



# POOLING UPDATE

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MLBC - AAPL



# RECENT FARM BUREAU ARTICLE



**S**hould the majority rule? Most Americans would say, "Yes!" Yet, the majority of mineral owners who want to develop their minerals can currently be prevented from doing so by a small minority. For those who would argue from the private property rights perspective, the question remains: what about the private property rights of the majority? We often complain about the minority getting its way and the majority being ignored all the time. So, which way do we want it?

An effort to allow a more balanced approach to this issue was attempted recently during the West Virginia legislative session. Sponsors and supporters of HB 2688 hoped to address a number of complaints held by both mineral and surface owners, while still allowing West Virginia to benefit from the oil and gas boom.

The facts are that a number of things are misunderstood about current law. First, "forced pooling" or "unitization" has been in effect for the Utica and all other deep formations since 1994. Existing West Virginia law allows forced pooling for deep wells such as Utica wells, with NO protection for mineral or surface owners (WV code 22-C-9-7). Current drilling activity is mostly in the Marcellus, but drilling in the Utica will be next. Why? Because Utica wells have 4 to 5 times more production than Marcellus wells. On average, a Marcellus well (defined as a shallow well by WV law) produces roughly 10 million cubic feet per day; a Utica well produces 40 to 50 million cubic feet per day (based on known wells in Ohio, western Pennsylvania and Tyler County, WV). Therefore, it is reasonable to conclude that a majority of the drilling in the near future will be in the Utica – which, again, is a deep well according to the definition set forth in West Virginia code.

So what did HB 2688 address? First, it applied to ALL horizontal wells – deep and shallow. It provided protection for surface owners (whether or not they have mineral rights) in that their surface could not be disturbed by the drilling process (no well pads, no roads, no equipment storage, etc.) Those who owned 80% of the acreage (note – not 80% of the owners, as there can be dozens of owners of very small parcels of land) had to agree to voluntarily pool BEFORE anyone could be forced to pool (no other state in the U.S. that allows pooling has a higher percentage). In previously proposed legislation in years past, the industry had initially wanted only 51% and later just 67%. HB 2688 required 80%. Also, the bill provided that NO deductions could be taken from the royalties of those who were forced in.

Under HB 2688, forced pooling could ONLY apply to the target formation (i.e., if a company wanted to drill in the Marcellus and your property was forced, they could not also drill other strata – that would have to be done under a separate agreement).

HB 2688 also required that when the West Virginia Oil & Gas Conservation Commission (the body responsible for looking out for the interests of "forced" owners) considers compensation for those being forced, they would have to take into account the compensation offered in leases made in the vicinity of the area being forced.

Unfortunately, there were major misunderstandings about how HB 2688 addressed compensation. No specific threshold of compensation was spelled out in HB 2688, so that all parties would be able to negotiate their best deal. If thresholds had been stated, it is likely that would be the best that would have been offered by either party. The 1/8 royalty mentioned in the bill is royalty

*West Virginia Farm Bureau News 9*



# RECENT FARM BUREAU ARTICLE CONT.



OWNERSHIP, not the royalty RATE, as many had been misled to believe. Therefore, mineral owners could get much more than the minimum 12.5% royalty on a tract with no deductions and no maximum limit, depending upon negotiations or what the West Virginia Oil & Gas Conservation Commission would decide.

HB 2688 would also have provided for changes to the West Virginia Oil & Gas Conservation Commission. The first change would be the addition of two members to the Oil & Gas Conservation Commission, as many felt the current make up was slanted toward the oil and gas industry. One of the new members would represent surface owners and be from the largest agriculture organization in the state; the other would represent mineral owners. Neither would be allowed to be affiliated with the oil and gas industry. Second, the bill allowed for an appeals process if parties are not in agreement with the Oil and Gas Conservation Commission decisions. Also, the state Geologist would be included as a member of the commission.

Many people were unhappy because they believed HB 2688 did nothing to address the problem of minerals that have been separated from the surface - but this was not true. The bill did provide for the eventual reuniting of the minerals of lost and unaccountable owners by the surface owner.

Many asked why transparency issues with the oil and gas industry were not addressed (i.e., record keeping, timeliness of royalty payments, tax issues). Addressing these in the same bill would have required the bill to be "triple referenced" - meaning it would have had to go through and be approved by several committees before it could be introduced on the floor. In most cases, this causes a bill to die because the process simply takes too long.

10 *West Virginia Farm Bureau News*

Another misconception pushed by opponents of the bill was the threat of losing property - which was completely untrue. No one was at risk of losing their land. They would continue to own the surface. NOTHING in this bill threatened their ownership.

The key thing - for people interested in personal property rights - is that this bill gained more for deep wells than was lost from shallow wells.

There are those who ask why Farm Bureau continues to be involved in this matter. The answer is simple. This is an extremely important issue that is not going to go away. Significant surface and mineral ownership issues exist for many of our members. Farm Bureau members voted on policy that is consistent with HB 2688 and therefore that dictates that we must stay involved and work for the best solution possible.

What can you do? First, find out the facts. Legislation will come up again - this issue is by no means going away. Don't accept what someone told you - learn for yourself what the truth is. Talk with your representatives. Get involved - when your county Farm Bureau holds policy meetings, attend them and voice your opinion. One thing is certain - nothing will change for the better if you don't.

If you would like to read the final version of the bill for yourself, see it on the West Virginia Legislature's site at [http://www.legis.state.wv.us/Bill\\_Text\\_HTML/2015\\_SESSIONS/RS/pdf\\_bills/HB2688%20SUB%20PRINTED.pdf](http://www.legis.state.wv.us/Bill_Text_HTML/2015_SESSIONS/RS/pdf_bills/HB2688%20SUB%20PRINTED.pdf) or call Joan Harman at 800-398-4630 x. 306.



# DELEGATE ZATEZALO EDITORIAL



## Clearing Up Myths About Gas 'Pooling' Laws

May 3, 2015

Mark Zatezalo, The Intelligencer / Wheeling News-Register

“. . . As West Virginians, we must decide if we are truly an energy state or are we just a state that has some energy. **[Pooling] is about the optimization of a balance of interest**, and this policy represents the next step in West Virginia's energy strategy. . .”

Mark Zatezalo is a Delegate from Hancock County, WV.



# DELEGATE CADLE EDITORIAL



## Why Pooling is Good for West Virginia

April 21, 2015

Scott Cadle, Charleston Daily Mail

“ . . . The advantages of pooling are many. . . If we are to grow the West Virginia economy, create good paying jobs that keep our sons and daughters here, boost local tax revenues, and usher in a new era of manufacturing, we need to maximize the value of what we have and use as much of the [gas] resource as possible. . . That’s why I’ve come to support the concept of pooling of our natural gas assets. **The bill before the 2015 session of the legislature would be fair to the farmer, the mineral owner, the state of West Virginia, the surface owner and the industry. . .**”

Scott Cadle is a Delegate from Mason County, WV





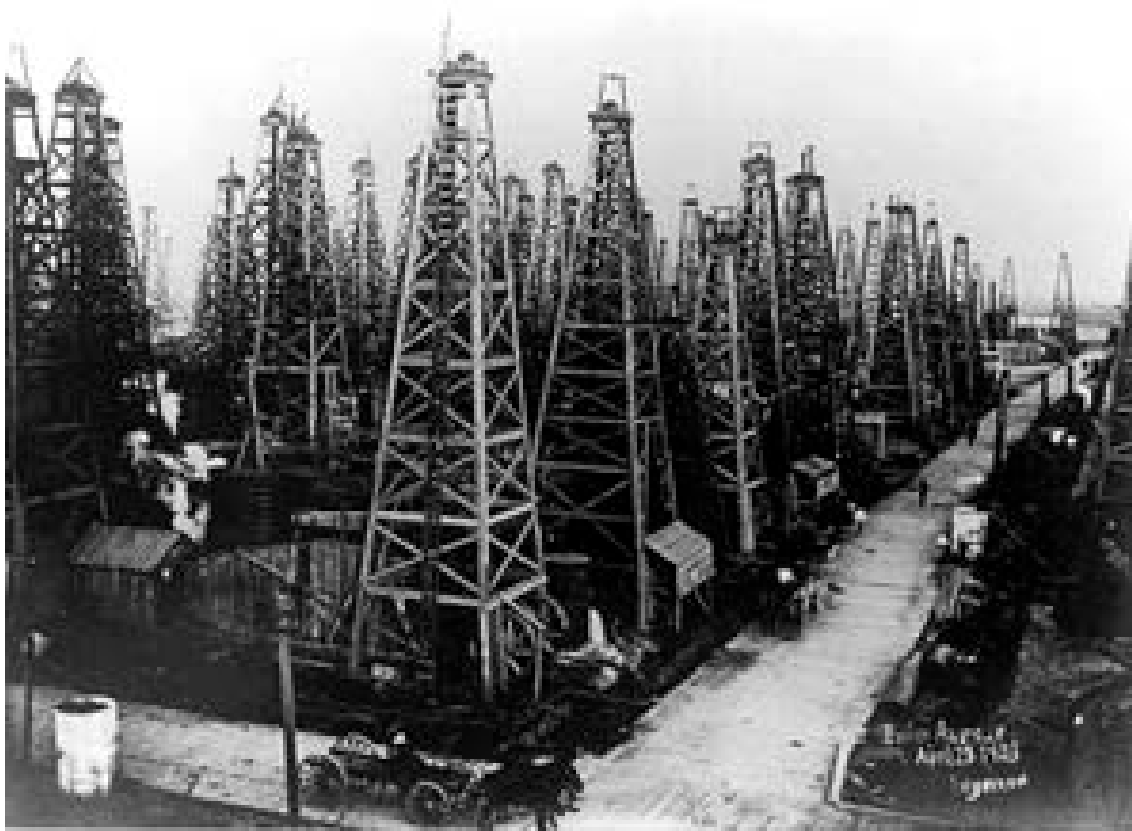
# ORIGINS OF POOLING



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Emergence of the concepts – pooling & unitization



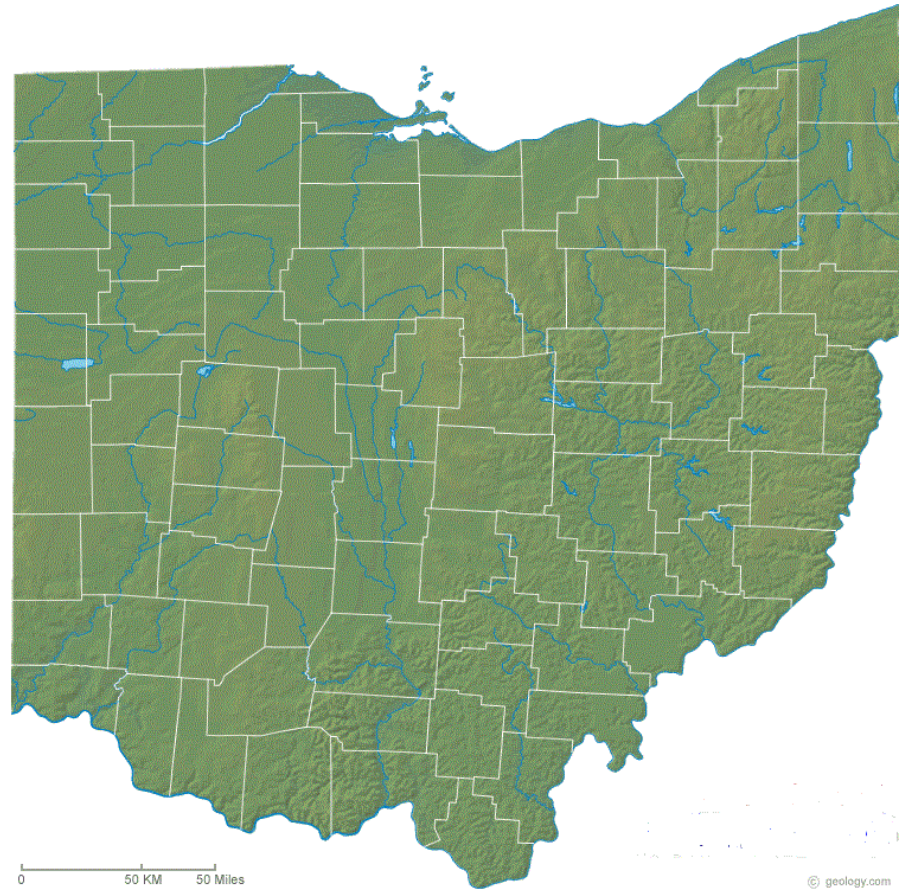
**Surely there is  
a better way to  
do things...**



# CURRENT POOLING IN OHIO



Ohio





# STATUTORY POOLING LAWS



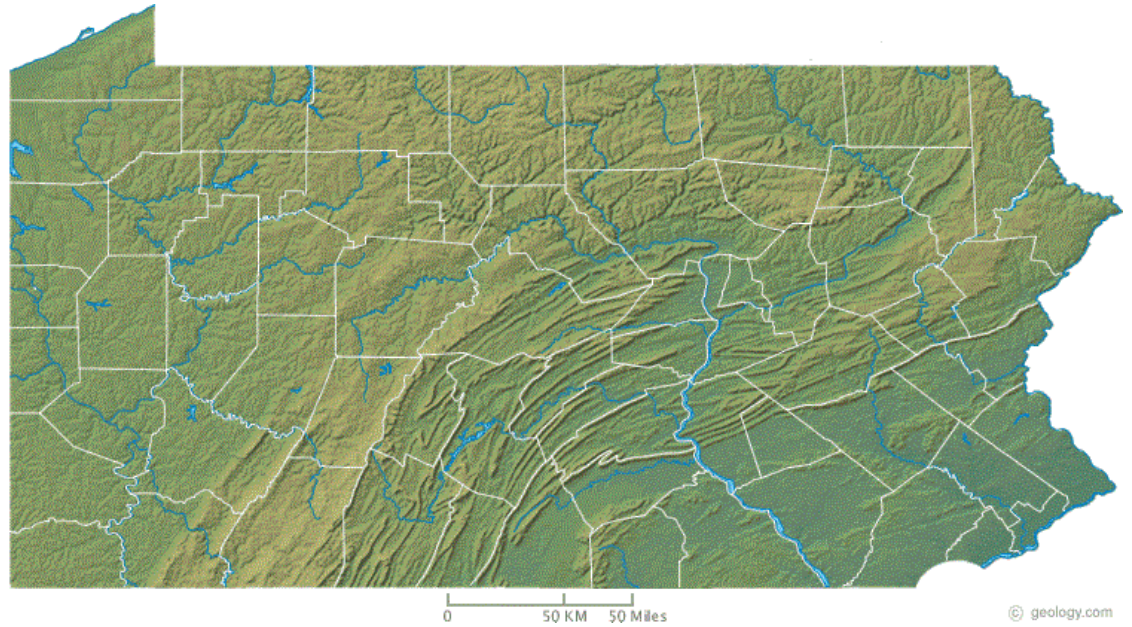
- No distinction between shallow and deep wells as in WV or PA
- Section 1509.27 authorizes mandatory pooling orders
- Section 1509.28 permits unitized operations
- Section 1509.29 permits exception tracts subject to production allowable where statewide or special rules would otherwise preclude development



# CURRENT POOLING IN PENNSYLVANIA



Pennsylvania



## POOLING IN PENNSYLVANIA



58 P.S. § 403 – applies to all wells except those that are less than 3,800 ft. or do not penetrate the Onondaga (Marcellus wells do not qualify as Conservation well)

58 P.S. § 405(c)(1)(iv) – gives Oil & Gas Conservation Commission specific authority, upon proper application, to enter spacing and pooling orders and provide for the integration of interests within a drilling unit

58 P.S. § 408 provides that two or more separately owned tracts can be voluntarily integrated to create a pool



**SECTION 2.1. APPORTIONMENT**

**WHERE AN OPERATOR HAS THE RIGHT TO DEVELOP MULTIPLE CONTIGUOUS LEASES SEPARATELY, THE OPERATOR MAY DEVELOP THOSE LEASES JOINTLY BY HORIZONTAL DRILLING UNLESS EXPRESSLY PROHIBITED BY A LEASE. IN DETERMINING THE ROYALTY WHERE MULTIPLE CONTIGUOUS LEASES ARE DEVELOPED, IN THE ABSENCE OF AN AGREEMENT BY ALL AFFECTED ROYALTY OWNERS, THE PRODUCTION SHALL BE ALLOCATED TO EACH LEASE IN SUCH PROPORTION AS THE OPERATOR REASONABLY DETERMINES TO BE ATTRIBUTABLE TO EACH LEASE.**



# CURRENT POOLING IN WEST VIRGINIA



## West Virginia



## Statutory Pooling

1. Shallow Wells
2. Deep Wells & Secondary Recovery
3. Coalbed Methane Wells

# Recent Attempts at Statutory Reform

## WV Regular Session – 2013

### Lease Integration

## 2013 – LEASE INTEGRATION PROPOSAL



- Legislation introduced, but not enacted – therefore, this overview is included for perspective purposes only and is not a summary of applicable law
- Addressed integration of leased tracts only – unleased acreage was not addressed
- Segments of industry support
- Would have been beneficial for operators who have large, contiguous holdings under leases that do not contain pooling provisions
- Applied only to shallow formations
- Bill would have allowed the establishment of drilling units
- Oil and Gas Conservation Commission would have been charged with administering integration process
- In order to file an application, the applicant was required to control 100% of the acreage with respect to the target formation by lease or other contract





## 2013 – LEASE INTEGRATION PROPOSAL



- Take away from 2013
  - Industry support was segmented
  - View was that the proposed legislation did not provide enough tools to efficiently develop Marcellus acreage
  - Royalty owners disapproved of constraints placed on amount of integration payments



# WV Regular Session – 2014

## Fair Pooling Act

- Legislation introduced, but not enacted – therefore, this overview is included for perspective purposes only and is not a summary of applicable law
- New approach when compared to 2013 Lease Integration Proposal
- 2014 Pooling Proposal applied to both leased and unleased tracts.
- Industry support from both major trade associations

- Multiple prerequisites to filing an application for drilling unit
- Applied to deep and shallow formations so long as horizontal wells were drilled
- Oil and Gas Conservation Commission authorized to administer the pooling process



- Prerequisites to filing application
  - Applicant must negotiate in good faith with all executive interest royalty owners and operators
  - Applicant must obtain consent to the proposed unit from a supermajority of the executive interest royalty owners and working interest owners of target formation oil and gas - determined on a net acreage basis
  - The interest of unknown or unlocatable owners is not counted in the threshold percentages

## 2014 – POOLING PROPOSAL



- Unit size set by statute at a maximum of 640 acres, with a 10% upside tolerance
- Development requirements set forth in the proposed legislation
  - If multiple horizontal wells proposed, operator must timely drill subsequent wells or else modify the unit
  - Production of gas and other operations on a portion of the unit deemed for all purposes to be conducted on each tract within the unit
  - Production allocated to tracts based on net acreage of individual tracts compared to net acreage of proposed unit



- Unitization consideration required to be paid in an amount determined by the O & G Conservation Commission to non-consenting royalty owners and owners of unleased minerals who elect unitization consideration
- Unitization consideration required to be “just and reasonable”

## 2014 – POOLING PROPOSAL



- “Just and reasonable” compensation is determined based on relevant evidence adduced at a hearing regarding amounts paid or consideration given in arm’s length transactions in the vicinity of the unit and within a reasonable time prior to the hearing for transactions of the same nature and involving similar geologic conditions as the transaction being considered.
- Determination of amount of unitization consideration within the Commission’s power



- Options for non-consenting owner of unleased oil and gas
  - Elect unitization consideration and lease the target formation oil and gas to the operator on mutually acceptable terms or under just and reasonable terms determined by the Commission
  - Elect to be a royalty owner as to 1/8th and be an operator as to the remaining 7/8ths interest in the oil and gas
    - With respect to the 7/8ths operator interest, elect between 3 Options

# WV Regular Session – 2015

## Fair Pooling Act



# POOLING UPDATE- SUMMER/ FALL 2014



- Intense outreach with interested stakeholders in advance of 2015 Regular Session
  - WV Farm Bureau*
  - National Association of Royalty Owners*
  - WV Land & Mineral Owners*
  - Others*
- Meetings with key policymakers
- Participation in Joint Judiciary Interim Committee meetings
  - Educational focus*
  - Show broad industry support*
  - Control the message for the initial legislative hearings*



## POOLING UPDATE – EARLY SESSION



- Three stakeholder meetings held by House Energy Committee Chairman Woody Ireland prior to introduction
  - *WVONGA, IOGA, NARO, SORO, Farm Bureau, WV Royalty Owners Assoc. and WV Land & Mineral Owners Assoc.*
  - *Stakeholders disagree on numerous provisions*



# POOLING UPDATE – POINTS OF CONTENTION AMONG STAKEHOLDERS



- Scope of Applicability
- Composition of the Commission
- Who Determines Compensation & Method
- Consent Threshold
- Transparency
- Deductibility of Post-Production Expenses
- Surface Use
- Mineral Reunification



## POOLING UPDATE – BILL INTRODUCED



- House Bill 2688 introduced on February 11
- Sponsors: Delegates Ireland, Anderson, Ambler and Evans, D.
- Referred to the House Energy & Judiciary Committees
- Single-referenced to Senate Judiciary



# KEY PROVISIONS



- Would apply to horizontal wells in all strata
- 80% consent threshold
- Would revise membership of Conservation Commission
- Good faith offers to all known and locatable owners required
- Non-consenting owners may receive “just and reasonable” unitization consideration determined by Commission (royalties must be free from deductions)
  - May also elect to participate on a full, limited or carried basis*
- Unit order does not grant surface rights
- Unit orders affects only target formation
- Unknown and unlocatable interest owners deemed leased
- Interests of unknown and unlocatable interests owners can be acquired by surface owner after period of five years



# TIMELINE



- February 11: H.B. 2688 Introduced in House
- February 13: Passed House Energy (voice vote)
- February 26: Passed House Judiciary (voice vote)
- March 4: Passed House (60-40 vote)
- March 12: Passed Senate Judiciary (voice vote with slight amendment)
- March 14: Passed Senate (24-10 vote)
- March 14: Rejected by House (49-49 vote)





## COMMENTS ON H.B. 2688



*“Now I understand after years of fighting against forced pooling it is tempting to simply continue to fight any pooling legislation. However, this bill is worthy of our careful consideration and support. In light of the numerous protections and improvements to current law, on behalf of The West Virginia Royalty Association and myself, I urge you to support this bill.”*

- Tom Huber, Vice President, West Virginia Royalty Owners Association



## COMMENTS ON H.B. 2688



*“We feel the proposal for unitization reflected through HB 2688 creates opportunities for our members, while providing protection for their rights.”*

Charles Wilfong, President, WV Farm Bureau, Inc. [2/18/15 Letter to Members of the House of Delegates]

*“All in all, the Land & Mineral Owners Association feels this is an effective compromise and is supportive of its passage...”*

Jason Webb, Land and Mineral Owners Association



## COMMENTS ON H.B. 2688



*“But the impact of pooling is not just about jobs. Universities and nonprofit groups like ours often receive oil and gas interests as gifts. If HB 2688 were to become law, it would make it easier for us to receive payments on our mineral rights. The mineral payments could be used to make college tuition more affordable and provide us with funds to improve student housing and classrooms. More scholarship money would be made available.”*

Dr. Richard A. Creehan, President, Alderson Broaddus University



# WHERE DO WE GO FROM HERE?



- Maintain Stakeholder Coalition
- Refine Positive Messaging For Passing Legislation
- Targeted Outreach to Members
- Public Awareness of Economic Impact of Passing Pooling Legislation – 2013 Study
- Maintain Active Support From Senate President – Seek Active Support from Speaker and Governor
- Encourage Coalition Members to be Active in Support of Legislation From Their Viewpoint
- Royalty/Landowner Meetings Throughout WV ongoing
- Stakeholder Coalition Continues Meetings in Charleston



# Thank You

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