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The West Virginia Legislature needs to enact legislation To plug existing orphaned, unplugged oil and gas wells, AND To enact legislation to prevent more wells from being orphaned!

October 9, 2019 Version

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BACKGROUND

Introduction.

The problem of orphaned wells is one of the most, if not the most, widespread property rights and pollution problems facing West Virginia landowners. In the 2019 legislative session three bills that would have put a small dent in plugging existing orphaned wells almost passed into law. A fourth bill to prevent future orphaned wells went nowhere. This document will explain the problem and what legislation is needed to plug current orphaned wells and prevent future orphaned wells.

What is "plugging"?

Plugging is not "capping". To plug a well, the driller has to pull out the thousands of feet of the metal pipe casing that is not cemented into the bore hole, and then fill the borehole and with clay and with cement "bridges" at certain depths to seal off the most concerning formations.

Why does a well need plugged?

When a gas (or oil) well has reached the end of its productive life it needs to be plugged. If not the metal casing WILL eventually go bad and CAN (though not always) cause problems. Unhealthy surface water can work its way down an unplugged well to the groundwater that people in rural West Virginia use for water wells. (Examples of unhealthy surface water include rain water from cow pastures with bacteria from manure and include water from septic tank leach fields.) Also iron and salt water from deeper formations can mix with good ground water and contaminate it. Worst of all, the oil and gas and brine water from the wells' target formation can leak out onto the ground and into the air and again into groundwater. It is also possible for gas or pollution from new drilling to find its way to an unplugged well and cause those and other problems.

When does a well need plugged?

Unfortunately the West Virginia Code only requires as well to be plugged if it has not produced any gas at all for a whole year (unless it has a registered bona fide future use). We will call that an "unplugged" well. (Really though it ought to be plugged before that. It ought to be plugged when a well is no longer producing enough gas in "paying quantities" to pay for the cost of producing that gas, let alone producing enough gas to build up the money necessary to plug it. Failure to do so at this point prejudices mineral owners – see below.)

What about well providing free/house gas?

What is often called "free gas" is the right of a surface owner to hook a gas line onto the wellhead of a gas well and use gas from the well to heat their home and for heating and other appliances in a residence. Often times drillers agreed to give "free gas" to homeowners when a lease was signed to produce the gas from under the surface property. Though this free gas has its own set of headaches, it is generally seen as a huge benefit to a home owner. West Virginia law delays the requirement for plugging wells when they are providing free gas.

WVSORO supports continuing to allow a well providing free gas to be unplugged as long as the well is not actually causing pollution.

How many unplugged wells are there in West Virginia?

Thousands upon thousands of wells are not producing in paying quantities. Over 12,000 unplugged wells have not produced any gas *at all* in at least the last year. (The statute calls these wells "abandoned" wells but that is a misnomer as explained below so we will use the term "unplugged".)

Why are these wells unplugged?

Drillers do not like to plug wells. For one thing, they like to try to use unplugged wells to argue that the old lease is still in effect so they don't have to get new leases and pay new signing bonuses and new modern royalties if they drill a new Marcellus etc. well.

Also it is expensive to plug a well. To plug a well costs anywhere from $10,000 to $65,000 and up depending on the age and condition of the well. And by the time it needs plugged, the well is not making nearly enough money to play to plug it (or even pay the cost of operating it), and very few drillers have not already spent the money that should have been saved to plug it.

Lastly, current West Virginia laws and rules have utterly failed. More on that later.

What is an "orphaned" well?

What is often termed an "orphaned" well is a well that has been unplugged for so long that the most recent owner has gone out of business. Frequently this happens when the original drillers who might have money from the production from drilling newer wells to plug their older wells do not do that. Instead, they transfer the wells to drillers who do not have money to plug the wells and who will only milk them for a while and then go out of business leaving the well orphaned.

How many orphaned wells are on the surface lands of West Virginia Citizens?

West Virginia currently has more than 4,500 orphaned wells!

How many orphaned wells will there be in the future?

The West Virginia Surface Owner's Rights Organization estimates that one company, Diversified, based on public disclosures to its British stockholders, will have another 10,000 orphaned wells by the year 2048.

Why haven't West Virginia statutes stopped this crisis from happening?

The statutes only require the driller to post a performance bond. Unfortunately the statutes allow drillers to post one "blanket" bond covering all of its wells. For conventional vertical wells the statutory amount of the "blanket" bond is only $50,000. For drillers with large numbers of conventional wells, that works out to less than $50 for each well, and each well costs more than $10,000 each to plug. So if the West Virginia DEP forfeits the bond it does not do much good.

Also, the state statutes allow a company to get out of all responsibility for plugging a well by transferring the well to another company, even if the well is being transferred from a company that can afford to plug the well to a company that will not have the ability to plug the well.

HOW THE WEST VIRGINIA LEGISLATURE CAN TAKE STEPS TO FIX THE ORPHANED WELL DISASTER.

The West Virginia Legislature needs to enact legislation to prevent more wells from being orphaned AND to enact legislation to plug existing orphaned, unplugged oil and gas wells (unless they are providing free gas or the current owner does not want them plugged now).

Legislation needs passed to stop the current situation from getting worse!

Finding money to plug current orphaned wells is a good idea, but it is like pouring water in a bucket with a hole in it unless legislation is passed to stop the creation of future orphaned wells. It does little good to just enact legislation to generate funds to plug current orphaned wells.

The 2020 West Virginia Legislature should pass laws to somehow prevent more unplugged and orphaned wells. This will not be easy because it will require drillers to put money away or do something more expensive or different from the current standard operating procedure.

ONE IDEA is the Legislature could prevent future orphaned wells by requiring plugging money to be placed in escrow early in the life of the wells while the wells are still producing lots of gas or oil.

OR all drillers could be required to put a certain amount of money to be "set aside" in the treasurer's for plugging future wells.

OR the Legislature could drastically increase the bonding requirements. Bonding requirements are the old solution and it should still be considered, but it is possible that bonding companies will make it very expensive to have the bond if the bond sellers understand the issue.

OR the industry and the Legislature could come up with other creative ways to solve the problem, but anything else has to be shown to work by professionals in accounting and gas and oil production.

ALSO the Legislature needs to change the laws on transferring ownership of wells. Right now the wells can be transferred to a new owner/operator as long as the new owner/operator has the $50,000 blanket bond that we have already shown is ridiculously too low to result in the plugging of the wells. Any complaints that additional requirements are too restrictive or onerous should be met by the statement, "How is the current system working?" WVSORO now has documentation sent to the investors of one company that the company is buying up wells and that those wells of the company will only be "economical" until the year 2048. And its other disclosures say that its plugging plans will leave 50,000 wells across Appalachia unplugged in that year -- and if those wells are not economical enough to just produce themselves, then they certainly cannot pay to save money to plug themselves.

Just what new requirements for transfer should be passed are subject to negotiation. One option is to require the original driller to still be responsible for plugging a well even after they transfer ownership of the well if the new owner does not plug it. Another is to require realistic single well bonds for each well. Another is to require an escrow for plugging money for the well.

Legislation needs passed to generate funds to plug current and future orphaned wells.

In addition, the 2020 Legislature should pass statutes that put money into the State's fund for plugging orphaned wells. That fund currently only gets enough money from permit fees etc. to plug 5 or 10 wells a year -- in 2018, only 1 was plugged! The legislation to provide funding for plugging wells includes:

The IOGA severance tax/well plugging bill.

This is a bill pushed by the Independent Oil and Gas Association (mostly smaller drillers and service companies) that gives a severance tax break to producers of low producing older conventional wells, many of which are heading to being unplugged, and then using half of that tax break to plug orphaned wells. This would be similar to the 2019 Legislature's H.B. 2673 that passed the Legislature, but was vetoed by the Governor. That bill might have plugged 50 wells a year.

Some people do not think that the driller's who have been so irresponsible should be given a tax break, but the reality is that piggy backing on the driller's tax break bill, which the drillers have agreed to, will increase the changes of getting more wells plugged.

The WVONGA expedited permit bill.

This is a bill pushed by the West Virginia Oil and Natural Gas Association (the organization of the larger drillers who are drilling most all of the horizontal wells in the Marcellus, the Utica, etc.) that would allow drillers to pay extra money to the DEP for it to do a faster "expedited" review of drilling permit applications and give half of that extra money to plug orphaned wells. That would be similar to the 2019 Legislature's SB 665 that died the last night of the session because a few drillers wanted a lower the cost of the expedited permit review. That bill might also have plugged 50 wells a year.

Some people say they are against all "fracking" that supporting expedited permit legislation will encourage drilling. The WVSORO position has always been that we are not against all horizontal drilling, but these new wells generation enough money to do it right from an environmental point of view and to reimburse surface owners for the value of the use of their land to the driller, not what the land used to be worth for the use by the surface owner/farmer. (One horizontal well generates 60 times the gas of a conventional vertical well. One horizontal well pad generates 1/3rd of a Billion dollars worth of gas over 30 years, and wells on 60 new well pads were permitted in a recent year.) And again piggybacking on the driller's expedited permit bill, which the drillers have agreed to, will increase the changes of getting more wells plugged

The WVSORO missing and unknown mineral owners royalty bill.

This is a bill that would be a compromise version of the 2019 Legislature's H.B. 2779 that died on the last night of the session. That bill might have plugged 200 wells the first year or two and 30 wells a year after that. That bill did two things which should not be confused.

FIRST, right now money is being held in Circuit Clerks' offices that is due to missing and unknown mineral owners in PARTITION CASES. As far as we can tell that money just sits there forever. The 2019 WVSORO bill provided that if the missing and unknown mineral owners did not show up in 7 years (the same as the laws for presumption of death in West Virginia), the money would go to plugging orphaned wells.

ALSO, right now the Circuit Clerks' offices also have money from MISSING LESSOR CASES. These missing lessor cases ARE brought pursuant to a statute which allows the judge to authorize leases to be signed on behalf of missing and unknown mineral owners. In those missing lessor cases, right now, the law provides that after 7 years, if the mineral owner does not show up and claim their royalties, the title to the minerals plus the past and future royalties go to the surface owners. WVSORO's 2019 Legislature's H.B. 2779 would have continued to give title to the minerals and all future royalties to the surface owner, but it would have given the first 7 years worth of royalties to plug orphaned wells.

WVSORO's 2019 bill was ambushed and killed the last night of the session by the lobbying of some surface owners and by some other people who are sneaking around buying surface land from unsuspecting surface owners whose land was going to get these royalties and mineral rights some day.

WVSORO intends to introduce a compromise bill to be passed by the 2020 Legislature that would continue, after 7 years, to give title to the minerals to the surface owner, and continue to give all future royalties to the surface owner, but the compromise would give one half of the first 7 years' royalties to the plugging fund ONLY IF the surface owner had no pads or roads on their surface and was only someone who only had horizontal well bores underneath their surface. A surface owner who had a well pad or toad etc. on them would still get all of the first 7 years' royalties plus title and all future royalties. But with horizontal drilling, many surface owners have no damages on them. And since they did not own the minerals, the royalties would be an unexpected windfall compensating them for nothing. So it is fair for half of the first 7 years' worth of royalties it to go to help the thousands of other surface owners who still also have the burden of orphaned wells on their land.

1% plugging fee bill.

This is a bill that has been suggested by others and would be supported by WVSORO. The bill would put a 1% fee on gas produced by the new horizontal wells and us that money to plug orphaned wells. Not surprisingly, that this is the solution favored by some conventional drillers. The horizontal drillers say that would not be fair because they did not create the problem with the conventional orphaned wells. Our response is to ask the horizontal well drillers what money they are putting in escrow now to plug their horizontal wells --if they are not doing so, then they are part of the problem; they are just defining the problem too narrowly.

Such a bill could be the solution. If all three of the first three bills above were to pass, and if the rough estimates are correct, then it would still take 32 years to plug just the existing 4,500 orphaned wells. And as explained above, there are thousands more to come. And the fee could be triggered to go lower if actuarial studies can show how much money is expected to plug how many wells and perhaps adjust the fee rate if the drillers ever catch up on plugging the existing orphaned wells plus their unplugged wells plus their wells that are no long producing in paying quantities. Any bill must be carefully drafted to make sure it is not a loophole for companies who can afford to plug their wells to get out of the responsibility of plugging wells.

What if the current surface owner does not want a well plugged?

What if the current surface owner where an orphaned well is located does not want the well on their land to be plugged. First of all, if a well is supplying free gas and not causing pollution, then we said elsewhere that a well supply free gas should not be required to be plugged. But plugging a well does cause at least a temporary mess. A rig has to come in to pull out old pipe and equipment is needed to put clay and cement down the well bore. At the end, the driller has to "reclaim" the mess caused by plugging by sowing grass, fixing the well road etc. Plugging does not cause nearly the mess and other disturbance that drilling a well does, but still there can be at least a temporary mess.

There are thousands and thousands of unplugged wells that need plugged where the surface owner wants it done. So WVSORO does not object to the current owner begin able to waive the plugging requirement -- so long as it is not causing pollution. However, this wavier should only stay in effect while that surface owner owns the land. When the surface owner that signs the waiver sells the land or dies, the well should go back on the priority list. The driller should not be able to pay the current surface owner a fraction of what it would cost the driller to plug the well to agree to a wavier and avoid plugging the well and causing all future generations of surface owners to be stuck with a well that they do not want on their land -- one that may be polluting. A future surface owner should be able to get the well back on the plugging list if they are worried it might someday cause pollution or if they think its existence is devaluing their land.

CONCLUSION

Orphaned wells are the most widespread property rights and pollution problem in West Virginia. The Legislature needs to act and pass bills to plug current orphaned wells plus legislation to prevent future orphaned wells.