WEST VIRGINIA CODE: §37B-3-4

§37B-3-4. Lawful use and development by co-tenants; reporting and remitting of interests of unknown or unlocatable interest owners; establishing terms and provisions for development; and merging of surface and coal.

(a) An operator's mining, use, or development of the coal estate is permissible, is not waste, and is not trespass if:

(1) The operator has made reasonable efforts to negotiate with all known, locatable owners of coal land; and

(2) At least three fourths of the undivided interests in the right to mine, develop, lease, operate, and produce coal have consented to the lawful use or development of the coal land.

(b) If the criteria in subdivisions (1) and (2), subsection (a) of this section have been satisfied, any consenting co-tenant and his or her lessees, operators, agents, contractors, or assigns:

(1) Are not liable for damages for waste or trespass due to the lawful use or development of the coal estate;

(2) Shall pay any nonconsenting co-tenant in accordance with subsections (c) and (e) of this section;

(3) Shall reserve the amounts specified in subsections (d) and (e) of this section for the benefit of unknown or unlocatable interest owners; and

(4) Shall report and remit the reserved interests as provided in subsection (d) of this section.

(c) A nonconsenting co-tenant is entitled to receive 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, equal to the greater of:

(1) The highest royalty percentage paid to any consenting co-tenant in the same coal land; or

(2) Seven percent, with no deductions for any related mining, processing, transportation, or marketing costs.

(d) An operator shall:

(1) Submit a report concerning each reserved interest for each unknown or unlocatable interest owner to the State Treasurer, as the unclaimed property administrator, not more than 120 days from the date upon which any amount is reserved for an unknown or unlocatable interest owner pursuant to subsections (a) and (b) of this section and §37B-4-1 *et*

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seq. of this code, and each calendar quarter thereafter;

(2) Concurrently with the report required in subdivision (1) of this subsection, remit the amount reserved in accordance with the provisions of §37B-4-1 *et seq*. and §36-8-1 *et seq*. of this code and as determined by the State Treasurer; and

(3) Submit any quarterly report and remittance required by this subsection 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 co-tenant or unknown or unlocatable interest owner:

(1) Is subject to and shall benefit from the terms and provisions most favorable to the nonconsenting co-tenant or unknown or unlocatable interest owner that are contained in any lease executed by a consenting co-tenant; and

(2) Is not subject to nor liable under any warranty of title, jurisdictional or choice of law provision, or arbitration provision contained in any lease executed by a consenting co-tenant.

(f) A nonconsenting co-tenant may challenge an operator's representations regarding the highest royalty the operator has paid in the same coal estate pursuant to subsection (c) of this section, and the lease terms and provisions pursuant to subsection (e) of this section, by filing a petition for accounting with the West Virginia Tax Commissioner within 45 days following the operator's written delivery of royalty and lease information required by subsections (c), (d), and (e) of this section. The Tax Commissioner shall make a written ruling on the nonconsenting co-tenant's petition within 60 days of receipt of the petition. If either the nonconsenting co-tenant or the operator is dissatisfied with the Tax Commissioner's ruling, he or she may file a petition for appeal with the West Virginia Office of Tax Appeals. Judicial review of a decision by the Office of Tax Appeals is governed by §11-10A-19 of this code. At the operator's discretion, disclosure of the payment terms may be made under seal. While a petition is pending:

(1) Production of the coal estate may continue during the proceedings; and

(2) Proceedings regarding the petition shall be limited in scope to the disclosure of the payment terms or other terms and provisions the operator has made pertaining to the same coal land.

(g) After seven years from the date of the first report to the State Treasurer, a surface owner may file an action to quiet title to the interests of all unknown and unlocatable interest owners of the coal estate. To the extent relevant and practical, the action shall follow the provisions of §55-12A-1 *et seq*. of this code.

(1) Upon presentation of proof sufficient in the court's discretion, a surface owner is entitled to receive a special commissioner's deed transferring title to the interest of any unknown or unlocatable interest owner in a coal estate which underlies the surface tract.

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(2) A surface owner is entitled to his or her proportionate share of any of the accrued funds attributable to the interests of the unknown or unlocatable interest owners that have been remitted to the State Treasurer prior to the execution of the special commissioner's deed and to any future proceeds.

(3) An unknown or unlocatable interest owner is not entitled to any amounts paid to any grantee of the special commissioner's deed after that deed is recorded with the clerk of the county commission of the county in which the coal estate is located.

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