

[Property owner rights before, during and after drilling \(http://www.register-herald.com/marcellus/x962028093/Property-owner-rights-before-during-and-after-drilling\)](http://www.register-herald.com/marcellus/x962028093/Property-owner-rights-before-during-and-after-drilling)

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BECKLEY — The surge of interest in natural gas reserves in the West Virginia Marcellus shale has left the fate of surface owners' properties — and the resources beneath them — in the hands of Charleston legislators.

Negotiating and signing lease agreements with natural gas drillers is new ground for most West Virginians and can be daunting for most without a legal background. The methods used to extract gas from the Marcellus shale, horizontal drilling and hydraulic fracturing particularly, introduce a unique set of concerns for West Virginians.

The need for special surface rights protections sparked the generation of the West Virginia Surface Owners' Rights Organization, co-founded by Dave McMahon, a Charleston-based attorney who authored the West Virginia Surface Owner's Guide to Oil and Gas.

Surface owners have been faced with difficult decisions regarding the release of their mineral rights, lease agreements and potential environmental damage to their properties.

"We shouldn't make the same mistakes we made with coal," McMahon said. "We should make sure our citizens get a fair share of the money that is made, and it shouldn't leave behind the problems coal has left behind. We need good legislation to carry that out."

McMahon has frequented the Capitol, speaking to lawmakers on behalf of those who own property that may potentially be drilled.

"There are 59,000 active wells in West Virginia that are not regularly inspected, because we only have 17 inspectors. There's 6,000 wells that should be plugged because they may cause pollution," McMahon told the West Virginia House Judiciary Committee. "Now, we have the Marcellus shale. It's the industrialization of West Virginia. It's the second largest gas pool in the world."

Another speaker before the committee said the "boom" in the gas industry was fictional and that increased regulation would only serve to harm an industry already in danger.

McMahon disagreed.

"It's going to change things," McMahon cautioned lawmakers. "Don't tell me that because permits are down, we don't need as much regulation."

Jason Webb, a representative of the West Virginia Land and Mineral Owners' Association, said because of the method of drilling, gas drillers will be able to essentially siphon the natural gas from underneath an owner without permission.

"Under the current law, the law of capture, someone can drill right next to you, whether you have your mineral rights leased or not, and they can essentially drain your gas from underneath you," Webb said.

Both organizations have found parts of the bill they like, but both have also cautioned that neither bill perfectly protects surface owners' rights.

One particularly sensitive issue is that of forced pooling. If forced pooling is passed by legislators, oil and gas companies will be able to utilize horizontal wells to extract minerals from underneath property owners who are holding out on leasing their mineral rights.

Many industry representatives, especially larger drillers, want the bill passed, otherwise a single holdout could significantly reduce the attractiveness of a particular well site. If a forced pooling measure is enacted, only 75 percent of the drilling site would have to be secured to proceed with drilling.

McMahon said that forced pooling would reduce the environmental footprint of drilling, because it would allow for multiple wells to be drilled from one platform. Allowing forced pooling, some have argued, may reduce the owners already few advantages in negotiating lease pricing.

Joe Miller's family has operated a tree farm in Preston County for about 150 years. He said that when he was approached to "get in the game" of natural gas, he did his research. What he found, Miller said, was a "total lack of regulation and oversight."

In describing forced pooling, Miller said he would be stripped of his ability to hold out against development if his neighbors were to sign leases with the natural gas companies.

"Ultimately, I won't have any ability to control what goes on around my 185 acres. That's going to be your job," Miller told legislators. "But, I thought I could control things for my own family. We made a decision not to sign a lease, and now it appears there is a provision in this bill that might compromise that, or negate our ability to make that decision."

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