



West Virginia Surface Owners' Rights Organization

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Supreme Court upholds surface owners property rights.

Drillers can no longer tell a surface owner that the driller has a right to put a horizontal well pad on the surface owner's land whether they agree or not..

(Charleston, WV)

The West Virginia Supreme Court has issued a much anticipated decision upholding the property rights of surface owners when well drillers try to use their surface for the enormous well pads necessary to drill horizontally. In a ruling that will affect almost all horizontal well pads, the Court said that the driller has no right to use a surface tract for a well pad to drill into neighboring mineral tracts that do not underlie the surface owner's property.

Well pads for horizontal wells drilled into neighboring mineral tracts require many more acres, require transporting in tens of millions more gallons of water, require trucking in miles more pipe, require trucking out hundreds or thousands of loads of flowback water and liquid hydrocarbons, and just the drilling lasts a year or more longer than a conventional vertical well drilled into only the mineral tract underlying the surface tract.

David McMahon, one of the lawyers for the surface owners Beth Crowder and David Wentz, and a co-founder of the West Virginia Surface Owners' Rights Organization [WVSORO], said, "We think this is the most important case for surface land owners since the 'broad form deed' cases that said strip mining could not be done on surface tracts where ownership of the coal was separated before strip mining was contemplated." The case was an appeal from the Circuit Court of Doddridge County and oral arguments were heard before the Supreme Court in March.

WVSORO thought the law was always obvious based on court decisions in similar cases according to its website. The Supreme Court agreed saying, "[P]recedent from this Court has repeatedly noted that a mineral owner does not have an implied right to use the overlying surface lands to benefit mining or drilling on other property." However, as the Supreme Court went on to say, "This Court has never had occasion to directly address the question raised by the parties." Before this week's decision when the drillers approached surface owners drillers would say or imply that they could come onto the surface owner's land with or without their permission.

The unanimous Supreme Court opinion written by Justice Hutchison said, "[T]he plaintiffs argue that there is no implied right to use a surface tract to extract minerals from neighboring tracts. Based upon our review of the law on this question we agree with the plaintiffs."

McMahon said that drilling will go on. However, in the past surface owners often agreed to be paid only what the land was worth to the surface owner as a meadow or wood lot. Now they can insist on surface use protections they want, like those recommended by WVU studies, plus surface owners can insist on being paid not what the land was worth to them as a meadow or wood lot, but instead insist on being paid what having the well pad is worth to the driller. In this case the driller expected to produce gas worth over a quarter billion dollars from this one pad. And, McMahon explained, "If the surface owner valued their land being undisturbed more than getting the money, the driller can drill horizontal well bores that are a mile or even two miles long. So the driller can move the pad and access the minerals under the surface owner from a pad in a different location."

The case is one of two in this term of the West Virginia Supreme Court dealing with the effects of shale drilling. The other case deals with the rights of surface owners whose land neighbors the tracts where the pads were drilled. It is expected soon.

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