

Vol. 9, No. 23 – November 1, 2007

Squatter's Rights

What if you woke up one morning to find a bulldozer cutting a new road right across your property? And then the bulldozer was followed by big rigs hauling in drilling equipment and pipelines. And what if, after a couple of weeks, you found that your land was festooned with drilling rigs chugging away day and night pumping out pricey methane and your groundwater along with it?

That's what happened to Bill McConnell. A drilling company set up shop on 15 acres of his 380 acre farm with seven noisy coal bed methane wells and almost five miles of pipelines and access roads. The drilling has devalued Bill's property, eroded his pastures, polluted his pond, damaged his access road and shattered the peace of his once-placid dairy farm with constant noise.

And while the Texas-based energy company pumping methane out of the coal seams under Bill's property stands to reap healthy profits, Bill gets nothing in return.

Many landowners in southwestern Pennsylvania are living this nightmare. Because of a quirk in Pennsylvania law, giant multinational energy companies have the right to drill for methane anywhere they own the rights to subsurface coal beds without the surface property owners' permission. They can use and pollute the owners' water in the drilling process, and there are few, if any, controls on how they dispose of wastewater.

In Pennsylvania, coal, oil and gas companies drilling for coal bed methane can just squat on private property for as long as the wells produce – maybe 20 to 40 years – without the permission of the landowners and without compensating them. The average coal bed methane well produces about 50,000 cubic feet of gas, which reaps about \$400 a day, or \$146,000 yearly.

Methane, which is a primary component in natural gas, is created as organic material turns into coal. It is stored within the coal itself. A 1983 Pennsylvania Supreme Court decision gave the rights to the methane contained in the coal wholly to the owner of the coal rights, a decision at odds with a 1999 U.S. Supreme Court ruling and laws in other coal states.

As a result, in Pennsylvania coal bed methane drillers can disregard the surface owner's rights and assert their

rights to gain access to the methane contained in the coal beneath the surface. This is in sharp contrast to how oil and gas companies must treat landowners sitting above non-coal bed natural gas deposits. In that case, the companies have no legal ownership rights to the natural gas and must negotiate a lease with the surface owner, reaching agreement on the terms and conditions of the lease. The surface owner does not have to allow the drilling and can control how the company operates the wells.

Even coal companies that want to strip mine coal resources that they own must first get the permission of the surface owner through a signed "Contractual Consent of the Landowner."

The high price of natural gas is fueling a coal bed methane gold rush in southwestern Pennsylvania. The number of wells doubled between 1999 and 2004 from 23,822 to 44,227, and estimates put recoverable methane in Pennsylvania coal beds at 2.7 trillion cubic feet. Energy companies are now snatching up bargain basement coal rights at county tax auctions for as little as \$100 for a 45-acre parcel. Counties do not notify the surface owners when coal rights under their property come up for sale at tax auctions, and sale notices include only the name of the coal rights owner, not the surface owner.

And even as coal, oil and gas companies scramble to snatch more and more of the valuable property of the coal rights, they fight proposals that would allow local governments to impose property taxes on the methane (as is done in West Virginia). Tax experts have estimated that Greene, Fayette and Washington counties have lost between \$20 and \$30 million in school, local and county taxes since the Pennsylvania Supreme Court ruled about five years ago that crude oil and natural gas could not be taxed as property.

As more and more landowners find themselves unwilling and uncompensated hosts to the production end of a highly profitable industry, some lawmakers are trying to level the playing field between landowners and the coal, oil and gas companies. Both Representatives Jess Stairs (R-Fayette and Westmoreland counties) and Tom Yewcic (D-Cambria and Somerset counties) have introduced legislation requiring coal bed methane drillers to enter into

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surface use agreements with landowners. Rep. Yewcic has also introduced a bill giving surface property owners the right to purchase the mineral rights first, and a similar bill is before the senate, sponsored by Senator John Wozniak (D-Cambria, Centre, Clearfield, Clinton and Somerset). Rep. Bill DeWeese (D-Fayette, Greene and Washington counties) has introduced legislation subjecting coal bed methane to local property taxes. Two public hearings have been held on the problems of coal bed methane exploration, with the Senate hearing in Harris-

burg and the House hearing held in the coalfield community near Johnstown.

For the people in the coalfields, legislation cannot come fast enough.

The price of natural gas will only go up over the next decade. The coal, oil and gas companies that will profit from higher energy prices should pay their taxes and treat landowners fairly instead of acting like unwelcome squatters.

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