Here’s what NARO-PA has to say about SB 259

To fully understand this debate, please read NARO-PA’s Policy Position Paper on Section 2.1 & our letter to the House Environmental Resources & Energy Committee first…

Trevor Walczak, NARO-PA Vice-President:

"This bill removes the ability for a mineral owner who already has shallow oil or gas production on their property, to negotiate a clause with an interested producer, for their Marcellus property. The old leases do not contain language which allows these leases to be pooled, so the absence of this clause gives a mineral owner the ability to negotiate for a pooling clause to be inserted into their existing lease. It is potentially a valuable opportunity to these mineral owners, but it appears that the operator who pushed this effort found their money would be better spent to negotiate in Harrisburg with lawmakers rather than at kitchen tables with mineral owners. Mineral owners in this position have now lost this great opportunity."

"This provision has no place in this bill. If the legislature wants to expand our antiquated and predatory pooling laws, we should be doing it in the light of day with the people who will be most effected, not behind closed doors with the people who will benefit the most by it. This is the fox watching the hen house. It’s bad business and bad politics."

"Once this section was amended into SB259, this bill was fast-tracked, with no attempt to include mineral owners in the discussion. I am shocked to see this legislation move forward, especially on the heals of the Senate Environmental Resources and Energy Committee's discovery that we need more checks and balances between the industry and their mineral partners. On the road to passing this bill, the House and Senate even went so far as to vote down all the suggested checks and balances which were recommended in the committee’s hearing."

"This opens up an entire new set of problems for the royalty owners affected. Will they be paid the state minimum 12.5% royalty with post-production costs allowed to be deducted? Before this bill, mineral owners would have been able to negotiate a higher royalty of 15 or 20% with no cost deductions. Are they even notified when they have been force pooled?"

"We all know horizontal drilling is more efficient than vertical drilling for surface use, but it's the people's property, not the governments to decide. There’s plenty of room to drill until we can fully complete this debate."

Contact Trevor Walczak: pennroar@yahoo.com or (570)510-3952

Attorney Dale Tice, *Marshall, Parker & Weber,* NARO-PA Secretary & founding member:

"As an oil and gas attorney, I have worked with a number of landowners who were in the position of having signed an old oil and gas lease years ago that only allowed pooling of formations below the Onondaga horizon - not the Marcellus shale. I am also aware of old leases that are now held by shallow gas production from vertical wells that don't include a pooling provision. These old leases invariably provide the state minimum royalty of 12.5 percent."

"In order to include these leases in a Marcellus production unit the gas company has to negotiate an amendment to the lease to allowing pooling of the Marcellus formation. This negotiation provides the landowner an opportunity to negotiate a better lease with a higher royalty and increased landowner protection."

"The NARO-PA position is that everything is negotiable and every time a landowner's signature is requested there is an opportunity to negotiate. This is as it should be – the freedom to negotiate consideration and contractual terms."

"I don't believe this result was the intention of the state senators who voted in favor of SB 259. Admittedly, the language in section 2.1 is somewhat confusing. The title notwithstanding, I don't see the focus of this section as "apportionment"."

Contact Dale Tice: datice@gmail.com or dtice@paelderlaw.com

Attorney John Shoemaker, *Greevy & Associates*, NARO-PA founding member:

"The representatives don't seem to understand that there are many oil leases in the western part of the state that don't have a unitization clause. This is often the only good thing about the language of the lease for the royalty owner, and it gives him leverage when a gas company wants to develop the Marcellus (or, I suppose, Utica) because, as a practical matter, the operator needs a unitization clause. I've had several clients escape ancient leases, and get a big cash bonus on the new lease, because of this issue."

Contact John Shoemaker: john@greevy.com

Attorney Robert Burnett, *Houston Harbaugh Attorneys at Law*, NARO-PA member:

This is really alarming as they are apparently confusing various legal concepts and creating a mess. The "rule of capture" generally applies to a conventional reservoir of gas. Horizontal drilling of lateral well bores accompanied by hydraulic fracturing is done because no "reservoir" exists and one is artificially created by the rock fissures.

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Attorney Taunya Knolles Rosenbloom, Esq., *Knolles Rosenbloom Law Office, NARO-PA member:*

"They *[the legislature]* are confusing the concept of pooling, rule of capture and apportionment."

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Here's what we were told:

Rep. Matt Baker, (R-68, Tioga Co.):

"Please see opinion by Rep. Garth Everett, who is also an attorney, that disagrees entirely with the opinion that this is in anyway forced pooling."

Rep. Garth Everett, (R-84, Lycoming Co.):

"This is not forced pooling or anything like it. In addition, they are confusing the court doctrine of "apportionment" with placing leased properties in a unit for efficient production purposes which is what the bill does."

Jonathan Lutz, Executive Director Environmental Resources and Energy Committee, Pennsylvania House of Representatives (R):

"Trevor's position mentions what we often refer to as the "rule of capture"

The courts of most oil- and gas-producing states have adopted the doctrine of non-apportionment. Thus, if a landowner signs an oil and gas lease on a tract of land and later conveys a part of that land to another and oil or gas is produced only from one of the tracts, all of the royalties on that production are paid to the owner of the producing tract.

What this means is that when an operator drills on one tract of land and gas is captured from a neighboring tract, the operator is not responsible for paying royalties to the neighbor. Part of the point behind the language in HB 1414 and SB 259 is to provide for apportionment. It is my understanding that without this bill, neighboring landowners really do not have to be paid."

Patrick Henderson, Energy Executive
Office of Governor Tom Corbett

“The references to forced pooling I have seen are disappointing as they could not be further from the truth.

The integration language is attempting to deal with leases that never contemplated – and could not contemplate – horizontal drilling. As a result of horizontal drilling, as you know, there are tremendous benefits, including significantly reduced surface footprint. That, however, requires “co-mingling” of gas to get the gas to surface. This language would permit the royalties paid to this gas to be allocated proportionally.

If anything, this ensures that landowners who may have gas extracted via horizontal drilling realize those benefits. That strikes me as good policy and one that also furthers minimizing surface impacts.”