

Know your mineral rights (DEEP POCKETS SERIES)

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As hundreds of property owners of the Greenfield Gas Group collectively negotiated a natural gas lease for their 25,000 acres, one landholder was in for a rude awakening.

After researching deeds of all the properties, the natural gas exploration company discovered the owner of 500 acres did not own the oil and natural gas rights of the property, recalled Trevor Walczak, who co-organized the group. While the group signed a lease for \$2,100 an acre and an 18 percent royalty, the owner was not entitled to the \$1 million-plus upfront and untold amount of royalty revenue on his 500 acres.

Clauses hidden in deeds that state the landowner does not own the mineral and gas rights on the property are fast becoming a growing concern throughout the region as gas-exploration companies are eagerly signing leases for access to trillions of cubic feet of natural gas thought to be imbedded in the shale a mile below the surface.

The 'coal clause'

The "coal clause" is as common in Northeastern Pennsylvania deeds as culm banks and rusted breakers.

The boilerplate legalese of the clause -- which preserved the rights of the coal underground to coal companies even though individuals owned the surface land -- is preserved in just about every deed to every property in valley areas.

It goes something like this:

"This deed may not convey any mineral rights or coal rights, and the owner or owners of such coal have the complete legal right to remove all of such coal."

For the first time since the 1959 Knox Mine disaster effectively ended underground mining, the coal clause has gotten attention thanks to another hydrocarbon: natural gas.

The search for Marcellus Shale is in the hills: Susquehanna, Wyoming and Wayne counties and parts of Lackawanna and Luzerne counties. In some cases, the "coal clause" areas overlap regions thought to harbor shale gas. Deeds in the mountains of Mildred and Forkston, where coal was mined, carry coal clauses.

The clause left some property owners to wonder whether they own the natural gas beneath their properties. Even with a coal clause, property owners probably do own the gas beneath their land, experts say.

Scranton environmental attorney Steve Saunders explains that in Pennsylvania, oil and gas rights are separate from mineral and coal rights.

So if a deed doesn't specifically grant oil and gas rights to someone else, the surface land owner probably owns the gas and is free to lease it, he said.

Many people have a hard time understanding how rights to coal, metal, blue stone or natural gas underground can be severed from the ownership of the surface land, said Mr. Saunders.

A property owner owns to the center of the earth. Hypothetically, that owner could sell the rights to blue stone to a quarry, rights to natural gas to an exploration company and rights to metal ores to a miner.

A new awareness

Generations ago, when owners of vast tracts of inexpensive land sold it off, they retained rights on minerals and gas, having learned from the coal barons. Their thinking was that one never knows what's down there.

As the anthracite era slipped further into history and rumors of natural gas exploration seemed far-fetched, mineral rights were an overlooked detail to property transactions.

Within the past year, mineral rights have become the uppermost concern in property transactions. Some people have signed leases and want to sell the surface real estate while retaining the natural gas rights.

Such sellers have not been successful, said David Kitner, a real estate agent with Classic Properties in Tunkhannock.

"When you sell or separate mineral rights, you are selling part of your real estate," Mr. Kitner said. "You diminish the value of what remains."

Someone trying to sell leased property may have more luck, Mr. Kitner said, if they transfer the gas rights to a buyer.

The heated market, higher prices and the prospect that drilling will become part of the life and landscape of the region has deterred those who are the conventional buyers in the region -- suburban refugees.

"The family from Southern Pennsylvania looking for a house with 20 acres on it doesn't want anything to do with gas leasing," he said.

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