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No Gas Lease Needed: 'Rule of Capture' Allows Drillers To Take Minerals

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POSTED: August 15, 2010

WHEELING - If you are waiting to join your neighbors in signing Marcellus Shale natural gas drilling deals, you should know that companies in West Virginia can legally take gas from your property without your permission.

For example, if drillers have signed up your neighbors for \$1,000 per acre in lease revenue with 14 percent production royalties, you could lose your minerals without ever signing a contract - and without ever being compensated for them.

"It is legalized stealing," said Dave McMahon, co-founder of the West Virginia Surface Owners' Rights Organization regarding the provision of the law, commonly known as the "Rule of Capture."

"They can drill a well off of your property, but right next to your property line," McMahon said of the gas companies. "Then, when some of your gas drains over to the their well, they get to keep it."

Stacey Brodak, director of corporate development for Chesapeake Energy, directed questions concerning the capture rule to Corky Demarco, executive director of the West Virginia Oil and Natural Gas Association.

Demarco said the rule allows companies to drill wells anywhere on the property they have under lease. This could, he acknowledged, allow the firms to collect gas from under properties they have not leased. "I do not know anyone who would intentionally drain gas from a property they have not leased," he said. "You are going to drain the property you have leased."

As for the capture rule itself, Demarco said, "As far as I know, this has been the law in West Virginia. As an industry, you are going to maximize wells to get the gas from your leased property."

McMahon, however, said the whole concept of the rule is unfair, noting, "If you wanted to wait out for a better deal, the company your neighbors have signed with can just go ahead and take your minerals."

Tim Greene, secretary and treasurer of the National Association of Royalty Owners, also acknowledged the rule of capture.

"This has happened," he said. "Even if you do not sign a lease, you could lose your gas. You need to look at where they are putting the wells."

"The rule of capture basically means, 'Hey, I've got it now - it's mine,'" Greene added.

Demarco continued to emphasize that any portion of gas collected from properties that are not leased would be strictly "unintentional."

Greene said the rule has "been an issue for years." Now he hopes the West Virginia Legislature will look to change the law at some point.

"It would not surprise me at all to see the Legislature address this," he said.

McMahon agreed that, due to the increase of Marcellus drilling throughout the state, legislators should look to updating the law.

"Many states out west have passed more rational laws. Hopefully, this state can get this eventually change this," he said.

McMahon is also concerned about gas companies being able to impede on a landowner's property - without that person's permission - to retrieve minerals owned by someone else.

"If someone else owns the mineral rights under my surface, the gas company can come onto my surface property to take those minerals, even if I don't want them there," he said. "They can do anything that is 'fairly necessary' to get the gas out from under my property."

In a related matter, Chesapeake's permits to drill near the current Oglebay Stables have still not been issued by the West Virginia Department of Environmental Protection, as park officials have questioned some of the company's plans for transporting water and gas. Preliminary plans called for Chesapeake to cut a road through the woods, just to the southwest of the stables. This road, according to those preliminary plans, would lead to a point between W.Va. 88 and GC&P Road, at which a 400- by 300-foot flat pad would be created from the currently graded, tree-filled terrain.

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