



West Virginia's  
**Surface Owners' Rights Organization**

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**A Forced Horizontal Gas Well Unitization/Pooling Bill  
Is ONLY a Good Idea IF:**

1. It is part of a **comprehensive bill** that includes provisions to improve the recognition of **surface owners existing rights**.
2. It is part of a **comprehensive bill** that includes the **general modernization and improvements** including those requested by the D.E.P.
3. It provides that **no horizontal drilling pad, access road or other surface disturbance can be put on the surface of the tract** that is forced to be joined into the unit. This prohibition has to apply whether the surface owner does or does not also own the minerals.<sup>1</sup> That is the existing Code in the “deep well” unitization and pooling statute.<sup>2</sup>
4. The driller must already have to have **75% of the drilling rights leased voluntarily** to assure that most people think the current market is the right time to drill.
5. The driller must **pay the forced mineral owner the most favorable royalty terms** being paid to others in the unit who have been signed up voluntarily, including a bonus and royalty.<sup>3</sup>
6. If the forced mineral owner has not signed a lease, **the operator doing the forcing should not get to payout less than if the property was already leased to another operator! The unleased mineral owner should have the opportunity to receive that.** In addition to the signing bonus and the royalty (previously usually 1/8th), the unleased mineral owner must get a share of the working interest (the other 7/8ths the *lessee* would get if the mineral owner had signed a lease). The calculation depends on whether or not the landowner participates in the financing of the drilling. This calculation needs to be set by the commission and not by statute.<sup>4</sup> The mineral owner should not have to choose between royalty and working interest!
7. If the tract forced into the unit is in “heirship”, and some of the owners cannot be found their **funds may be claimed by the surface owner** similar to the way they do under West Virginia Code §55-12A-1 et seq. “Lease and Conveyance of Mineral Interests Owned by Missing or Unknown Owners or Abandoning Owners”. If not claimed by the surface owner, then to the orphan well plugging fund.
8. It provides only for **single well units**, not multiple well units (multiple *wellpads* are OK).<sup>5</sup>
9. It provides that a **neighboring mineral owner** whose acreage is near the drilling unit **has the opportunity to join the unit** <sup>6</sup> if the neighbor can show that their gas will also be drained by the horizontal well for which the unit was created.
10. It only allows for forced unitization for producing natural gas from the **particular acreage and formation** or formations from which the horizontal well will actually drain gas.<sup>7</sup>
11. It should have the commission require that the well bores have to be **far enough inside the unit boundaries** that they are not draining gas from outside the unit. It should give the commission the power to prevent **new well bores being drilled outside the unit** from being so close they can drain the unit, or so far away that it would leave **un-drainable acreage in between** the new well and the unit.<sup>8</sup>

*(See endnotes on reverse side.)*

## Notes

1. It would be a “taking” for the statute to allow a surface owner’s land to be used to produce oil and gas from a mineral tract that is not the mineral tract underlying the surface tract. See Williams, Howard R. & Meyers, Charles J., *Oil and Gas Law*, Matthew Bender, "Conduct of Operator Injurious to Others" §§218.4 and 218.6.
2. W.Va. Code §22C-9-7(b)(1) (last sentence).
3. If the driller does not have to pay the forced owner the most he is paying those voluntarily joining the pool, then the driller will lease the cheapest tracts (or use old tracts held by production under old low-paying leases) and force everybody else to lease below current market values. Often the royalty on the cheapest tracts, or those held by production, will be the old “standard” 1/8th with expenses deducted -- which is unfair for mineral owners for horizontal wells in the current market.
4. If the forced party does not help pay for the drilling, they do not start getting the initial working interest payments until after the drilling of the well has been paid for. How long after "payout" before the forced party begins receiving working interest payments? There is some risk on the first horizontal well in an area for which the financier of the drilling should be compensated. But for subsequent horizontal wells from same pad, not so much risk. So the statutory factors of double and triple payout in current statutes for statutory “deep” wells and coal bed methane wells should not be used. It should be left to the commission considering risk and cost of capitol.
5. There could still be centralized horizontal well pads with multiple wells, which is good. But each horizontal well should have its own unit that is the size of the acreage that the one horizontal well can drain. If a unit is established that is so large it needs several horizontal wells to drain it, and if only one horizontal well is drilled in that established unit, then some mineral owners in the unit will have their royalty go to mineral owners whose minerals are not being drained. Also, those mineral owners whose acres are not being drained will not be able to lease to another driller who would drill a well draining them and paying them much more royalty.
6. To give neighboring mineral owners this opportunity, there must be publication notice of the unit.
7. If some acreage in one formation of a mineral tract is forced into a unit, the owner should be free to lease the other, undrained acreage of that formation to someone else. Also, other oil and gas formations above or below the target formation should not be forced into the unit. The mineral owners should be free to lease them to others.
8. In the industry these are called “conservation” provisions and are part of the protection of “correlative rights” of others. A more comprehensive set of these provisions like the set that current exists for statutory “deep” wells would also be good public policy, but also more controversial.