

## Conservation Pooling – Position Paper

By: State Representative Garth Everett

My announcement that I intend to co-sponsor a bill dealing with what is called unitization or pooling of private property for Marcellus gas development has sparked quite a bit of interest and some backlash among the residents of Lycoming County. I am hopeful more detailed information on pooling and my intentions with respect to this legislation will defuse a bit of this concern and explain my interest in participating in the development of this legislation.

First, virtually all Marcellus gas leases allow the pooling or unitization (combining) of two or more leased tracts together into one “production unit.” Many older or early leases specify production units of 640 acres, which happens to equate to one square mile and is a very common-sized parcel in other gas producing states like Texas and Oklahoma. Many newer leases in Pennsylvania simply allow for unitization and do not specify a minimum or maximum size for a unit.

Unlike most other significant gas producing states, Pennsylvania has very little in the way of existing statutes or regulations pertaining to pooling or unitization and there is also not much in the way of court case law on the subject, so, for a number of reasons I will address, I believe it important that we set up a fair system for the establishment of these units.

Most, if not all, major gas producing states have provisions in their unitization laws which allow for some method of bringing “stray” or un-leased properties into a production unit. Though actually used infrequently, this aspect of unitization law is certainly the most controversial. Proponents of this method of bringing a property into a unit call it “fair-pooling” and those opposed to it call it “forced-pooling.” Whichever way you view this process, the overall concept of mandatory pooling is that it is in the public interest to have the maximum amount of this valuable resource developed with the minimum disruption to the surface and environment by reducing the number of drill pads and pipelines necessary in a given area.

Properties that a company may want to bring into a unit to optimize the use of a particular drill pad may not be under lease with the company proposing to form the unit for a number of reasons:

1. The property owner may have signed a lease with another company and the company forming the unit has been unable to negotiate a transfer of the lease.

2 The property owner and the company forming the unit were, after good faith bargaining, unable to come to terms on a lease of the property.

3. The property owner, for whatever reason, may just not want to lease the property.

Whatever the case, properties un-leased by a company which are being proposed to be added to a unit would only be able to be brought in under specific circumstances which would include that the company:

1. Already have a vast majority (some set percentage, maybe 90 percent) of the property in the proposed unit under lease.

2. Have made a good faith effort to execute a lease with the property owner(s) to be brought in under terms similar to the existing fair market value for leases in the area.

3. In the case of a property under lease to another company, have made a good faith effort to have the property's lease transferred.

I think that an important point to remember is that a property brought into a pool without a lease would receive fair market value royalty payments for its gas but never, without the owner's permission, have any type of surface development on it – no drilling, no pipelines, no roads, no disturbance of any kind. All that would happen is that the company bringing the property into the pool would simply be allowed to harvest the gas underneath the property using either horizontal drilling and/or hydro-fracturing in return for paying fair market value royalty payments for the gas.

Here is a hypothetical scenario under which I may be able to support this type of mandatory pooling:

1. A company already has 900 acres of a proposed 1,000 acre unit under lease.

2. There are three or four property owners who, despite good faith efforts by the company, refuse to sign leases.

3. The un-leased properties are located such that they will cause the company to have to develop another drill pad or pads in order to reach all the gas in the unit.

While I am hesitant to require property owners to unwillingly participate in this development, because of the larger public policy concerns, I am willing to consider this minimal level of mandatory pooling so long as the pooling regulations also contain provisions which will protect landowners. Another plus to mandatory pooling is that it

may ensure that companies can form pools which include all landowners in an area who have signed leases and not put some landowners in jeopardy of being excluded from development based on the fact that an adjoining or nearby property owner refuses to participate in the unit and, thereby, effectively blocks them out from being included in a unit and having their property developed.

As we have seen more units being established here in Lycoming County, I have had quite a few inquiries and complaints from constituents concerning how pooling is currently being done which right now is – any way the company holding the leases wants to do it.

Here are some of my concerns about pooling that I would like to also see addressed as part of this pooling legislation:

1. That a landowner who has a lease with a company different than all his surrounding neighbors does not get “locked out” of being put into a unit simply because the property owner signed with a company that was unable to acquire enough property for a unit in the area in question.
2. That “small acreage” property owners get an opportunity to participate with the “big acreage” property owners in the financial benefits of the gas development. That is, that a company establishing a unit offer fair market value lease to all property owners within the confines of a proposed unit, no matter how small their acreage.
3. That property owners be protected from having a very small percentage of their property placed in a large unit solely for the purpose of locking the entire property up for what amounts to perpetuity.
4. That the legislation ensures that units are put together efficiently to minimize the number of drill pads and pipelines necessary to access the gas resources in a given area and that no significant chunks of land get “stranded” in sizes that are not economically feasible for development.
5. That the unitization process be well defined, well regulated, open and transparent both to those within a unit and those with properties nearby or bordering a unit and that some governmental body be charged with the oversight review and approval of proposed units.
6. That property owners be provided with an appeal process for unitization, pooling and royalty calculation issues.
7. That setbacks from unit borders and/or un-leased properties for both vertical and horizontal wells be established to ensure that gas is not “captured” by a company from a property for which it does not have a lease. Right now, either a vertical

or horizontal well can be drilled virtually on the property line of a unit and, with the ability to hydro-fracture hundreds of feet out from the well casing, gas can be extracted from beneath property outside a unit or lease boundaries.

As I have said and will say again, I will not support pooling legislation that is not good for both the landowners and residents of Lycoming County – I have no interest in pooling legislation other than ensuring that all property owners get a “fair deal” and that we harvest this resource with the least amount of impact to the environment, landscape and beauty of northern-central Pennsylvania and the entire Marcellus development area of the Commonwealth. I came out early on as a “sponsor” of this legislation because I want a “seat at the table” to make sure that this is done right and that is what I fully intend to do.

I have no desire or interest in making it easier for a gas company to negotiate with private property owners nor do I intend to allow this legislation to allow the mandatory pooling of any property of “significant size” – that negotiation is the business of the property owner and the gas company. I do intend to ensure that the gas companies have to negotiate in good faith with all property owners, large and small, and that every property owner who wants to participate in Marcellus development gets an opportunity to do so.

I am hopeful this will help those who have expressed their concerns about this legislation better understand my position. Right now, this legislation is in the “draft” or “conceptual” stage and no bill has actually been introduced. As we go through this process, I plan to have public meetings to gather input from the residents of Lycoming County and to explain the details of what is being proposed. At the end of the day, if this legislation is something that does not benefit Marcellus landowners and the public, I will not only withdraw any support, but will openly and vigorously oppose it.

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