WEST VIRGINIA CODE CHAPTER 37B ARTICLE 1

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§37B-1-1. Short title.

This article shall be known as the Cotenancy Modernization and Majority Protection Act.

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§37B-1-2. Declaration of public policy; legislative findings.

It is declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage and promote exploration for and development, production, and conservation of oil, natural gas and their constituents;

(2) Prohibit waste of oil, natural gas, and their constituents and unnecessary surface loss of oil, natural gas, and their constituents;

(3) Encourage the maximum recovery of oil, natural gas, and their constituents;

(4) Safeguard, protect and enforce the correlative rights of operators and mineral owners in that each such operator and mineral owner may obtain his or her just and equitable share of production;

(5) Safeguard, protect and enforce the integrity of the passive royalty owner’s interest in his or her minerals.

(6) Safeguard, protect and enforce the rights of surface owners; and

(7) Protect and enforce the clear provisions of contracts lawfully made.

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§37B-1-3. Definitions.

As used in this article:

“Consenting Cotenant” means a tenant in common, joint tenant, or parcener having an interest in the mineral property who consents in writing to a lawful use of the mineral property through a bona fide lease made in an arms-length transaction.

“Nonconsenting Cotenant” means an owner who for any reason chooses not to consent to a lawful use of the mineral property agreed to by the consenting cotenants owning, cumulatively, at least an undivided three-fourths interest in and to the mineral property.

“Operator” means any owner of at least an undivided three-fourths interest of the right to develop, operate and produce oil, natural gas, or their constituents, and to appropriate the oil, natural gas, or their constituents produced therefrom.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof.

“Post-production expense” means an expense or cost subsequent to production including, but not limited to, an expense or cost related to severance taxes, pipelines, surface facilities, telemetry, gathering, dehydration, transportation, fractionation, compression, manufacturing, processing, treating or marketing of oil or natural gas and their constituents.

“Prorata share” means the allocation of revenues and costs attributable to the lawful use of a mineral property that is calculated based on the proportion that the net acreage of such ownership interest bears to the total net acreage in the mineral property, in a development or production unit that includes, all or part of, that mineral property.

“Royalty owner” means any owner in place of oil or natural gas and their constituents, owners of oil or natural gas leasing rights, and owners vested with any leasehold estate less than 25 percent of the total, to the extent that the owners are not an operator as defined in this section. A royalty owner does not include a person whose interest is limited to: (A) A working interest in a wellbore only; (B) overriding royalties; (C) nonparticipating royalty interests; (D) nonexecutive mineral interests; or (E) net profit interests.

“Unknown or unlocatable interest owner” means a person vested with a present ownership interest in the oil or natural gas and their constituents in place in a mineral property whose present identity or location cannot be determined from:

(A) A reasonable review of the records of the clerk of the county commission, the sheriff, the assessor, and the clerk of the circuit court in the county or counties in which the interest is located, and includes unknown heirs, successors and assigns known to be alive;

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(B) A reasonable inquiry in the vicinity of the owner's last known place of residence;

(C) A diligent inquiry into known interest owners in the same tract; and

(D) A reasonable review of available Internet resources commonly utilized by the industry.

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§37B-1-4. Lawful use and development by cotenants; election of interests; reporting and remitting of interests of unknown or unlocatable cotenants; establishment of terms and provisions for development; and merging of surface and oil and gas.

(a) If an operator or owner makes or has made reasonable efforts to negotiate with all royalty owners in an oil or natural gas mineral property and royalty owners vested with at least three fourths of the right to develop, operate, and produce oil, natural gas, or their constituents consent to the lawful use or development of the oil or natural gas mineral property, the operator's or owner's use or development of the oil or natural gas mineral property is permissible, is not waste, and is not trespass. In that case, the consenting cotenants and their lessees, operators, agents, contractors, or assigns are not liable for damages for waste or trespass due to the lawful use or development and shall pay the nonconsenting cotenants in accordance with subsections (b), (c), and (e) of this section, reserve the amounts specified in subsection (d) and (e) of this section for the benefit of unknown or unlocatable interest owners, and report and remit the reserved interests as provided in subsection (d) of this section.

(b) A nonconsenting cotenant is entitled to receive, based on his or her election, either:

(1) A pro rata share of production royalty, paid on the gross proceeds received at the first point of sale to an unaffiliated third-party purchaser and free of post-production expenses, equal to the highest royalty percentage paid to his or her consenting cotenants in the same mineral property, under a bona fide, arms-length lease transaction and lease bonus and delay rental payments or other non-royalty mineral payments, calculated on a weighted-average net mineral acre basis; or

(2) To participate in the development and receive his or her pro rata share of the revenue and cost equal to his or her share of production attributable to the tract or tracts being developed according to the interest of such nonconsenting cotenant, exclusive of any royalty or overriding royalty reserved in any lease, assignments thereof, or agreements relating thereto, after the market value of such nonconsenting cotenant's share of production, exclusive of such royalty and overriding royalty, equals double the share of such costs payable or charged to the interest of such nonconsenting cotenant.

(c) A nonconsenting cotenant shall have 45 days following the operator's written delivery of its best and final lease offer in which to make his or her election for either a production royalty or a revenue share as specified in subsection (b) of this section. If the nonconsenting cotenant fails to deliver a written election to the operator prior to the expiration of the 45-day period, he or she shall be deemed to have made the election set forth in subdivision (1), subsection (b) of this section. Within 30 days after a nonconsenting cotenant has chosen or is deemed to have chosen the production royalty option, the nonconsenting cotenant shall have the right to appeal to the commission regarding the issue of whether there has been compliance with subdivision (1) of subsection (b) of this section, to verify the highest royalty paid in the same mineral property and the value for the lease bonus and delay rental payments: *Provided*, That the operations upon the parcel may continue during the

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proceedings.

(d) Unknown or unlocatable interest owners are deemed to have made the election provided by subdivision (1), subsection (b) of this section and are only entitled to receive the amount provided by that subdivision. Within 120 days from the date upon which an amount is reserved for an unknown or unlocatable interest owner pursuant to subsection (a) of this section, the consenting cotenants and their lessees, operators, agents, contractors, or assigns shall make a report to the State Treasurer as the unclaimed property administrator and each calendar quarter, thereafter, concerning each reserved interest for each unknown or unlocatable interest owner and shall concurrently remit the amount reserved, in accordance with the provisions of §37B-2-1 *et seq*. and §36-8-1 *et seq*. of this code and as determined by the State Treasurer. The quarterly report and remittances shall be submitted by the first day of the month following each calendar quarter.

(e) Unless otherwise agreed to in writing or defined by this section, any nonconsenting cotenant and any unknown or unlocatable interest owner who elects or is deemed to elect a production royalty under subdivision (1), subsection (b) of this section is subject to and shall benefit from the other terms and provisions defined by the lease executed by a consenting cotenant which contains terms and provisions most favorable to the nonconsenting cotenant or the unknown or unlocatable interest owner: *Provided*, That nonconsenting cotenants and unknown or unlocatable interest owners shall not be subject to or liable under any warranty of title, jurisdictional or choice of law provisions, arbitration provisions, injection well provisions, disposal well provisions, and storage provisions: *Provided, however*, That consenting cotenants and their lessees, operators, agents, contractors, or assigns shall only develop the specifically targeted stratigraphic formation and 100 feet above and below said formation; nonconsenting cotenants and unknown or unlocatable interest owners will retain all rights to all other formations unless or until reasonable efforts are made to renegotiate under this section for each additional formation. If a consenting cotenant has made a lease only for the targeted formation, in that case the nonconsenting cotenants and unknown and unlocatable cotenants shall receive the highest royalty, bonus, and delay rental in the lease which was executed for the targeted formation.

(f) Unless otherwise agreed to in writing or defined by this section, a nonconsenting cotenant who elects to participate under subdivision (2), subsection (b) of this section, shall be subject to and shall benefit from other terms and provisions determined to be just and reasonable by the Oil and Gas Conservation Commission in a manner similar to the provisions of §22C-9-7(b)(5)(B) of this code governing deep wells. The commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code, to implement and make effective the provisions of this section and the powers and authority conferred and the duties imposed upon the commission under the provisions of this section. Notwithstanding the determination of participation terms by the commission, an operator may proceed with the development of oil, natural gas, or their constituents pursuant to this section.

(g) After seven years from the date of the first report to the treasurer, a bona fide surface

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owner may file an action to quiet title to the interests of all unknown and unlocatable interest owners of the oil and natural gas estate underlying the surface tract. To the extent relevant and practical, such action shall follow the provisions of §55-12A-1 *et seq*. of this code. Upon presentation of sufficient proof, a bona fide surface owner shall be entitled to receive a special commissioner's deed transferring title to the interest of any or all unknown or unlocatable interest owners in an oil and natural gas estate which underlies the surface tract. The surface owner shall only be entitled to their proportionate share of all future proceeds and is not entitled to any of the accrued funds which have been remitted to the treasurer prior to the execution of the special commissioner's deed. The unknown or unlocatable interest owners are not entitled to any amounts paid to the grantees of the special commissioner's deed after delivery of said deed.

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§37B-1-5. Limitations of liability for certain cotenants.

Nonconsenting cotenants who elect to receive a production royalty pursuant to §37B-1-4(b)(1) of this code and unknown or unlocatable interest owners shall have no liability for bodily injury, property damage, warranty of title, or environmental claims, arising out of site preparation, mineral extraction, maintenance, reclamation, and other operations with respect to minerals produced from the cotenant's property, except nonconsenting cotenants and unknown or unlocatable interest owners are liable for their intentional acts.

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§37B-1-6. Surface use.

(a) When any tract of mineral property where an interest in the oil or natural gas in place is owned by a nonconsenting cotenant is used or developed pursuant to §37B-1-4 of this code, in no event shall drilling be initiated upon, or other surface disturbance occur, without the surface owner's consent regardless of whether such surface owner possesses any actual ownership in the mineral interest: Provided, That this subsection shall not require surface owner consent for tracts on which surface disturbance does not occur or tracts otherwise subject to an existing surface use agreement, oil and gas lease which includes surface use rights, or other valid contractual arrangement in which the owner has granted rights to the operator to use the surface for horizontal drilling or any other use for which this article is used.

(b) Except as specifically described in subsection (a) of this section, nothing contained in this chapter is intended to alter in any way, and this chapter shall not diminish or increase, the rights of the owners of the surface overlying the minerals developed in this state. Except as specifically described in subsection (a) of this section, in enacting this chapter in 2018, it is the intention of the Legislature to leave unchanged the common law of this state as it relates to the mineral owner's right to utilize the surface for the extraction of minerals.

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§37B-1-7. Severability.

The provisions of this article are severable and accordingly, if any part of this article is adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity of the remaining provisions of this article.

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