PENN ROAR

Pennsylvania's Royalty Owners Action Report

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Return of the Severance Tax Debate

By: T. Walczak

Similar to a low-budget sequel to a box-office bust, the severance tax proposals are back again. However, this follow-up theatrical thriller is gaining momentum on the pages of newspapers statewide, fueled by journalistic cheerleading of misinformation, exaggeration and down-right misleading coverage of natural gas exploration, statewide. Proposed cuts to the state's glutinous spending will only fuel the fire for a severance tax to fund the entitlements.

An almost daily barrage of exploration coverage rarely places the criticism in context and even more infrequently documents the great strides the industry and DEP have taken to improve their environmental impact. This assault has created a widening chasm of support between those who perceive no benefit to themselves by the exploration and those that do.

As documented in the January 2011 Penn ROAR, the previous severance tax proposals had little to do with safeguarding the environment and more to do with balancing the state budget to cover glutinous spending. The introduction of two new severance tax proposals, HB 833 and SB 352, by Democrats in the Pennsylvania House of Representatives and Senate, have made little improvement on their distribution and would remain as some of the country's highest taxes.

Those calling for a severance tax are calling bluff to the industry's assertion that a tax could force the industry to cut or abandon their exploration efforts here, given that the Marcellus, in combination with potential Utica shale opportunities, makes for Pennsylvania sitting atop one of the largest natural gas fields in the world. Regardless of the size, every oil field experiences waves of activity based on profitability.

Geologists have "known" about this field, since the mid 1960's. It is no coincidence that major interstate natural gas transportation lines, like the Tennessee Gas Pipeline, which stretches from Texas to NYC, were routed miles out of the way in an effort to cut through the heart of Marcellus country. Numerous mapping attempts of the underground reserves were made throughout the 1970's and 1980's. Consequently, it wasn't until the natural gas price began to rise and the promotion of the potential of these reserves, by geologists Terry Engelder and Gary Lash, brought in the exploration companies from across the country. The combination of horizontal drilling and hydraulic fracturing began to make access to these reserves a viable venture, with well drilling efficiency improving with each well.

However, as natural gas prices fell to levels limiting the exploration company's willingness to take larger risks and pursue a large scale production plan, most companies began to spend in the short term, in an effort to hold acreage by production (HBP) until the prices improve to make large scale production viable again. Most companies identify this fragile balance. Still, for over a year now, prices have struggled to improve past $4/MCF, even with the rising oil prices.

Continued to page 2

Inside This Issue

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Return of the Severence Tax Debate continued from page 1

Currently, there is a push to hold acreage before it expires. State policy and its cost consequence will have a tremendous impact on drilling activity here, in the long term, whereas the short term is governed by the lease term of key acreage.

Both the industry and the environmentalists know that increasing drilling costs will limit exploration and production. Eventually, an increasingly unfriendly business climate will cause the industry to abandon continued development after key acreage is HBP. Watch regionally if multiple wells are drilled on each pad to complete development or if only single wells are drilled on each pad. Also, watch the Pennsylvania rig count to identify these trends over time.

It is the bureaucrat who is convinced that drilling will take place in the state on a continuous upward trend. They make the dangerous assumption that, because the gas is here, exploration companies will continue to explore, regardless of what they do in Harrisburg. However, once this shale becomes as unprofitable to produce as it was before the gas boom, the exploration companies will find somewhere else to drill where it is profitable.

Remember, the gas companies are not here because they recently discovered the Marcellus, but rather because they discovered they could finally produce it economically.

Refer to the severance chart in the January 2011 Issue of Penn ROAR to see how the other states' severance taxes compare. ●

HB 833	SB 352
Proposed Tax to be Levied	
30¢ per MCF	5% + 4.6¢ per MCF
Assuming the current natural gas price ~$4/mcf, this would be ~7.5%, equivalent to the nation's highest	Assuming the current natural gas price ~$4/mcf, this would be ~6.15%, ranking as the nation's third highest
Allocation	
35% to Local Government Services Account to distribute to municipalities to assist with burdens of Marcellus drilling	50% to General fund
20% to PA Infrastructure Investment Authority for upgrading wastewater treatment plants. Half must go to plants that treat drilling wastewater	21.5% to Environmental Stewardship Fund
15% to Environmental Stewardship Fund	21.5% to municipalities to assist with burdens of Marcellus drilling
10% to PennDOT for Marcellus affected roadways and bridges	3% to the PA Fish & Boat Commission
6% to Liquid Fuel Tax Fund and distributed evenly between all counties	3% to the PA Game Commission
3% to County Conservation District Fund	1% to Low-income Home Energy Assistance Program
3% to PA Fish & Boat Commission	--
2% to PA Game Commission	--
2% to Low Income Home Energy Assistance Program	--
2% to Hazardous Sites Clean-up Fund	--
2% to Oil & Gas Environmental Disaster Recovery Account	--

Pennsylvania Supreme Court Rules on Oil and Gas Zoning

By John A. Shoemaker, Esq., Greevy & Associates

The Pennsylvania General Assembly has delegated to local governments certain authority to pass zoning ordinances to regulate land use, through the Municipalities Planning Code (MPC). A 2000 amendment to the MPC requires municipalities to "provide for the reasonable development of minerals in each municipality."

The term "mineral" as used in the MPC includes oil and gas, sometimes bringing the MPC into conflict with the Oil and Gas Act (OGA). Importantly, the OGA specifically preempts and supersedes "all local ordinances and enactments" purporting to regulate oil and gas wells.

So, which aspects of oil and gas well drilling can a municipality control through its zoning or other ordinances?

The short answer is that the OGA does not preempt all zoning regulations, only the ones relating to the technical aspects of drilling.

In fact, the Pennsylvania Supreme Court has ruled, in Huntley v. Borough Council of the Borough of Oakmont, that the OGA does not prevent municipalities from performing their "core function" of designating zoning districts for particular land uses, including gas drilling.

For municipalities that have enacted zoning ordinances, the effect of this ruling is that wells may be placed only in a zoning district where such activities are permitted. A municipality may not, however, prohibit drilling in all zoning districts; some districts must remain open to drilling.

Another Pennsylvania Supreme Court ruling, Range Resources – Appalachia, LLC v. Salem Township, holds that local governments may not regulate the technical aspects of drilling. In that case, the Court struck down an ordinance that would have established permitting procedures for gas wells, bonding requirements, requirements for restoring roads to pre-drilling conditions, and pre-drilling water testing, among other things.

The Court indicated that it struck down that ordinance because it would have largely duplicated the existing Pennsylvania Department of Environmental Protection regulatory scheme.

The Supreme Court's decisions in the Huntley and Range Resources cases leaves many important questions unanswered, particularly, whether municipal regulatory schemes that are less comprehensive, and do not duplicate existing DEP regulations, would be permissible.

Local governments contemplating passing a zoning ordinance that would regulate natural gas drilling and related activities can find some guidance from the Pennsylvania State Association of Township Supervisors' (PSATS) Model Zoning Ordinance for Oil and Gas Exploration.

The PSATS Model Ordinance would require gas operators to obtain a permit from the township. The Model Ordinance would establish restrictions on how operators may access drill sites, the height of structures, and noise, and other aspects of gas drilling. The Model Ordinance would also establish requirements for setback from property lines, buildings, and historic sites; and for screening, fencing, and lighting.

While the Model Ordinance or other less comprehensive regulatory schemes would protect some residents' interests, these benefits do not come without cost.

Local government officials should also consider the time and resources required to administer an oil and gas permitting and regulatory scheme. ●

Legislative Update:

Senator Yaw Proposes New Marcellus Bills

By: T. Walczak

Senator Gene Yaw (R-23) represents the counties of Pennsylvania seeing the most prolific drilling. As a result, he has been responsible for the most common sense legislation relating to the activity. He follows-up his successful legislation last session by sponsoring five new proposed bills, each addressing a specific issue within the Marcellus.

SB 445 Title to Dormant Rights Act: Mineral rights in real property shall be deemed abandoned after a period of 21 years of nonuse of the mineral rights by a subsurface owner, unless the subsurface owner shall, within three years of the effective date of this section or within 21 years from the nonuse, whichever is later, record a claim of interest in the county of the claimed minerals. This does not apply to minerals acquired by a separate deed and also gives surface owners a path to claiming abandoned mineral rights, under their property. Many surface owners in PA cannot develop their mineral estates because title to the minerals under their property are abandoned and claims are expensive, difficult and take many years to finalize.

SB 447 Unconventional Oil and Gas Unit Establishment Act: This legislation introduces the concept of compulsory integration, but on a "company to company" basis, and does not affect "holdout" landowners. If a gas company wants to create a production unit for drilling, and a landowner in the middle of the proposed unit refuses to enter into a gas lease, the gas company may have to develop two well pads instead of one to extract the gas from under the proposed unit, which increases the environmental impact.

Sen. Yaw has said that "90% of the pooling problems" are not caused by "holdout" landowners, but by gas companies that happen to have a gas lease in the middle of an area where another company wants to drill. This legislation would allow a gas company, which holds at least 65% of the leases in a proposed unit, to move forward developing the production unit and pay the "holdout company" holding the remaining acreage, their working interest and the royalty interests. Expect to hear more about this one…

SB 460 Oil and Gas Lease Act: This legislation requires gas companies to list all deductions on royalty check pay stubs. Currently, the state of Pennsylvania does not require gas companies to list deductions from royalties paid to the landowner on monthly payments, and this proposal will provide openness and transparency for mineral rights owners, as seen in other natural gas producing states. This legislation would require companies producing natural gas to show on each check stub, attachment to a payment form, or other remittance advice:

- lease identification number or reference to appropriate agreement with identification of the well or unit from which production is attributed;
- the month and year of sales or purchases included in the payment;
- the total amount of gas sold;
- Owner's final realizable price per MCF;
- the total amount of state severance and other production taxes paid, with the exception of windfall profit tax;
- any other deductions or adjustments;
- the net value of total sales after deductions;
- the owner's interest in sales from the lease, property, or well expressed as a decimal;
- the owner's share of the total value of sales before any tax deductions; and
- the owner's share of the sales value less deductions his share of the production and severance taxes, as applicable.

Continued to page 5

Senator Yaw Proposes New Marcellus Bills continues from page 4

SB 601 Amends Section 103 of the Oil & Gas Act: This legislation would increase the distance that a natural gas drilling company would be presumed liable for any contamination of a water supply within 2,500 feet of a gas well, within a year after completion or alteration of a well, up from the current statute of 1,000 feet and 6 months presumed liability. The legislation would also further increase the horizontal distance a Marcellus well can be from an existing building or water supply, increasing the current standard of 200 feet to 500 feet.

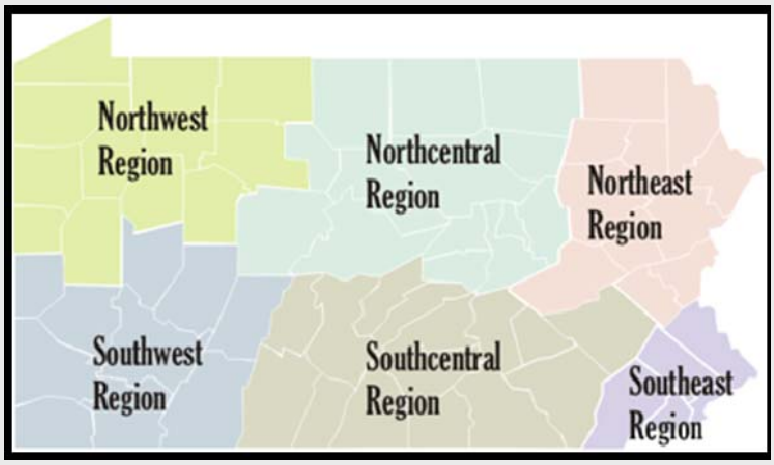
SB 722 Addition of a Pugh Clause Amending the Oil & Gas Act: This legislation which would stop the practice of tying up large tracts of land by including only a few acres in a production unit. Under today's laws, utilizing as little as two or three acres in a production unit could hold up 200 or 300 acres with no obligation to develop the gas under that land. This provision would provide the landowners and gas companies the option to develop the acreage not included in a production unit by allowing the lease to expire with respect to the acreage not included in the production unit, renegotiating the lease, as to that acreage, or including that acreage in another production unit. ●

Check out the NARO-PA Chapter website:

http://www.naro-us.org/Pennsylvania

NARO members can log in to the members only message board to get reliable information about natural gas drilling in Pennsylvania.

- Research archived PENNROAR newsletters.
- Post a story of interest
- Visit the NARO Store for gas & oil publications
- Browse other state chapters to find out what's happening in other plays



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A Closer Look at HB 833

By: T. Walczak

Even with the new legislative session just beginning, state representatives, like "Bud" George, have already started their assault on the drilling industry for the new session with the introduction of HB 833. In a way, the arguments made for this new tax validate the points I made in the Penn ROAR January 2011 story "The Truth Behind the Severance Tax" by admitting so much of the proposed severance tax was Harrisburg's business as usual, by just searching for new sources of funding to cover up their out of control spending. SB 352 exhibits the worst of that type of gluttony and deserves little discussion.

It is very telling that the monies for road and bridge repair were not even included in previous tax proposals, even though road damage was one of the major impacts that experts from other regions of the country warned us to prepare for. While this is an appropriate allocation, the practical question is why, at 16% for the combined contribution to the restricted road and bridge fund, and the contribution to the state's Liquid Fuels Account, is this combination one of the smallest components of this tax?

However, in 2010 the Chesapeake Appalachia invested a little over $90 million to improve road infrastructure through Bradford County and other places they drilled in the northern tier. All of the other companies are also doing the same, so the necessary work is being completed, and there is little need for Harrisburg to step in after the fact.

One of the biggest obstacles to overcome, from the general public's eye, is the potential for environmental disaster in our quest for energy independence. In this proposal, only 2% of the revenue generated would go to disaster mitigation, like remedying the water problem in Dimock, Susquehanna County. While the benefits from drilling are well documented, the adverse environmental impacts are rare but can be catastrophic. The remedies to these catastrophes should definitely not be at the taxpayers' expense.

Meanwhile, the same 2% distribution is given for low-income heating assistance. As previously explained, the surplus of natural gas on the market has driven down the cost of heating with natural gas by over 30%, as reported by UGI last year.

We don't need another redistributive tax gaining legitimacy and taking away from the competitiveness of Pennsylvania's natural gas.

The 35% for county, township and emergency services is a huge allocation. Without a doubt, the boomtowns created by the drilling put a strain on services, but as a proportion of the total proposal, it is too high.

Again, the 20% to sewage treatment plants is a good investment, but this type of proposal should be limited to the 10% Marcellus impact remediation component. Improvements to these facilities would be better made through a fee structure for usage after mandating stricter discharge provisions.

The industry is improving its recycling efforts with every well. Brian Grove, Director of Corporate Development for Chesapeake Appalachia, said in an interview in January, "We are a zero liquid discharge operation. Any liquid waste that is produced is recycled and then reutilized by our operations, which gets rid of the need to use fresh water for production. No, we are not discharging any produced water into any surface waters in Pennsylvania whatsoever."

While the distribution of the proposed revenue is improving, much of it is still misappropriated or simply ill-

Continued to page 7

Pa-Naro Members:

Please share your pictures and stories from your gas well with us.

Forward them to pennroar@yahoo.com

A Closer Look at HB 833 continued from page 6

conceived at a time when this infant industry is struggling to emerge as a competitor in the global gas market. 23% of this tax goes to appease the environmental community by funding various environmental groups. While these are good contributions to Pennsylvania's long-term environmental legacy, they are actually a greater inhibitor to this early establishment of Pennsylvania as a competitor in the worldwide gas market. These "wish list" items should be avoided in this early exploration stage since they are a drain on the state's efforts to gain a foothold in the natural gas market.

Until legislators can hold themselves to this type restraint, they should avoid beating the "severance tax drum" which, to date, has only served as a recruiting tool for the Not-In-My-Back-Yard's (NIMBY) support. As previously stated, in the January Penn ROAR, the NIMBY's are simply being co-opted by the politicians to join the call for a tax, but the tax does nothing for protecting the environment.

Each article in the newspaper that attacks the drilling is followed up by a story about growing support for the severance tax, but with little discussion as to where the funds are allocated. Arguments attempting to gain support for the severance tax treat it like a solution to the problem when it is actually a punishment for prosperity. In the case of SB 352, it is not at all about remedies. HB833 has some good components, but it is still a far cry from legislation that should be passed.

The weak links of the exploration need to be identified and remedied first. Legislators should focus their efforts on the problems at hand and resist the temptation to treat the drilling like a piggy bank. If there are shortfalls in the environmental code, they should be addressed rather than levying another punishing tax just for the sake of taxing anything that moves.

For once, in Pennsylvania, we should just let the "Marcellus multiplier" work, and then see what the economic engine generates in revenues through our existing tax structure, which is already one of the most punishing in the country. ●

March 2011 Penn ROAR Membership Survey

In each issue of Penn Roar we will conduct a survey about the subjects discussed in each newsletter. The results will give us a stronger connection to our membership and allow us to more definitively create policy stances. Your participation is crucial to our making a difference.

1. Do you support a severance tax on natural gas extracted from Pennsylvania?
2. If so, what percentage should it be?
3. If so, where would you allocate the revenues?
4. Do you have an alternative?

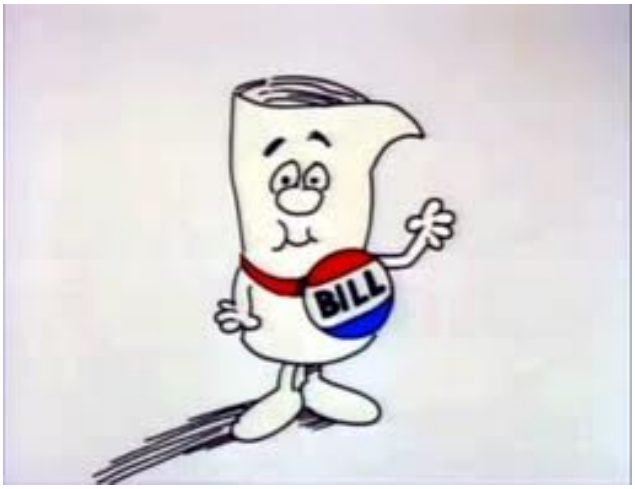
Please send responses and comments to:
pennroar@yahoo.com

Subject Line: January Survey Answers

Thanks,

NARO-PA Legislative Committee
Lester Greevy
Jacqueline Root
Alan Rank
Bill Wilson
Trevor Walczak

The results will be printed anonymously in the Penn ROAR Newsletter and used to promote NARO-PA's position .



Gas Leasing 101

By: Attorney Dale A. Tice, Marshall, Parker and Associates

What is a Pooled Production Unit?

The oil and gas leases being used by companies leasing in the Marcellus shale include a provision that allows the gas company to combine, or "pool", the landowner's acreage with property from other leased landowners to form a production unit. The production unit defines the area that the company intends to produce gas from by using vertical or horizontal gas wells.

In most cases, the unit will be developed by drilling multiple horizontal wells with the potential for six or more wells to be drilled over time. To avoid trespass issues, most operators in the Marcellus want to have all of the contiguous acreage in the unit leased.

The landowners in the unit will all share in the royalties from the wells drilled based on their proportional ownership in the unit. This means that a landowner with 100 acres in a 600 acre unit will receive royalties based on the ratio of 100/600, multiplied by his or her royalty percentage.

As the size of the production unit increases, the landowner's proportional ownership in the unit will decrease, and the landowner's royalties will correspondingly be reduced. Because the gas company can fully develop the unit by drilling multiple horizontal wells from one well pad, many landowners in the unit will be entitled to receive royalties even though there is no drilling on their property.

However, all of the landowners in the unit will have their leases extended and "held by production" as long as wells on the unit are producing gas in paying quantities.

Many of the older leases that have been signed by Marcellus landowners limit the size of the production unit to 640 acres, or one square mile. Units of this size may have been typical for drilling operations in states such as Texas and Oklahoma.

In order to allow greater flexibility in drilling operations, while holding more acreage by production, leases offered to landowners now often have no limit on the size of a production unit.

Before signing a gas lease, landowners should always consult a qualified attorney to ensure that they understand how the pooling provision in their lease will impact the potential royalties they will receive as production units are developed.

What is a Pugh Clause?

For most Pennsylvania landowners who have signed an oil and gas lease, the possibility of receiving royalties sounds exciting. As landowners see drilling development approaching their property, the potential royalties seem ever more real. When a landowner receives notification that their land has been included in a pooled production unit, these life-changing royalties seem just around the corner.

Imagine the landowner's dismay when they read the Declaration of Pooling and Unitization and realize that their property has been "clipped" and that only a small portion of her land has been included in the production unit. Unfortunately, this is the reality for many Pennsylvania property owners.

continued to page 10

Oil and Gas Lease Planning and Management

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Gas Leasing 101 continued from page

The gas leases used by the companies drilling in Pennsylvania allow the gas company to combine multiple properties into a pooled production unit. The landowners in the unit will share in the royalties from wells drilled based on their proportional ownership of the unit. While some production units may follow property boundaries, in most cases the unit is in the form of a rectangle with the boundaries of the unit not following property lines. Although the landowner will only receive royalties for the portion of the land included in the unit, the entire property is extended into the secondary term of the lease and held by production. For a landowner with only a small portion of their land in a production unit, this is not a good outcome.

The solution to this problem is a Pugh Clause. Usually added to the lease as an addendum, the Pugh Clause provides that at the end of the primary term (typically five years), the lease will terminate as to any acreage outside of a production unit.

This allows the landowner to sign a new lease for the property not included in the unit at the end of the five year primary term. The cash bonus received for signing the new lease provides compensation to the landowner for the property not included in the unit.

Naturally, the gas companies don't want to lose leased acreage and won't offer a Pugh Clause to landowners signing a gas lease. However, this is an important provision that should always be requested in gas lease negotiations.

Landowners who have signed a lease without a Pugh Clause and find that their property has been "clipped" can take comfort from the accelerating pace of development in the Marcellus shale. Over time it is likely that additional production units will be formed including the acreage left out initially.

However, landowners who have not signed a lease should understand the importance of working with an experienced oil and gas attorney who can draft an effective Pugh Clause and assist in negotiating with the gas company to include this important provision in their gas lease.

What is the Meaning of "Held by Production"?

Many of the oil and gas leases used by the gas companies leasing in the Marcellus shale include a primary term of five years. This means that the gas company has five years to begin drilling operations on the leased premises or the lease will expire at the end of the primary term. Although the lease may not include the expression "secondary term", the gas lease moves into the secondary term when drilling operations begin and then is extended as long as gas is produced in paying quantities. The industry term used to describe a gas lease that is extended in this manner is "held by production".

The gas leases used by the oil and gas companies operating in the Marcellus shale also include a provision allowing the gas company to pool the landowner's premises with other leased properties to form a production unit. Landowners signing a gas lease must understand that commencement of drilling operations anywhere on the unit extends the entire production unit into the secondary term. As a result, a producing well holds by production all of the property placed in the unit.

The oil and gas companies operating in the Marcellus are spending millions of dollars on lease cash bonus payments. Naturally, the companies don't want these leases to expire as they may be forced to approach the landowner with a new lease at the end of the primary term, an alternative that is particularly unattractive to the operators in light of the general trend for cash bonus payments to increase as the Marcellus play matures. To avoid this result, the gas companies have increased drilling activity despite low natural gas prices. Chesapeake Energy CEO Aubrey McClendon has said that up to 50% of all natural gas drilling is done to retain leases that would otherwise expire.

Clearly, it is the goal of the gas companies to hold as much land by production as possible. Because production of gas will hold all of the acreage in the pooled unit, the gas companies have an incentive to make large production units. In fact, some companies have requested that landowners sign an amendment to their gas leases to remove any limit on the size of a production unit. However, as the size of the unit increases, the landowners' proportional ownership in the unit decreases, thus reducing the landowners' share of the royalties. Before signing any amendment to a gas lease, landowners need to understand the impact the amendment may have on their future royalties.●

Meet the NARO-PA Founders

Trevor Walczak, chapter vice-president

When the gas companies crossed into the Delaware River Watershed, they were not greeted with as many open arms as they had come to expect when they touched down. The scenic Delaware River has long been the second home to wealthy socialites and celebrities looking for some time away from metropolitan life. The rustic river-front towns are often teeming with day-trippers, seasonal residents and boomers who never quite left after their arrival in '69.

They have little connection to the lifestyles of those who have continued to carve out a living for generations in those parts after the canals, railroads and now the family farms have all gone bust. Still, many landowners in northern Wayne County can trace their lineage back many generations to the land they are still standing.

For them, the gas drilling was breathing life back into a region that only the tax collector remembered. However, in that scenic river corridor was the powder keg that has set-off an explosion of activism not seen since they last showed us "a better way."

Water usage in the Delaware River watershed is regulated by the Delaware River Basin Commission (DRBC), the same way that the Susquehanna River watershed is regulated by the Susquehanna River Basin Commission (SRBC). The commissions are interstate compacts, so they operate outside of the realm of the individual states in which they function. In the case of the DRBC, their headquarters are in Trenton, NJ, which couldn't be any further removed from this region.

Drillers interested in procuring water anywhere in either watershed for their operations need to petition the commissions. Upon approval, they will be given a specific withdrawal location, daily limits on volumes that can be removed, and minimum flow rates that will suspend withdrawals.

In response to drilling and hydraulic fracturing hysteria, the state of New York placed a statewide moratorium on Marcellus drilling over two years ago. Because New York City's drinking water comes from reservoirs within the Delaware River watershed, the city put pressure on the DRBC to extend the same moratorium to the DRBC's activity as well until a comprehensive new set of rules could be drafted.

This new set of rules, unveiled late last year, requires drillers to submit detailed development plans of their entire lease area, similar to the way a proposed real estate development would be permitted. Requiring gas companies to project their specific drilling plans years into the future has drawn extensive criticism from the gas companies. They also increased distances gas wells could be located from waterways and wetlands, set limits to the slopes on which a well can be placed as well as regulating wastewater tracking and disposal.

Generally, their rules seek to overlap much of the responsibilities of PA Department of Environmental Protection (DEP) but would create an entirely new oversight body that would duplicate their requirements, but with far less experience, since DRBC had never handled gas drilling before. Drillers in Pennsylvania within the Delaware watershed would be beholden to both PA-DEP and the DRBC.

Common sense would dictate that one should look to the SRBC's policies, evaluate shortcomings, if any, and apply similar rules, working in tandem with existing oversight, but we're talking layered bureaucracy here, so… "Anything you can do, I can do better," kind of stuff.

On February 22, 2011, the DRBC held 1 of 6 public hearings in Honesdale on the proposed rule changes and allowed for public comment on a first-come, first-served basis, where only 75 potential speakers were strictly allotted two minutes to say their piece.

I was asked to speak on behalf of NARO-PA, as a small business owner, and as a landowner within the DRBC's jurisdiction. After all, the moratorium was removing our choice as landowners to decide whether we wanted to engage in the exploration and how we wanted to do it, as well. In my opinion, this fight cut directly to the core of what NARO is all about: *" to encourage and promote exploration and production of minerals in the United States while preserving,*

continued to page 12

Meet the Founders continued from page 11

protecting, advancing and representing the interests and rights of mineral and royalty owners through education, advocacy and assistance to our members, to NARO chapter organizations, to government bodies and to the public."

To ensure a speaking position, I waited in line two-and-a-half hours in the blistering cold of the sunny winter morning, along with over a hundred other concerned citizens from every side of the argument. I was fortunate enough to draw speaker #36.

I had spent the night before rehearsing with a stopwatch, so I had it down. Trouble is, I've always been a man of few spoken words, unless you give me a pen and paper. In this case, writing two minutes of commentary barely had my keyboard warmed up.

Among other points, I informed the crowd of over 350 that "failure to lift this drilling moratorium, shortly hereafter, will be a great infringement on the private property rights of those landowners within the Delaware River basin who have faithfully paid their taxes, in good faith, while thinking that their property's future was theirs to determine."

"The 5th Amendment to our US Constitution states *nor shall private property be taken for public use without just compensation*. Therefore, if the DRBC continues these restrictions, which would prevent a private mineral owner from developing their mineral interests, that is a government entity taking our private property and, consequently, the government should then be responsible for *just compensation.*"

I also found it relevant to add that "in the last two years of working right along side drill rigs, I have witnessed the rapid strides the industry has made to improve upon itself by employing new technology, techniques and strategies proven to shore-up environmental stress points."

"Each time we were on a job, we were encouraged to surpass what was required. The companies exploring here know the cost of doing it wrong is larger than the cost of doing it right. So they're doing it better and safer every time they drill a well. I've been there and I've seen it."

Joining in the fight was David Callahan, the vice president of the Marcellus Shale Coalition (MSC) who testified "the proposed standards related to siting, design, and operation of natural gas well pads are a significant departure from the Commission's traditional role regarding the review of water resource projects within the Basin. They raise a real question as to whether the Commission has legal authority to impose such standards."

"The MSC is concerned that natural gas activities have been singled out by the Commission and may be required to adhere to standards not imposed upon other industries with similar or greater impacts from land clearing and alteration. This apparent effort to single out natural gas development has led to proposed regulations that overlap, or even conflict, with both state regulations and even the DRBC's own existing water withdrawal and wastewater programs. Ultimately, this inconsistency will only serve to bring regulatory and public confusion and impatience."

Doug McLinko, a county commissioner from Bradford County, which hosts the most Marcellus wells in the state, testified as to there being over 600 drilled wells in his county, numerous water withdrawal sites, and no environmental problems. He believes it was the best thing to happen to that county.

Numerous other landowners and elected officials cited their opposition to the overreach, enumerating these concerns.

Of course, on the opposition to the drilling we faced Josh Fox, the maker of the fact-deprived documentary *Gasland*, whose family has a summer home in northern Wayne County. Expect to see choice excerpts of the meeting in his upcoming sequel. Hollywood actor Mark Ruffalo, also has a home along the river, in Callicoon, NY, and testified as well. Both warned of impending destruction and the need to carry out years of expensive studies, while continuing the current moratorium.

While two thirds of the speakers were in opposition to the DRBC's overreaching new draft regulations, the other third was opposed to the regulations because they were opening the door to allow drilling in the future. I guess the score was unanimously against the DRBC, but we will see what they decide in July, the earliest they felt a decision could be made.

NARO-PA will continue to fight these battles on behalf of all landowners in Pennsylvania. I hope you will continue to join us as well. ●

New York Times Drops a Bombshell on PA Natural Gas

In response, I thought it best to get a statement right from the man at the center of the controversy:

Former DEP Secretary John Hanger's Statement regarding Sunday NYT February 27th Drilling Article

Excerpts from his personal blog: http://johnhanger.blogspot.com/2011/02/statement-regarding-sunday-nyt-february.html

No compromises can be made about the safety of drinking water. The Sunday NYT article raises serious issues that must be definitely resolved immediately. The most serious issue raised by the NYT is whether or not unhealthy levels of radium are in the drinking water as a result of gas drilling wastewater.

Good reasons exist to believe that the answer is no, including the new drilling wastewater disposal rule that went into effect in August 2010 and the now widespread use of recycling technology to manage at least 70% of drilling wastewater. But belief is not good enough. We must not drift into a war of competing theories or studies. We need the facts. Pennsylvanians deserve nothing less. Moreover, once the results comeback and no matter what the results are, testing should continue on a regular basis at least at the 65 public water systems identified by the NYT.

Now only testing can resolve one way or another, the issue about radium that the NYT raises. Having said that, some further points about the article need to be made. The piece looks at a three year period and characterizes regulation in Pennsylvania as lax. Lax regulation is the theme or narrative of the piece and virtually all elements and word choices of the article are consistent with that theme.

Buried late in this enormous piece is a paragraph that states that the rules today are much stronger. Shortly after I became Secretary on September 2nd, 2008, I concluded Pennsylvania's rules governing gas drilling and protecting our waters needed to be strengthened. I directed 4 new policies or rules be drafted and completed as soon as possible. All now have been.

The 4 strengthening regulatory packages that were barely or not all mentioned in the NYT article included:

First, finalizing protective water withdrawal policies requiring at the time of the drilling application the submittal of a water plan that insured water withdrawals would not damage streams even during droughts.

Second, I ordered a major rule to end Pennsylvania's decades long practice of allowing unlimited amounts of drilling wastewater untreated for total dissolved solids (salts etc) into rivers and streams and won passage of this rule over opposition from the gas industry, the coal mining industry, the Pennsylvania Chamber of Business and Industry, and other supporters of the gas industry.

The new drilling wastewater rule became effective in August 2010 and applies to all sources of TDS pollution, including mining and industrial sources. The rule, however, singles out drilling wastewater for the strongest requirements. The 2010 rule requires new or existing drilling wastewater plants that expand to treat drilling wastewater to the Safe Drinking Water Standard for TDS if it is returned to a river.

The rule does allow plants that had been operating for many decades to conditionally do so if they do not expand and if the river to which they discharge has TDS levels below 75% of the Safe Drinking Water standard of 500 mg/liter. The NYT erroneously suggests that the existing plants if they do not expand can continue operating under the rule no matter their impact on the receiving stream. False. If the receiving stream has TDS increase as a result of the existing plants discharge or other reasons, these existing plants will have to modify how they operate and possibly cease operations. The drilling wastewater rule is hugely important and must be enforced fully.

Third, I ordered a strengthening across the board of the rules governing drilling well design, materials, construction, monitoring, testing, and disclosure of chemicals. This rule became effective on February 5, 2011 after being begun in 2009. They are state of the art standards. They must be followed and enforced.

Fourth, we enacted a 150 foot buffer requirement from all development for High Quality streams, Pennsylvania's best waters. About 22,000 miles of streams receive this protection or one-quarter of all of Pennsylvania's streams. This rule commenced in 2009 and was final in November 2010. ●

For more info about fact checking the New York Times Article, check out these links: http://www.energyindepth.org/ has completed extensive debunking of the NYT piece in their stories: *Welcome to Urbina Island* PERMALINK; *Third Times a Charm* PERMALINK; *On Wastewater and the NYT* PERMALINK;

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NARO PA 2011 Convention
Schedule of Events

Thursday, March 31st

Registration 8:00am-5:00pm
Expo 11:00am-7:00pm

8:00am-11:00am PA Board Meeting- *Guests welcome*

8:00am-11:00am Vendor Setup

9:00am-10:30am CMM Exam- *Must be pre-registered with the NARO Office in Tulsa, OK*

11:00am-12:00pm NARO PA Chapter Annual Meeting- All NARO members are welcome to attend

12:00-1:00pm Lunch - Sponsor ***S&T Wealth Management***

1:00-1:15pm Opening Remarks- Jackie Root CMM, NARO PA Chapter President

1:15-2:15pm The Role of Fractures in Marcellus Production with Dr. Terry Engelder, PSU Professor of Geosciences. Dr. Engelder is credited with the 2008 announcement that focused national attention to the vast Marcellus Shale deposit underlying the Commonwealth.

2:15-3:00pm Pennsylvania Oil and Gas Lease Litigation- Taunya Knolles Rosenbloom, Esq. Signing a lease was the first hurdle… how do you deal with an expiring lease, unfair unitization and improper royalty deductions.

3:00-3:30pm Networking Break Sponsor ***Newfield Exploration***

3:30-4:15pm New Estate Tax Legislation- Lester Greevy Esq., Greevy and Associates. Late in 2010 a major change was enacted in the estate tax law. Learn how the new law will impact your mineral estate succession decisions.

4:15-5:00pm PA Legislative Issues- Senator Gene Yaw. The Senator was responsible for introducing legislation passed in 2010 to address Clean & Green and to require reporting for Marcellus production. He will discuss 2011 legislative initiatives with the potential to impact oil and gas development.

6:00-8:00pm – Reception Sponsored by
Cabot Oil and Gas Corporation

Friday, April 1st

Registration 7:30am-10:00am
Expo 7:30am-1:00pm

6:30am-7:45am Breakfast Buffet- Sponsor ***XTO Energy*** Wake up with the NARO PA Legislative Committee. Learn about proposed legislation and how it will affect oil /gas development and royalty income.

8:00am-9:00am – Mineral Management 101- Dale Tice Esq., Marshall Parker & Associates and Earle Robbins-CMM, R&R Energy Consulting. How mineral interests are managed today will affect related income for generations.

9:00am-10:00am – Metering- Jim Perkins, P&C Gas Services. Metering accuracy will have a direct effect on your royalty income. Learn how gas flow is measured and what can affect accuracy.

10:00am-10:30am – Networking Break Sponsor ***First National Bank***

10:30am-11:15am – NARO: The National Perspective with NARO Executive Director, Jerry Simmons

11:15am-12:00pm – Practical Financial Planning for Oil and Gas Income, Daniel Simonsen- Oil, Gas and Mineral Banking Officer, Northwest Savings Bank

12:00pm-1:00pm – Luncheon- Sponsor ***Talisman Energy USA***

1:00pm-1:30pm – Oil and Gas Regulations: Changes and Challenges, DEP Official

1:30pm-2:45pm – Technical Panel moderated by Jerry Simmons will include DEP, Robert Garland- Universal Well Services, Jeff Kiem- Cabot Oil and Gas Corporation, Dan Tomley- XTO Energy and Talisman Energy USA. Panel members will answer your questions regarding regulation, well siting, construction, drilling, hydraulic fracturing, unitization and more.

2:45pm-3:00pm Break

3:00pm-3:45pm Pipeline in PA- Paul Metro- PUC Head of Pipeline Safety. Gathering, pig, transmission, class 1, 2, 3 or 4, riser, compression, looping, ROW, dehy… new terms to you? Learn about gas movement in the Commonwealth and the rules that govern it.

3:45pm-4:45pm – The Future of Natural Gas – David J. Spigelmyer VP, Government Relations, Chesapeake Energy. The well is complete, pipeline is connected. Will the Appalachian region face an oversupply far into the future or are there marketing opportunities just over the horizon?

4:45pm-5:00pm – Closing
Grand Prize Award

NARO PA 2011 CONVENTION REGISTRATION

March 31 - April 1, 2011
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IMPORTANT NOTICE!
Cut-Off Date for the
NARO PA room block is
February 28, 2011
Be sure to reserve rooms by that date!

All-Events registration includes all meal events, meetings, seminars and printed materials.

EARLY BIRD ALL EVENTS Registration *(before March 1, 2011)* Qty. Total

☐ NARO Member $150 _____ $_____
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ALL EVENTS Registration *(after March 1, 2011)*

☐ NARO Member $200 _____ $_____
☐ Non-Member $350 *(includes 1-year NARO Membership)* _____ $_____

(No refund of registration fee after March 1st. Refund less $50 processing fee before March1st.)

MEALS-ONLY REGISTRATION for those not paying for All Events

☐ All Meals - $100 _____ $_____

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