



Testimony

Pennsylvania Senate Environmental Resources & Energy Committee

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Offered by

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Good morning, and thank you for the opportunity to testify before you this morning. I am Joel Rotz, Director of State Governmental Relations for the Pennsylvania Farm Bureau. Farm Bureau represents over 41,000 rural and farm family members in the state. The combination of rising gas prices, advances in technology for drilling and extracting methane gas from coal seams, and a 1983 Pennsylvania Supreme Court decision interpreting “coal” rights have caused serious problems for many landowners who no longer own coal rights under their property.

The coal bed methane well situation differs from what landowners normally face with the location, drilling and operation of gas wells on their properties. In situations other than coal bed methane, the gas well company that would like to drill and operate a gas well on a particular parcel of private property has no legal ownership rights to that property. The company must obtain that right from the landowner, most often through a gas lease. The company must negotiate and reach agreement with the landowner on the terms and conditions of the lease. The landowner, who is under no obligation to enter into the lease, has the ability to control the conditions under which the company will operate under the lease, including the location where wells may be drilled, what activities the company may perform on the landowner’s property, the compensation that company must pay the landowner, and other terms and conditions that the landowner is particularly concerned about.

With the drilling and operation of coal bed methane wells, the situation is entirely different. This came about as a result of the 1983 Pennsylvania Supreme Court decision *United States Steel Corp. v. Hoge*. In that case, the Court ruled that the person who obtained ownership of the coal beneath the surface also received ownership of the methane gas contained within the coal seam. Because of the Supreme Court’s interpretation of property rights related to ownership of coal, current landowners of property whose coal rights have been transferred can no longer claim they have ownership of methane gas in coal seams. As part of the property rights associated with “ownership” of coal, coal bed methane gas drillers have the right to reasonably use the land above the seam in order to tap into the methane contained in the seam. Since they already “own” the right, methane operators do not have to enter into any lease with the landowner for drilling wells.

Quite frankly, Pennsylvania Farm Bureau believes the Court’s decision in *Hoge* was wrong and contradicts what numerous other state and federal courts decided regarding coal bed methane as not being a part of the property rights transferred under coal agreements. It is impossible for us to reasonably believe those landowners who entered into coal agreements decades ago consciously intended to give up rights to any other subsurface material than coal. Unfortunately, this decision has the force of law for Pennsylvania, and what we must deal with in trying to come up with a solution to the serious problem that landowners in western counties of the Commonwealth are facing.

Even though *Hoge* may have generally resolved the issue of who owns the right to coal bed methane with respect to lands that are subject to coal agreements, we do not believe

the legislature is powerless to prescribe requirements in the exercise of that right in order to protect public health, safety and welfare. Without legislative action, landowners are essentially powerless to compel the coal bed methane operator to respect their needs in properly managing farms, homes and businesses. As a result, landowners whose properties have been subject to unrestrained methane well drilling and operation have been seriously harmed in their ability to manage their farms and lands, maintain their water supplies, and maintain reasonable peace and enjoyment in their homes.

Pennsylvania Farm Bureau supports changes in law to prohibit operators of coal bed methane wells from accessing private property or performing any activity related to the development, construction, or operation of a well on private land without the surface landowner's written consent. This seems like a reasonable approach to address the property rights concerns of both the coal bed methane operator and the surface owner. It is Farm Bureau's general understanding of coal mining laws that an owner of an interest in mineral rights must still obtain consent of the surface landowner in order to perform surface activities that facilitate underground coal mining. Based on that same reasoning, the mineral owner's property rights are not being infringed by a requirement that the owner obtain the surface owner's consent on well locations.

The written consent would identify the conditions by which the coal bed methane operator is authorized to enter and drill a coal bed methane well on the landowner's property. Areas addressed in the written consent could include the location and maintenance of wells, access roads and pipelines in order to ensure the farmer's ability to utilize his own property for agricultural production. Wells and pipelines can block access to farmers' fields, cause erosion, disrupt the farmer's access to water, harbor noxious weeds, create noise pollution and destroy the appearance of the landscape if not properly located and maintained.

These are all reasonable and legitimate concerns that any landowner would have and can be addressed by coal bed methane operators as they locate, operate and maintain their wells without infringing on operators' rights of access to the methane. Nothing should also prevent compensation from being made to landowners for any inconvenience the location of a coal bed methane well creates as a component of a consent agreement.

It is also vitally important that an agreement process be established that is timely and inexpensive. Farmers should not be burdened with a time consuming and costly process in reaching consent agreements. Farmers cannot be expected to take time and financial resources away from their farm enterprise to resolve issues that offer little to the profit center of their operations.

In summary, Pennsylvania Farm Bureau believes the solution to problems created by the *Hoge* decision is not that complicated. Coal bed methane operators have a right to the property the courts have determined they own. Surface owners such as farmers and other landowners have a right to protect the value and productivity of their property when a coal bed methane operator wishes to gain entrance, just as currently exists for mineral

owners to gain entrance. Pennsylvania Farm Bureau supports the preservation of both parties' interests through a written consent agreement required by state law.