

SURFACE OWNERS' NEWS

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

VOL. 14, 2022

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Dear SORO:

We sincerely appreciate all the help you gave us & Attorney Mr. Mahon contacted us & we really & truly think you all are a wonderful group of human beings for how you go out of your way to help us with our gas/oil problems.

Enclosed please find a contribution of 100\$ & we will try every way to get you to spend your money.

Thank you again

SOME ORPHANED WELLS ARE STARTING TO GET PLUGGED, BUT WE NEED ORPHANED WELL PREVENTION LEGISLATION

State money for plugging

For many years the State of West Virginia has only had the money to plug maybe three orphaned wells a year. Legislation that WV SORO helped get passed in 2018 has now started putting money into the DEP orphaned well plugging fund! It is expected that 21 wells will be under contract to be plugged by the end of the calendar year and a total of 36 by the end of the fiscal year using that money! Thanks to all of you who contacted legislators on those bills back in 2018.

The state legislation will continue providing funds for many, many years of orphaned well plugging for many years to come. However, those funds are dwarfed in the shorter term by federal money from the Bipartisan Infrastructure Law.

Federal money for plugging

The federal Bipartisan Infrastructure Law provides for three successive bundles of money to plug orphaned wells. The first bundle gave \$25 million to every state with an orphaned well problem

-- a total of \$650 million. So West Virginia is receiving \$25 million to plug wells.

The difficulty with this first bunch of money is that Congress, in order to get the money into the economy to quickly stave off a recession during the height of the pandemic, required the money to be spent ("obligated" really) within one year. West Virginia had very little agency structure in place to spend the money that quickly. So the State contracted out not just the physical plugging work, but

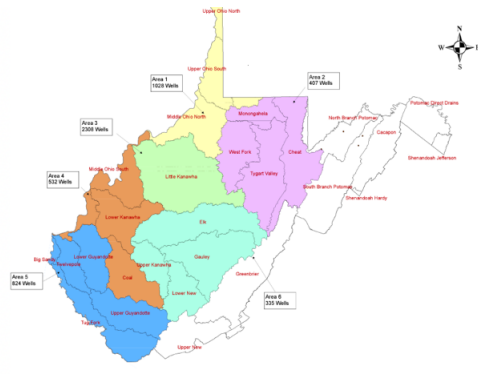
some of the earlier work usually done by the State. For example the contractors, instead of the State, get to choose which wells to plug. While they have to pick at least 25% from the State's high priority list, they can pick others that are quick and easy to plug. The contractors also are doing the research on who owns the wells and even oversee compliance with the requirements for proper well plugging. (See the slide show on our website about how a well is plugged, not "capped,"

The third bunch of money is called Performance Grants, and one factor in dividing that money will be the efforts States have made to prevent wells from being "orphaned" without being plugged in the first place. WV SORO is very proud, and very thankful to Senator Manchin, for moving the date to start considering states' efforts back to include the bills that WV SORO got passed in 2018 and the wells that will be plugged using state funding. However . . .

Orphaned Well Prevention Act

will instead require the drillers to put money to plug the wells into the State Treasury at the beginning of the productive life of new wells...

Area	Orphaned Wells	Contract Wells
1	1028	40
2	407	20
3	2308	40
4	532	20
5	824	20
6	335	20



how a well is plugged properly and why that's important, and how it is easy for a plugger to cheat.) The worst thing about this contract arrangement is that the pluggers can have their own compliance officers instead of state inspectors overseeing the work and making sure it is done right. We will be working to try to fix that with the next bundle of money.

However, it is good to report that, for this first bundle of money, West Virginia has divided the State into six regions and has or will award contracts to companies in those regions to plug 200 orphaned wells. Below is a map of those regions from a report on the process prepared by the Ohio River Valley Institute. The full report can be found at <https://ohiorivervalleyinstitute.org/first-tranche-of-federal-orphan-well-funds-out-the-door/>.

The second bunch of money, called Formula Grants, is \$2 billion. That will have a longer time frame and the money will be divided among the states according to the number of orphaned wells they have. West Virginia should do well there!

Orphaned Well Prevention Act

. . . West Virginia already has 6,500 orphaned wells. The tsunami of horizontally drilled Marcellus (and other formations) shale wells has very adversely affected the traditional, small operators of conventional, vertical, sand formation wells. We expect many of them to go out of business leaving many more orphaned wells. In addition to that, many of the larger companies that traditionally drilled conventional vertical sand formation wells, but now drill only horizontal shale formation wells, are



transferring those older wells and their plugging liability to Diversified Gas and Oil and its subsidiaries. Diversified has disclosed to its stockholders on a stock exchange in Great Britain that by 2050 their wells will no longer be profitable and they will have 50,000 wells unplugged across Appalachia -- and probably 10,000 in West Virginia.

So West Virginia needs to do more to prevent orphaned wells. We have had our Orphaned Well Prevention Act introduced for several years in the Legislature. It needs to get passed in order to draw down a larger portion of the Performance Grant funds. Even more importantly it needs to be passed so we stop pouring public money into a bucket with a hole in the bottom.

Bonding has never worked to prevent orphaned wells. Bonding companies are too smart to sell operators bonds that will cover the full cost of all of their wells because they know the lengths that well operators will go to avoid paying



to plug wells -- and the bonding companies do not want to have to pay out when the drillers do not.

So the Orphaned Well Prevention Act will instead require the drillers to put money to plug the wells into the State Treasury at the

beginning of the productive life of new wells when there is the cash flow to provide the money. And it will require money into the State Treasury when existing wells get transferred between well operators/dillers. The Act requires a smaller

set aside for existing wells that are producing in paying quantities. And there are other helpful provisions. So stay tuned for actions you can take to help us get this bill passed during the upcoming legislative session. §

EPA SHOULD USE INFLATION REDUCTION ACT MONEY TO FIND FUGITIVE METHANE

This article is not about the earlier Bipartisan Infrastructure Act money, which provided funding to help plug some of the 6,500+ "orphaned" wells in West Virginia. This article is about the chance to spend wisely the \$850,000 included in the newer Inflation Reduction Act's amendment to the Clean Air Act. The IRA's amendment to the Act added a new Section 136. "Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems." WV SORO's concern is that the money will be given to irresponsible well operators to plug their non-producing "abandoned" wells. (See Subsection (a)(3)(D)). (Some would call that "socializing" the oil and gas industry.) These operators should be plugging their non-producing wells with the money they are making on their producing wells!

Instead, the Inflation Reduction Act money should be used to make a real difference in reducing fugitive

methane emissions from working and unplugged/abandoned wells and from gathering pipelines in order, ". . . to reduce methane and other greenhouse gas emissions from petroleum and natural gas systems, [and] mitigate legacy air pollution from petroleum and natural gas systems . . ." (See Sub-section (a)(3)).

To do that, the EPA should focus on making grants available to entities that would test existing wells and natural gas systems, including pipelines, for methane leaks. Those leaks would be reported to the DEP for enforcement action. A Princeton and McGill University study, as well as local reports, indicate that in many cases leaks at gas wells can be fixed using just a wrench, but no one is checking them due to the DEP's lack of inspectors. (See *Inspectors article* below for more on that!)

To the extent federal money is used to help well operators plug wells it should go to the small

businesses, the family owned gas well operators, who are being hammered by declining well production and by competition from more productive Marcellus and other shale gas wells. These smaller entities are least likely to be able to plug their "abandoned" wells. The worry is that, instead, a company like Diversified, which at least tells its stockholders that it is making money, will be the company to have the sophistication to get the new federal money. Diversified says on its web site for investors that it engages in "Low-cost, profitable production providing steady revenue generation."

WVSORO has met with the regional EPA to ask it to make sure that applications for grants of this money allows for fugitive methane detection and not (or at least not just) for helping existing drillers plug their own wells. And we will try to make possible methane detection entities aware of and successful at obtaining these grants. §

ONE OIL AND GAS INSPECTOR FOR EVERY 8,000 WELLS, PLUS . . .

In 2020, the DEP only had one inspector for every 4,000 oil and gas wells in the State – 18 inspectors for 75,000 wells. No wonder a 2018 study of 79 active gas wells in 13 counties done by Princeton and McGill University scientists found that 53% were leaking methane into the atmosphere at an average rate of nine cubic feet an hour. This is wasteful, results in reduced payments to royalty owners, lost severance tax revenue for the state, not to mention, it actually stinks, —

and causes climate change!

What did the Legislature do in response to this? It CUT the 2020 and 2021 budgets for employing inspectors. So now there are only nine inspectors for 75,000 wells — one for every 8,000 — plus 20,000 associated tanks, 15 active drilling rigs and the applications for permits to use those rigs, and now six contractors plugging orphaned wells.

We are not making this up! During the 2022 session, there was

a bill to get back to one inspector for every 4,000 wells. It would have placed a fee of \$100 on active wells grossing at least \$10,000 a year. The industry opposed this as "onerous". (We did not make that up either.)

Because the industry opposed the \$100 fee on wells grossing \$10,000 or more a year, the Legislature did not pass the bill. The Legislature should have amended it so all active gas wells pay a fee of \$50 a year — that is a

dollar less than you pay to register your car every year. That would have gotten us to 36 inspectors — allowing one inspection of every well only every eight years after doing their other duties reviewing permit applications and responding to complaints.

The Legislature did not make that amendment or even pass the bill to get us back to one inspector for every 4,000 wells. We need surface owners, mineral owners and concerned citizens to press the Legislature to either put a registration fee on wells, or dedicate a portion of the severance tax for funding oil and gas inspectors.

If you aren't getting occasional emails from us, please send us an email to info@wvsoro.org and let us know! This way, we can add you to our email list for action alerts and updates during the session, to help keep you informed of surface owner rights issues!

§

PLUGGING ON YOU

There Is a Proposal to Plug a Well on My Land. What Should I Do?

As usual we have extensive advice on this issue on our website, www.wvsoro.org, and if there actually is a proposal to plug a well on you, then you should go to it NOW, as you may only have five days for some actions. But for the newsletter we offer a brief summary.

First, a well may be proposed to be plugged because it is orphaned, and as a result of WV SORO's work and passage of the federal Bipartisan Infrastructure Act, there is money to plug many, but not all, orphaned wells.

Second, drillers are supposed to plug wells if they have not produced for 12 months, and the State is supposed to make them plug these wells if they do not. Not many wells are proposed to be plugged for this reason as evidenced by the fact that there are now 12,000 such wells that drillers should have plugged, but that the State has not made them plug.

Third, coal companies may want to do longwall mining, and plugging wells in their way is cheaper and safer than mining around these wells. (Coal is almost always shallower than oil or gas so most oil and gas wells go through coal on the way to their target formations.)

Fourth, the well is polluting the surface or the ground water and someone (maybe you) have complained about it. (It could also be leaking methane and you can test for that with meters available on line and complain if you want to.)

For these reasons, it is probably best for you to go along with the well on your land being plugged. The

casing and cementing of all wells eventually go bad and sometimes, although not always, causes pollution. The risk of that, and therefore the mere presence of the well, lowers your property value. Plugging causes a lot less mess and noise than drilling a well, but there will be surface disturbance, so not everyone wants it done. If you do not want it done on your land, our website has tips for chasing off the plugging in some instances. But again, it is probably best to have it plugged.

You may find out the plugging a well on your land is being proposed if you find someone on your land scouting the work. However, the first thing may be your receiving a copy of the plugger's application for a State permit to do the plugging. If that is the first way you hear about it then **YOU ONLY HAVE 5 DAYS to comment on the permit**, so don't delay taking action! And DO NOT sign off on the permit application and waive the five days right to comment unless you have seen the actual permit application and understand it.



You will have surface use concerns. The well road needs to be built properly to prevent soil erosion and to prevent temporary and future water runoff onto good parts of your land. (The State has a manual the driller is supposed to follow that is available on our website.) Do you want to keep the road and the pad or do you want your land to go back to its original contour? (There will be a four-foot pipe monument marking the plugged well so it can be found if problems develop from a poor plugging job etc.) If there will be a road when they are done, do you want it gated and locked while they are plugged and afterward? What do you want planted for reclamation/revegetation?

Also you want to be sure that the well is properly plugged all the way down to the bottom (it is not just "capped" at the top). See our slideshow at www.wvsoro.org about that. If this issue is too technical for you, contact us if you have questions or concerns).

Your biggest concern after how your surface is treated, should be whether the driller follows the plans to plug the well the right way set out in the permit. This is important. Once the job is done, it is impossible to know if the driller put the cement and the bentonite clay in the right amounts at the right depths. Plugging is expensive and time consuming and there has to be great temptation for the plugger to take shortcuts

because it is expensive and time consuming -- and because it is impossible to check after the job is done. Our website recommends that surface owners visit the plugging site frequently from the very beginning of the plugging. And when doing so, that the surface owners appear with a copy of the permit application and the State Soil Erosion and Sediment Control Manual visibly in their hands. And we recommend that the surface owner be friendly, but take a lot of pictures and ask a lot of questions about what stage pulling the uncemented pipe casing or inserting bentonite clay or inserting

cements the plugging the company is at. Hopefully this will provide some deterrence against shortcuts.

One of the big reasons the surface owner needs to take an interest in what is going on during plugging is that the State has miserably few oil and gas inspectors to watch over the work. Plugging using federal money requires a "compliance officer" for the job, but that is someone chosen and paid by the contractor hired to plug the well. So we have limited faith in them and their influence on the plugging company doing the job right -- but hope we are wrong. Beyond that the State only has nine

(9) oil and gas inspectors for 70,000 wells, 20,000 associated tanks, 15 rigs drilling wells as this is written, reviewing permits for wells drilled by those rigs, and -- oh yeah -- overseeing well plugging.

So, if you are interested in learning more on this subject, we urge you to go to www.wvsoro.org and look at our slideshow on why a well is plugged and not "capped," how it is supposed to and should be plugged, and why a lot of oversight of well pluggers is needed. And go there for more information on what to do if there is a proposal to plug an oil or gas well on your land. §

FORCED POOLING/UNITIZATION BILL PROTECTS SURFACE OWNERS

Forced unitization bills, often termed "forced pooling" bills, have been introduced and have been very controversial for years. WV SORO has always said, if (a big IF) there is going to be drilling, then a good forced pooling bill would be a good thing. This is because a good forced pooling/unitization bill lessens the number of wells and well pads needed to produce natural gas for whatever market there is for natural gas. Fewer wells and pads on surface owners is a good thing! In particular, leaks on well pads into groundwater are one of the biggest pollution problems. And fewer wells drilled through water aquifers means fewer risks of groundwater pollution.

It is just that in prior years we have never seen a good bill. We just see bills that favor industry over surface owners and over those of our members who also own some minerals. This year's bill, SB 694, is not quite a "good" bill, but because of all the good surface protections it contains, and because it is OK to most mineral owners, and also because the industry dominates the Legislature and could do so even more after the next election, WVSORO thought this bill was OK and told members of the Legislature so.

To learn more about the relationship between forced

pooling, horizontal shale drilling and surface use and pollution risk see the articles on www.wvsoro.org about forced pooling.

WV SORO respects the views of those who want to leave every possible stumbling block in the way of hydrocarbon energy production. But our position has always been that, for the reasons above, as long as horizontal methane gas wells are going to be drilled, legislation that will allow longer bores from fewer wells to be drilled from potentially fewer well pads is a good idea. And in fact these horizontal shale wells are being drilled now and will be for the foreseeable future. So this forced pooling/unitization bill was OK, if just OK.

(Note that this practice is commonly called forced "pooling". But forced "pooling" lets one company with leases force another company with leases to drill wells together in one unit. Forced "unitization" forces the mineral owners' mineral interests into units that can be drained by horizontal wells. Confusingly, variations of the root word "pool" are used to mean three different things in the existing statutes. So we use the term "forced pooling/unitization".)

The problem with forced pooling/unitization bills introduced in the past years has been that the forced pooling/unitization

legislation introduced in the past has done the good things that such legislation can do for the drillers, but not done good things for surface owners. These bills have also been unfair to forced mineral owners in determining how much the mineral owners will get paid up front and for royalties. SB 694 introduced this year is far from the best possible bill. But it is OK for WV SORO because it does have some significant beneficial provisions for surface owners. Here's a summary of those provisions:

First, the driller will still have to get (and if the surface owner agrees, pay for) the permission of the surface owner to put one of their big horizontal well pads on the surface owner's land. The West Virginia Supreme Court case WV SORO helped win in 2019 remains in force! Though the drillers would like that to be something that could be forced upon the surface owner, the bill does not provide for it! The driller has to get the surface owner's agreement. And, we advise surface owners to ask for \$640,000 from the driller to agree to the placement of the pad on their surface! More at www.wvsoro.org.

Second, remember that one tract of minerals can have the ownership shared by scores of heirs. Sometimes it is not possible

Forced - Cont. from pg 5

to find those heirs in order to pay them the royalty payments and signing bonuses to which they are entitled. Under SB 694, if those mineral owners do not show up in five years, the surface owner gets not only all the back royalties for those five years, the surface owner gets title to that share of the minerals, plus all future royalties! The surface owner has to bring a court proceeding to do that. We explain more about when and how that is done on our website. If there is a horizontal well pad near you, contact us to learn whether a wellbore is going under you. And if so, you should go after this benefit. You should wait a couple years after the wells are drilled.

Third, there are legislative findings in the bill recognizing surface owners rights that can be used by courts in interpreting and carrying out the bill.

Fourth, about one-third of WV SORO members also own the minerals, or a share of the minerals, under their land. So if their minerals (but not surface) are forced into a unit then under the bill they will get very fair royalties paid to them and they will get paid very fair up front money calculated off a weighted average of what the drillers paid to owners who signed leases. However, the terms are not so good when the bill is used to force unitization modification language into leases where the mineral owners' lease

lacks a pooling clause and is held by production. And even worse for leases signed before 2008 with old pooling/unitization clauses. Fifth, and finally, the legislation adds a farmer and a mineral owner to the commission that determines whether to allow the driller to form the unit, and if so, how much the mineral owners should get paid.

This is not to say that SB 694 is perfect. IF we could have drafted the legislation we could have drafted something even better in the devilish details. But what we got was good for surface owners. And with the political climate at the current Legislature, and the unpredictability of the future, we believed it was the wise thing to say that we were OK with this bill. §

THREATENED WITH FORCED POOLING/ UNITIZATION/COTENANCY?

- Have you been threatened with forced pooling/unitization by a driller or land company because you will not sign their lease or amendment papers?
- Have you received papers giving you notice of a forced pooling/unitization proceeding before the Oil and Gas Conservation Commission?
- Have you received a letter from a driller or a land company that says it is the "best and final offer" giving you options to elect a sale, a production royalty, or a working interest?

If you answered, "Yes," to any of these questions, you should go to www.wvsoro.org to learn more about what is going on and what you can and should do in response. This is much too complicated to fit into a newsletter article. If you do not have a home computer or cannot use one at work, try your local library!

What we can tell you in this newsletter is our first piece of advice on our website, which is that understanding just the language of the provisions in an oil and gas lease or amendment is difficult. And understanding on top of that

your bargaining position and what leverage you have and do not have in negotiating and signing an oil and gas lease or amendment is very, very complicated — particularly with our relatively new cotenancy statutes and our brand new forced pooling/unitization statute. There are lots of moving parts, there is lots of money involved and there are lots of property rights at stake! And what you sign will certainly last for decades! (We have seen leases still in effect after 100 years.) So your descendants will be bound by what you sign. Therefore, our first piece of advice is to seek out the advice of a lawyer or other person who understands the oil and gas leasing business. We have a list of some lawyers on our website.

The second piece of advice we can put in this newsletter is to not sign anything you do not understand. This is particularly true if you are presented with a proposed lease or amendment after being threatened with cotenancy or forced pooling/unitization. It is very likely that you will be better off to be forced pooled or have cotenancy used on you than to sign off on the complicated language of documents prepared by the oil and gas company's lawyer. (Note, however,

that this does not apply if you are served with papers suing you in Circuit Court for "partition." Look on www.wvsoro.org for articles about partition suits in Circuit Courts for more information on this situation.)

But really, if you are threatened with any of this:

- Start on our website.
- Get a lawyer.
- Call us if you still have questions.

§

**HELP
WV SORO
DO THE
WORK**

TO PROTECT SURFACE OWNERS' RIGHTS.

Most of our money comes from membership and donations. If you have not already renewed your membership, or if you just want to send us a one-time donation, visit wvsoro.org/donate to make a contribution today.

2023 WV SORO LEGISLATIVE PRIORITIES

Fully Fund the Office of Oil and Gas: Currently, there is only ONE (1) inspector for every 8,000 wells. Require industry to pay \$100 per well to fund the OOG 2020, staff was cut from 40 to 25. Require industry to pay \$100 per well to fund the OOG. There is now only ONE (1) inspector for every 5,000 wells.

Orphaned Well Prevention: Prevent thousands and thousands more wells from becoming orphaned revert 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 the minerals under their land is SOLD at a tax sale.

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

WV SORO'S COMMENTS ON THE MOUNTAIN VALLEY PIPELINE



comments of others, we see that this has likewise been the case with the previous work on the Mountain Valley Pipeline. Unless or until these significant problems are solved the pipeline should not proceed.

Also, although it is not within the agency's jurisdiction, we

emphasized and made clear that our position is that surface owners should be paid not just for the value of the land based on its current use before the pipeline came along, but what the use over time of their land is worth to the pipeline companies! §

* Photos by WV Rivers Coalition.

We submitted comments on the Mountain Valley Pipeline that said that WV SORO has had 800+ dues paying members and that our website has numerous daily users and visitors

WV SORO respectfully takes the position that any request of Mountain Valley Pipeline be denied. Our experience with the West Virginia Department of Environmental Protection has been that it is underfunded, has insufficient enforcement tools, and generally fails to adequately enforce environmental requirements under its jurisdiction. From viewing the proposed



WV Surface Owners' Rights

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