

Gas land pooling discussion revived in Harrisburg

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By Laura Olson, Post-Gazette Harrisburg Bureau

HARRISBURG -- Gov. Tom Corbett has said he won't sign it. Top lawmakers call it a "deal breaker" and have cautioned that firearms should be taken away from the citizenry before it is approved.

And yet, with six short bullet points, the Marcellus Shale Advisory Commission has revived debate over whether to allow land to be gathered into a larger drilling unit, even against a property owner's wishes.

That practice, commonly referred to as "pooling," sparked immediate controversy when it began circulating in Harrisburg last session. Opponents portrayed it as a grab by gas drillers at private property rights. Top Republican lawmakers rejected it -- even as some rank-and-filers had begun drafting a measure.

"If you are going to take their property, you better take their guns first," quipped then-Minority Leader, now House Speaker, Sam Smith to reporters in the fall.

Now, that policy is being re-cast as a way to protect property owners from the prospect of their natural gas being stranded -- and royalty dollars never realized -- due to an uncooperative neighbor or competing company that can't resolve leasing disputes.

A current proposal would allow pooling only for units where all the property owners have leased their gas rights, an approach that the governor's spokesman has said could change his anti-pooling stance. Only drilling companies would be forced to allow pooling, not property owners who haven't signed leases.

The governor's shale commission, borrowing language used by industry officials and some academics, called pooling a win-win. They argued that updates to the state's conservation law would maximize gas production while minimizing costs and the amount of land disturbed.

"The stranding of gas correlates with lost jobs," Penn State geologist Terry Engelder told his fellow commission members at their final meeting.

But their vague recommendation gave only bare-bones directions for how pooling should be regulated. Looking to other states offers some ideas on how pooling could occur in the Marcellus.

Pooling involves combining the mineral interests of two or more parties in order to drain gas from a certain amount of land, said Bruce Kramer, a retired Texas Tech law professor who specializes in oil and gas cases.

Traditionally, those gas units have been up to 640 acres in size, helping to space wells efficiently. In some states, those units are based on a grid system that determines for the companies where the dividing lines go.

Under pooling, the company controlling a majority of the mineral rights within a unit gets a contiguous piece of property to drill. The company must compensate the other firms involved by sharing the profits or trading another property, and providing a royalty payment to any owners who had not leased.

Companies benefit by drilling from one wellpad, rather than the multiple pads that would be required to work around land controlled by uncooperative parties. Proponents argue that it's more efficient from an environmental and economic perspective.

"We make more gas, we sell more gas and you as a landowner in turn get more money," said Matt Pitzarella, a spokesman for Range Resources.

Other states manage their pooled units in different ways, but every major gas-producing state has some form of pooling statute, Mr. Kramer said. Pennsylvania too has a conservation law, written in 1961 and targeted only at rock formations

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deeper than the Onondaga. At about 3,800 feet below the surface, that excludes wells in the slightly more shallow Marcellus Shale.

"Even though Pennsylvania had been producing oil and gas for 150 years, there was never a need" for a more comprehensive conservation law, Mr. Kramer said. "You never had the overdevelopment with derricks standing next to each other." That's what Range Resources says is happening now, pointing to maps comparing how wells are placed in Washington County currently and how that would occur with pooling. That current-day map shows dots representing wells scattered willy-nilly, with leased properties caught in between the wellpads.

Those "stranded" properties may never be drilled if a different company holds the surrounding leases, said Mr. Pitzarella of Range: "They also are never receiving compensation and leaving all that gas in the ground, despite the impact on the surface."

The shale commission appears to have agreed with the companies that the current system is unruly, but declined to wade too far into the discussion on property rights.

That issue tripped up Rep. Garth Everett, a Lycoming County Republican, in his work last year toward a pooling bill.

Mr. Everett said he was the subject of severe backlash from those who viewed the policy as an eminent-domain procedure for private companies.

He said he's not interested in forcing those opposed to drilling into a unit. Instead, the focus should be on tracking how companies are piecing together their parcels of land, Mr. Everett said.

"They should show geology, saying this is how we're going to develop this whole area," he said. "Right now, it's a mystery."

A current bill from Sen. Gene Yaw, R-Lycoming, would do just that. If all the property in a unit is under lease, those controlling at least 65 percent could apply to the state Public Utility Commission to pool in the properties leased by other companies.

Others within the proposed unit would be allowed to appeal the move if they disagree.

Proponents say that process would remedy many land-use disputes by working out company-to-company issues.

But Mr. Kramer, the law professor, disagrees, noting that all other states with pooling include both leased and unleased land. He said that more problems arise with an unwilling landowner than in dealing with other companies.

"If you just limit it to leased interests, to me, you would not be solving the problem," Mr. Kramer said.

He also points to the "rule of capture," which is part of Pennsylvania law. It allows for operators to drill up to a property line without compensating a neighboring landowner for any potential gas migration.

By joining the pooling unit, he said, surrounding landowners don't run the risk of their gas being drained from the nearby activity.

Debate over those details and others could be lengthy this fall, if lawmakers decide to include pooling among the Marcellus-related issues on their to-do list.

Further definition of pooling may also be needed for the Corbett administration, with the chief executive saying again last week that he opposes any pooling policy that would require someone to join a drilling unit.

Corbett spokesman Kevin Harley said after the report was released that the governor would consider a version of pooling that addresses only leased property and is aimed at resolving development disputes.

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