the drilling, they do not start getting the initial working interest payments until after costs of drilling the well have been recouped by the driller. How long after "payout" before the forced party begins receiving working interest payments? The statutory factors of double and triple the payout in current statutes for statutory “deep” wells and coal bed methane wells should not be used. It should be left to the commission considering risk and cost of capital.

7. There could still be centralized horizontal well pads with multiple wells, which is good. But each horizontal well should have its own unit that is the size of the acreage that the one horizontal well can drain. If not, and if a unit is established that is so large it needs several horizontal wells to drain it, and if only one horizontal well is drilled in that established unit, then some mineral owners in the unit will have their royalty go to mineral owners whose minerals are not being drained. Also, those mineral owners whose acres are not being drained will not be able to lease to another driller who would drill a well draining them and paying them the full royalty for their gas.

8. If some acreage in one formation of a mineral tract is forced into a unit, the owner should be free to lease the other, undrained acreage of that formation to someone else. Also, other oil and gas formations above or below the target formation should not be forced into the unit. The mineral owners should be free to lease them to others.

9. In the industry these are called “conservation” provisions and are part of the protection of “correlative rights” of others. A more comprehensive set of these provisions like currently exists for statutory “deep” wells would also be good public policy, but also more controversial.