WEST VIRGINIA CODE: §22-6-8

§22-6-8. Permits not to be on flat well royalty leases; legislative findings and declarations; permit requirements.

(a) The Legislature hereby finds and declares:

(1) That a significant portion of the oil and gas underlying this state is subject to development pursuant to leases or other continuing contractual agreements wherein the owners of such oil and gas are paid upon a royalty or rental basis known in the industry as the annual flat well royalty basis, in which the royalty is based solely on the existence of a producing well, and thus is not inherently related to the volume of the oil and gas produced or marketed;

(2) That continued exploitation of the natural resources of this state in exchange for such wholly inadequate compensation is unfair, oppressive, works an unjust hardship on the owners of the oil and gas in place, and unreasonably deprives the economy of the State of West Virginia of the just benefit of the natural wealth of this state;

(3) That a great portion, if not all, of such leases or other continuing contracts based upon or calling for an annual flat well royalty, have been in existence for a great many years and were entered into at a time when the techniques by which oil and gas are currently extracted, produced or marketed, were not known or contemplated by the parties, nor was it contemplated by the parties that oil and gas would be recovered or extracted or produced or marketed from the depths and horizons currently being developed by the well operators;

(4) That while being fully cognizant that the provisions of Section 10, Article I of the United States Constitution and of section 4, article III of the Constitution of West Virginia, proscribe the enactment of any law impairing the obligation of a contract, the Legislature further finds that it is a valid exercise of the police powers of this state and in the interest of the State of West Virginia and in furtherance of the welfare of its citizens, to discourage as far as constitutionally possible the production and marketing of oil and gas located in this state under the type of leases or other continuing contracts described above.

(b) In the light of the foregoing findings, the Legislature hereby declares that it is the policy of this state, to the extent possible, to prevent the extraction, production or marketing of oil or gas under a lease or leases or other continuing contract or contracts providing a flat well royalty or any similar provisions for compensation to the owner of the oil and gas in place, which is not inherently related to the volume of oil or gas produced or marketed, and toward these ends, the Legislature further declares that it is the obligation of this state to prohibit the issuance of any permit required by it for the development of oil or gas where the right to develop, extract, produce, or market the same is based upon such leases or other continuing contractual agreements.

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(c) In addition to any requirements contained in this article with respect to the issuance of any permit required for the drilling, redrilling, deepening, fracturing, stimulating, pressuring, converting, combining, or physically changing to allow the migration of fluid from one formation to another, no such permit shall be hereafter issued unless the lease or leases or other continuing contract or contracts by which the right to extract, produce or market the oil or gas is filed with the application for such permit. In lieu of filing the lease or leases or other continuing contract or contracts, the applicant for a permit described herein may file the following:

(1) A brief description of the tract of land including the district and county wherein the tract is located;

(2) The identification of all parties to all leases or other continuing contractual agreements by which the right to extract, produce or market the oil or gas is claimed;

(3) The book and page number wherein each such lease or contract by which the right to extract, produce or market the oil or gas is recorded; and

(4) A brief description of the royalty provisions of each such lease or contract.

(d) Unless the provisions of §22-6-8(e) of this code are met, no such permit shall be hereafter issued for the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing, stimulating, pressuring, converting, combining, or physically changing to allow the migration of fluid from one formation to another, of an existing oil or gas production well, where or if the right to extract, produce, or market the oil or gas is based upon a lease or leases or other continuing contract or contracts providing for flat well royalty or any similar provision for compensation to the owner of the oil or gas in place which is not inherently related to the volume of oil and gas so extracted, produced, and marketed.

(e) To avoid the permit prohibition of §22-6-8(d) of this code, the applicant may file with such application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to state that it shall tender to the owner of the oil or gas in place not less than one eighth of the gross proceeds, free from any deductions for post-production expenses, received at the first point of sale to an unaffiliated third-party purchaser in an arm’s length transaction for the oil or gas so extracted, produced or marketed before deducting the amount to be paid to or set aside for the owner of the oil or gas in place, on all such oil or gas to be extracted, produced or marketed from the well. If such affidavit be filed with such application, then such application for permit shall be treated as if such lease or leases or other continuing contract or contracts comply with the provisions of this section.

(f) The owner of the oil or gas in place shall have a cause of action to enforce the owner’s rights established by this section.

(g) The provisions of this section shall not affect or apply to any lease or leases or other continuing contract or contracts for the underground storage of gas or any well utilized in

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connection therewith or otherwise subject to the provisions of §22-9-1 et seq. of this code.

(h) The director shall enforce this requirement irrespective of when the lease or other continuing contract was executed.

(i) The provisions of this section shall not adversely affect any rights to free gas.

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