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SURFACE OWNERS' NEWS

The latest news and updates from WV Surface Owners' Rights Organization

IN THIS ISSUE

2019 Legislative Session & What's Next

We were just gearing up (drafting improved versions of bills, getting sponsors, etc.) for this year's legislative priorities when the issue of orphaned oil and gas wells blew up from the very serious problem it as always been to one of, if not the most, widespread property rights and environmental disaster in the history of the state.

Orphaned wells have always been a problem. Wells need plugged at the end of their useful lives to prevent oil and gas and surface pollution from leaking into groundwater and onto the surface and into the air – plus their very existence and the threat of these issues devalues surface owners' land. One way that wells become orphaned is when a driller with lots of assets (generally a driller that is drilling new wells and who can therefore pay for the plugging of old wells), transfers their old wells to a driller who will just milk what gas production

the old wells have left and then go out of business, instead of plugging the wells that are barely producing themselves.

This is largely how we got the current 4,500 orphaned wells. (And there are 8,000 additional wells that still have a bonded operator, that have not produced gas in a year, and that should already, by law, have been plugged. Many, many of which will become orphaned.) This can happen because under current law drillers are not required to plug wells if they are producing any gas at all.

Drillers only have to post a $50,000 “blanket bond” for all their wells no matter how many they have – so for some drillers this is only $25 per well.

DIVERSIFIED GAS

Then the news hit that a company called Diversified (and its subsidiaries including Alliance and Core) are exploiting these weakness in our laws and using them as an exploitive business model. Diversified is buying up declining, older, conventional vertical wells from the drillers developing horizontal wells to the Marcellus and other shale formations.

Diversified is promoting to its investors on a stock exchange in Great Britain that it can keep milking these wells for 15 years.

After that its wells will no longer be “commercial” — i.e. not even producing enough gas to pay to operate themselves — let alone pay for plugging. It has purchased 17,000 wells in West Virginia alone and we estimate about 10,000 of those wells will become orphaned starting in 30 years — 2049.

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2019 BILLS

Three bills got introduced that would have provided enough money to begin to plug orphaned wells and at least put dent in the problem.

HOUSE BILL 2779

House Bill 2779 was introduced to provide money to plug orphaned wells; it which would have generated enough money to plug 200 orphaned wells in the first year or two and 30 or so a year thereafter. The bill would have used money held by the circuit courts for missing and unknown mineral owners in the nasty partition cases the drillers have been bringing to plug orphaned wells. It also would have used money held for missing and unknown mineral owners in missing and unknown owner lease cases.

After passing the House, and being approved by two committees in the Senate (all without a whiff of opposition), HB 2779 was ambushed on the last night of the session on the Senate floor. There are speculators (the ones that usually make a living buying minerals at tax sales) who are going to surface owners who don’t know they might someday get those royalties being held in circuit court. These speculators offer to buy the unknowing surface owner’s land without of course telling them that they could be coming into lots of money plus title to their underlying minerals. This ambush was organized mostly by these speculators, and came with only 6 or 8 hours left in the session and not enough time to find any middle ground or clear up the confusion, ultimately killing the bill.

[Not all of our members liked House Bill 2779 because right now that money might have gone to surface owners if the missing or unknown mineral owner never showed up. However, those surface owners would still have gotten all future royalties after the first seven years and they would have gotten title to a share of ALL of the oil and gas formations under their surface. And the original bill would only have taken the first seven years if the minerals were under surface owners that had no surface disturbance on them. So we thought plugging orphaned wells currently burdening surface owners was more important than giving the first seven years of money to surface owners most of whom would have only had horizontals running underneath them with no surface burden at all.]

Senate Bill 665

The second bill introduced was an expedited permitting bill, and subsequently would have plugged maybe 40 to 70 wells a year. It had the next best chance of passing. The horizontal drillers wanted it. It would have given the drillers the option to get a faster permit if they paid an extra $20,000 permit fee for the first well on the pad, $10,000 for the permits for other wells on the same pad, and a $5,000 permit modification fee. As a result of our advocacy the big horizontal drillers put in the bill that half that money would go to plug orphaned wells, while the other half would go to increase DEP's permitting staff.

However, some of the big drillers played games in the House and got the fees reduced to $10,000, $5,000, and $5,000 respectively, even after the House Energy Committee chairman offered a compromise of $15,000, $7,500, and $5,000. As a result the Senate, voted to amend the fees to $30,000 for the first well, and $15,000 for each addition well on the same pad. Everyone expected the House Energy Chairman was going to concur with further amendment back to $20,000, $10,000, and $5,000.

Instead, the House leadership refused to concur and rejected the Senate amendment bumping the fees back to $10,000, $7,500, and $5,000. It is unclear whether this would have been enough to fund the staff increases needed because this meant more drillers would take advantage of it but pay less money to increase staffing.The House's last action was communicated to the Senate with only an hour or so left in the session, killing the bill.

House Bill 2673

A third bill that would have provided money to plug orphaned wells was proposed by the Independent Oil and Gas Association (IOGA). Last year they proposed a bill to just eliminate the 5% severance tax on their low producing wells that were being made unprofitable by the Marcellus Shale drillers. Because of our advocacy on orphaned wells, this bill this ended up reducing the severance tax on "low producing" from 5% to 2.5% and dedicating that remaining 2.5% severance tax to plugging orphaned wells. The average cost to the DEP to plug an orphaned well is $65,000. Industry estimated the bill would generate $3.5 million, and plug 53 wells a year. The Finance Committee estimated $8 million, and 125 wells per year. This bill passed! We were just about to send out an update highlighting this, when without warning, the Governor vetoed the bill.

Veto & Special Session

As reported by the Charleston Gazette-Mail, the veto even left the industry "scratching our heads a little." WV-SORO blasted the Governor in the press for vetoing this badly needed legislation without consulting any of the stakeholders regarding his concerns. Even the State Journal did an article about how badly surface owners had been treated by the session.

We were about to send around an update explaining how terribly disappointing this was when it was reported by WV MetroNews that HB 2673 is one of the bills the Governor is going to add to the call for the current special session. Maybe all of our this condemnation had an effect! As this goes to print, we are still unsure of the fate of the special session.

In the end there was lots to be disappointed about. No bill moved that would have prevented more wells from becoming orphaned. On the other hand, thanks in parts to the contacts some of you made when we asked you, we may get some money from at least one bill to start plugging wells and putting a dent into the existing problem.

Importantly we did enormous consciousness raising causing the small and big drillers to put orphaned well plugging money into THEIR bills. We had the pro-business State Journal running a front page article and even an editorial that supported us. We also have two Energy Committee chairs that are really upset with industry not only on these bills, but on other bills including one that mineral owners wanted that would make it easier to clear up courthouse records of expired leases of their minerals, and another that would have altered the way partition suits are used against mineral owners.

So we may yet get something this year. And we are well positioned for next year. In our lobbyists' experience it takes three years to get a bill passed in West Virginia. The first year just gets attention to it and is used to deflate opposition by alarmists. The second year the bill moves, but problems emerge and lessons are learned. The third is the charm. This year was the second year for the bill that passed and was vetoed (HB 2673), the second year for WV-SORO's that died in the Senate on the last night (HB 2779), and the first year for the expedited permitting money bill that died on the last night. And even if it is the first year for the bill to require "plugging assurance" to prevent future orphaned wells, we are encouraged for it passing next year.

With your help and support, we can do even better next year, not just on orphaned wells, but on pipelines, and on reunification, and on surface owner protections!

Do we have your correct contact information? If you aren't receiving emails from us, please send your correct or updated contact to info@wvsoro.org

Don't Sell Your Surface Rights In Horizontal Drilling Country!

You might someday be able to own the minerals under you!

Under the 2018 Cotenancy statute and even over an older statute, surface owners can end up getting royalties and owning an interest in the oil and gas minerals under their surface tract!

Many times the ownership of a single mineral tract has fallen into heirship for so many generations that dozens of people own a very small share of the one tract. There are so many heirs that some of the heirs are now unlocatable or even unknown. Under two different statutes, if the rightful oil and gas owner heir does not come forward for seven years, then the owner of the surface tract or tracts above the mineral tract can take action so they end up owning the unlocatable or unknown owner's interest in the minerals under their land! Under both statutes the surface owner can start getting future royalties, and under one statute, maybe even get the signing bonus and accumulated royalties.

If you are a surface owner, and someone suddenly wants to buy your land — do your research first! That buyer may want to buy your land cheaply because they have knowledge you do not have! They may know that the surface owner of your tract could end up owning a profitable interest in the underlying minerals. If there is horizontal drilling going on near you, find out of they are drilling under or near your land before you sell. Maybe you should not sell and maybe you should get a lot more if you do!

Advice to Mineral Owners: Selling Your Rights

We believe mineral owners should retain their rights, rather than letting others reap profits. Often the first question someone asks us is, "**How much should I sell for?**" We think that is the wrong first question. The first question you should ask is, "**Should I sell at all?**" And the answer is almost always "No". If you have a dread disease or if you are way up in years, and if you have a bucket list of things you want to do that you may not otherwise be able to afford to do before it is too late, then maybe you should consider selling. Otherwise, it is a bad idea." Companies or individuals looking to buy the mineral rights do so because they know they can turn around and sell it, or more likely, lease it to a gas company, for a profit – often a big profit.

We have heard of land being sold, and within weeks the buyer leases it to a driller for a signing bonus of twice the cost per acre they paid to buy it, and the buyer keeps the right to receive a royalty that is more valuable than the up-front payment per acre. That is a lot of money the landowner has given away.

One exception may be if your interest is very, very small. For example, if you and 25 second cousins twice removed jointly own a four-acre tract, your share or interest is 0.16 "net acres". If your interest is that small you may want to sell and be done with it. Or you might want to give it to the surface owner, or donate it to a charity. WVSORO can help with that.

Leasing: We recommend waiting until the driller comes to you. It's better to seem uninterested and hard to get, because contacting the driller first sends a bad message that you are anxious to sign a lease, so they will think they will not have to pay you as much as they would otherwise.

Large Leases: If you are interested in leasing, get together with your neighbors and put together several hundred acres and look and bargain together.

Drillers are much more interested in leasing large tracts of several hundred acres – up to 600 or 1200 acres.

Selling: Think hard before selling. Don't think like a poor West Virginian, think like a rich Texan. Minerals should be valued at what they are worth to the buyer, not the seller. Do not sell for what the mineral interest was worth to you before they showed up, sell for what it will be worth to them.

Contact us or a knowledgeable lawyer or agent before you sell.

UPDATE: CROWDER & WENTZ V. EQT PRODUCTION CASE

WV-SORO cofounder Dave McMahon recently argued in the *Crowder & Went v. EQT Production* case in front of the WV Supreme Court related to a potentially precedent setting case that could determine whether drillers can use surface owners' land to drill horizontal wells into neighboring mineral tracts without the surface owners' consent. In 2017, we had a huge victory in the case when Circuit Court Judge Timothy Sweeney, who presides over cases in Doddridge, Ritchie and Pleasants counties, ruled that the right to do what was "reasonably necessary" did not include the authority to use the a surface owners land to develop neighboring mineral tracts. So that is for now the law in those counties.

Later, a jury in the same case (*Crowder & Wentz v. EQT Production Company*) returned a verdict in favor of the surface owners, and awarded them $190,000 in damages because EQT constructed a well pad on their property without their permission in order to drill horizontally to develop neighboring mineral tracts.

As this goes to print, Judge Sweeney's decision was appealed to the West Virginia Supreme Court, which heard oral arguments in the case in March. **A decision is expected by June** and WV-SORO hopes that the Court will finally rule in our favor for the whole State.

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

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