

SURFACE OWNERS' NEWS

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



Holiday decorations hide orphaned well in yard

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SURFACE OWNERS CAN BE PAID WHAT THEIR LAND IS WORTH TO THE DRILLER-- OR THEY CAN JUST SAY NO

The WV Supreme Court said that drillers do not have the right to use our surface to drill horizontally into neighboring mineral tracts, even if we do not own the minerals under us, unless the drillers get our permission.

It's been a year and a half since the Crowder West Virginia Supreme Court decision and we are concerned that surface owners are not taking enough advantage of their rights.

Some things don't have a price, but when it comes to compensation West Virginians need to think like rich Texans. We are afraid that surface owners are still uninformed or intimidated by drillers, and that they are not getting paid what they should for the use of their land for well pads etc. -- or not just saying "no" if they like their land the way it is better than being paid handsomely.



A horizontal well pad in action.

If you do not want a well pad or other surface use on you for horizontal drilling you can now say "No" in almost all situations. (If you want to know the exceptions, look on our web page at the second link under "Useful Information," or just call us. But assume you can say "no".)

If you would allow surface use on your land as long as you got the right surface and environmental protections and for the right money, we have a web page that talks about "The Provisions Needed by Surface Owners in Surface Use Agreements." (After you click on the second link under Useful Information," go down to the fifth paragraph and click the link to "The Provisions . . .".)

When the 2011 Horizontal Well Act passed the Legislature we did not get the surface protections we needed and asked for from noise and lights etc. Instead the Legislature had WVU do studies to see if we needed protections and what they should be. WVU said we needed more protections, as did the DEP -- but the Legislature never implemented them. So you have to stand up for yourself and demand the WVU recommended protections when you enter into the surface use agreement with the driller.

The drillers can afford them, and the Crowder case gives you the leverage to insist on them. (We do think you need the help of a lawyer to be sure you get it right, and the money to pay the lawyer will come out of the money you get.)

If you agree to surface use, how much money should you get?

The driller will have a bunch of arguments for why you should let them put the well pad on you and for only the amount they want to pay you. They are professional persuaders. Be polite, but insistent on what you want. This is business.

Take the following scenario for example:

If Exxon wanted to buy your pasture next to a highway for a gas station, should they pay you what your pasture is worth to you or should Exxon pay you what having the use of your land is worth to them? One horizontal well pad will probably generate 1/3 of a Billion dollars worth of gas....that was a "B".

Should you get 1% of the value of the gas over 30 years? Mineral owners' royalties varied from 14% to 18% and you getting 1% that some mineral owners got and others did not is not unreasonable as a surface owner.

Or should you as the surface owner of one pad get just 10% of the amount of signing bonuses the drillers paid to get the mineral owners to sign leases for wells drilled from one pad? Or should you get just 1% of the others' cost to the driller to drill the wells?

Using that first "1% of the value of the gas" comparison, you should get \$3 Million paid out over time (or \$1.7 Million up front).

Start negotiations there! An amount equal to 10% of the signing bonuses paid to mineral owners would be \$640,000. Or instead, what about 1% of the other costs of drilling the wells on your land as the size of the payment to you for the use of your land? That would also be \$640,000. All of this is further explained on our website, or give us a call.

Read more at wvsoro.org for ways to debunk their arguments in which they will state that they will just move the pad to somewhere cheaper, or that you are depriving you mineral owner neighbors of money etc. You have negotiating power and we are here to help you take advantage of it.

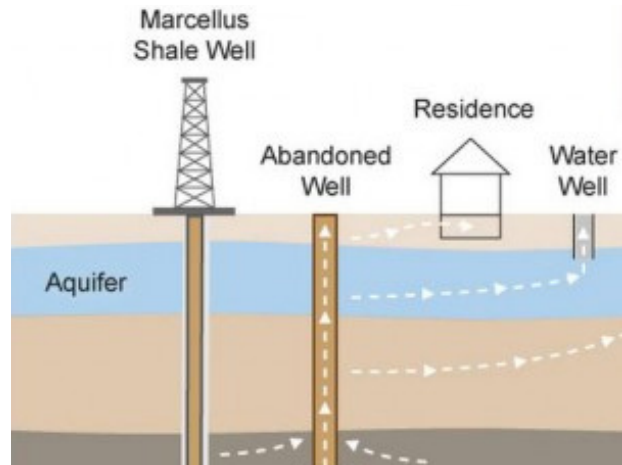
THE LEGISLATURE NEEDS TO FULLY FUND THE DEP'S OFFICE OF OIL AND GAS

The Office of Oil and Gas (OOG) has always been understaffed. Last year they had 18 inspectors for 65,000 wells. That is 1 inspector for every 3,600 wells. No wonder there are 8,000 wells that still have bonded operators that are required to already be plugged by them but are not plugged. No wonder there are 4,500 orphaned wells that the State delayed making the operator plug them for so long that the operator/driller has gone out of business. This summer, OOG's total staff of 40 was cut back to only 25 positions! One inspector now covers 11 counties!

Here is why that happened and what needs to be done about it immediately:

Nearly all of OOG's funding comes from one-time fees from drillers for permits to drill new wells. New Marcellus shale wells produce 60 times the gas of a single old, conventional, vertical well.

There are fewer wells being permitted than ever in our history. Industry has over-drilled horizontal wells. And then comes the pandemic. So the OOG's funding has fallen off a cliff. It's an office that requires a permanent revenue stream, but is at the whim of permitting funds. We are not saying that funding the DEP with fees on the industries it oversees is the best public policy, but that is how it has always been done for all industries here in West Virginia.



One way abandoned wells pollute

The current funding system works worst for oversight of the DEP's most cyclical industry, oil and gas. The DEP programs for NPDES water permits, and for air permits get a chunk of federal funding. The OOG does not get any federal money.

Those water and air permits require an annual fee paid every year to the DEP. But Oil and gas drillers only pay the OOG one up-front fee one year. No wonder the OOG has always been understaffed.

The DEP needs to do its oversight of oil and gas wells not only when they are drilled, but for the life of the wells -- and that can be decades and decades. So the operator of a well should pay each year a mere \$100 per year oversight fee for each well the driller "operates" in order to fund the OOG properly and increase staffing, not just backfill this year's staffing cuts. If a well does not produce enough to cover that small amount, the old lease is over because the well is no longer "producing in paying quantities" and the well should be plugged to make that clear so the mineral owners can sign a new, better lease.

Donate to WV-SORO to sustain our work with surface owners in West Virginia! See the back of this newsletter for more information.

WVSORO HAS BEEN WORKING FOR FEDERAL STIMULUS MONEY TO PLUG WELLS

Despite our wins and efforts (details on page 5), we expect one company, Diversified, to have 10,000 more wells it cannot afford to plug that should be plugged in the next 15 years.

One way to put laid-off oil and gas workers and pipeline workers back to work and stimulate the economy is to put those workers to work plugging wells. Fortunately WVSORO has been able to work with The Western Organization of Resource Councils, with the Interstate Oil and Gas Compact Commission and with the Environmental Defense Fund to try to get Congress to put money to plug orphaned oil and gas wells into the next stimulus package.

We have had lots of communications with these organizations and made suggestions for the federal legislation based on our long experience with the issue and the failure of statutory bonding, particularly blanket bonding. We have suggested language from the orphaned well prevention legislation we have introduced in West Virginia.



Monument left after well is plugged.

We have had Senator Capito talk to us in person. We have had conversations with Senator Manchin's personal staff and with the staff of the Senate committee that would get the bill where he is the ranking minority member. As this newsletter goes to print we do not know what will happen. If you have followed the stimulus news you know a stimulus package has been a political hot potato. We have thought one would pass and the money was in it. Then another might pass and the money was not in it. Last we heard we still have a chance.

Keep up to date with Surface Owners' News by visiting our website, www.wvsoro.org

CONNECT WITH WV SORO VIA EMAIL FOR NEWS ALERTS

We explained and celebrated our success in getting plugging money bills passed in our spring newsletter that, however due to Covid, was only emailed. We do not have email addresses for a large number of our members, so we are again looking back and explaining our success in this winter hard copy of our newsletter! To sign up for alerts, particularly during the upcoming Legislative session, send us an email at info@wvsoro.org so we can add you to our email list.

WVSORO HELPS MINERAL OWNERS SUED FOR PARTITION

If you are sued for partition of your ownership interest in a mineral tract, or if you are just threatened with such a lawsuit to try to get you to sign a lease or to sign a lease with terms that you do not want, do not be alarmed. You should know that the West Virginia Supreme Court has made a decision which we believe says that minerals are not subject to partition.

Drillers used to have to get the signatures on a lease by each and every one of the co-owners/co-tenants/co-parceners of a mineral tract before they could drill it (or frac' into it). When they could not, they filed partition suits to force a buyout of holdout mineral owners' interests. After the 2018 Co-tenancy statute they only need 75% now.

Sometimes however, drillers are still using "partition" lawsuits where the driller buys out one co-owner and brings a lawsuit to have the holdouts' ownership interests sold to the driller or at a public sale! The holdouts do get some money up front, but not future royalty payments and not as much total money. We recommend fighting partition suits even if just to get the leverage to get a lease or amendment with good, modern royalties and other terms.



Marion County Courthouse

You can file an answer contesting a partition suit on your own ("pro se" in court talk). But this is probably a situation where, if you get served with one of these suits, you need to talk to a lawyer. Few lawyers are expert in this kind of thing. Our co-founder lawyer has drafted a sample answer to a partition law suit that can be used to fight a partition suit filed in Circuit Court that attempts to take a mineral owner's interest in their land from them. It is a very good idea to talk to a lawyer about this if you do get court papers for a partition of your property. But this sample is a place for you, and your lawyer, to start. It is on our web site on the right under "Advice for Common Situations", and then the bullet "Partition Suits and Threats Thereof". So we suggest that you show this sample to the lawyer you pick. Also we have some lawyers listed on our website who know something about this area.

Our sample answer to a partition suit gives a thorough set of legal arguments.

Some are based on actual Circuit Court and even W. Va. Supreme Court opinions, and some just arguing for defenses and other legal contentions that are warranted by existing law or by a non-frivolous argument for extending, modifying, existing law or for establishing new law for partition of mineral tracts.

In particular it sets up statutory defenses to allotment, points out an existing West Virginia Supreme Court case that upholds dismissal of suits for partition of mineral interests, sets out how "fair market value" of minerals as required by the statute cannot be established and why courthouse steps sales do not establish fair market values. It also sets out why the term "conjointly" in an existing lease does not establish a right to pool, and why there is no implied covenant to pool in an old lease.

LOOKING BACK AT THE 2020 WV LEGISLATIVE SESSION FOR SURFACE OWNERS RIGHTS

Three of the bills passed in 2020 will generate significant money for the DEP to use in plugging orphaned wells.

H.B. 4091 allows drillers to get permits processed within 45 days if they pay an extra \$20,000 permit application fee for the first well on a pad, and \$10,000 extra for subsequent wells on the same pad (and \$5,000 for a modification of an application). Because of our advocacy on the orphaned well issue, half of the money from these fees goes to plug orphaned wells!

The second plugging money bill is H.B. 4090. The conventional well operators are having a tough time since the horizontal shale well tsunami hit. They are not drilling new wells and their existing wells naturally produce less each year. They initially wanted a bill passed to eliminate the 5% severance tax on their "low producing" wells. Because of our advocacy, the bill reduces the severance tax on gas wells producing less than 60 MCF a day to 2.5% but dedicates all of that (except a little that goes to counties) to plugging orphaned wells. It is estimated this could generate enough money to plug 40 or 50 wells a year once it gets going, but fewer over time as production from these wells decreases.

H.B. 4088, our drafted bill, frees up a lot of money for plugging orphaned wells. There is money being held in the Circuit Clerk's offices for missing and unknown royalty owners from partition suits and from missing/unknown mineral owner lease suits. In the case of the partition suits, the money would just have sat there forever. Now after seven years the money will go to plug orphaned wells.

Before the bill passed, the first seven years of that royalty money will now go to plug orphaned wells, including money that has already been held for seven years.

After that, as was the case before, title to the minerals and all future royalties goes to the surface owner! (We asked the Legislature to give the surface owners with well pads etc. on them all the money and to give half the first seven years' money to surface owners with undisturbed lands above horizontal well bores. We did that as a result of a poll we took of our members.) H.B. 4088 could be enough money to plug 100 or 200 wells in the first couple years!

LOOKING AHEAD: 2021 LEGISLATIVE PRIORITIES

Legislation to have the property rights of surface owners recognized, to increase their chances of owning some of the minerals under them, and to deal with thousands and thousands of orphaned wells and other environmental problems, will continue to be WV-SORO's legislative priorities for 2020.

We will also be active opposing legislation the industry introduces (out of its sense of entitlement) which will harm the interests of surface owners (including some fortunate few of whom are also small mineral interest owners).

Some think that the recent election results will hurt our chances on those fronts. We disagree. WVSORO has always tried to be non-partisan. Rural Republican legislators have generally been supporters of our positions. Our issues are in essence property rights issues favored by many of those just elected.

See the next page for a bulleted list of our five main priorities. We'll also be actively paying attention to legislation that may threaten your rights as a surface owner.

Be ready to contact your legislators during the upcoming session! They need to hear from you. Sign up for our email list at www.wvsoro.org for Legislative Alerts

2021 WVSORO LEGISLATIVE PRIORITIES

Fully Fund the Office of Oil and Gas: In 2020 staff was cut from 40 to 25. Require industry to pay \$100 per well to fund the OOG. There is now only one inspector for every 5,000 wells.

Orphaned Well Prevention: Prevent Thousands and Thousands More Wells from Becoming Orphaned.

Protect Surface Owners: Implement the Recommendations of the WVU Studies Required by the 2011 Horizontal Well Act.

Land Reunion: Let Surface Owners Step into the Shoes of the High Bidder If an Interest In Their Minerals Is Sold at a Tax Sale.

Pipelines: Require Compensation Paid to Landowners in Eminent Domain Proceedings for Pipelines to Be Based on Its Value/Worth to the Pipeline Company.

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Orphaned wells like the one hidden in the Christmas yard display below still sit in citizens' yards and threaten their groundwater.



Older conventional well at left (see arrow) compared to horizontal shale well pad