

Oil and Gas Operations Impacts on Surface and Split Estate Properties

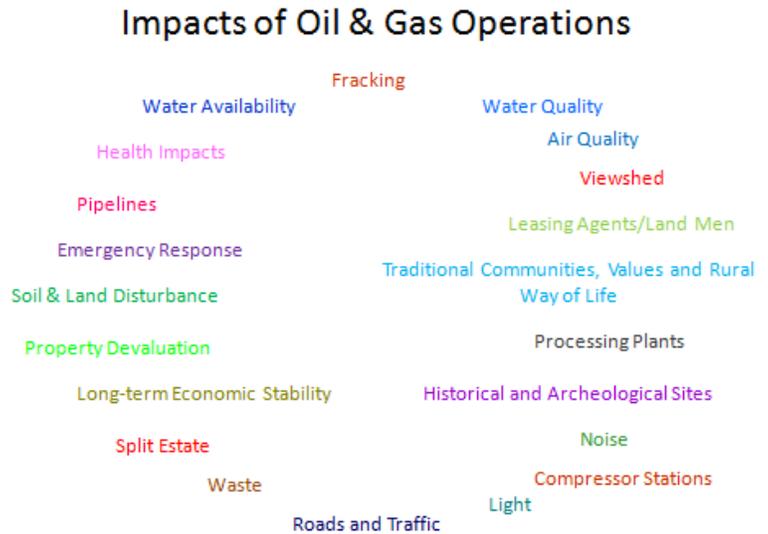
January 10, 2013

Mr. Chairman, Commissioners,

My name is Leslie Hammel –Turk. We own a small ranch on County Rd A3. Our property is under split estate, we know that at least 4 unrelated individuals own the mineral estate and it may be as high as 6 individuals. As a concerned citizen I have been devoting myself to learning all that I can on the issues for the last three years. I was a member of the audience for every meeting of the task force. One of the products of the task force was a list of principles that was meant to serve as the guide to a regulatory ordinance. The task force voted unanimously to support that list of principles. I would like to see those principles brought to light again.

Impacts Other Than Fracking

Of course the first thing we think about with Natural Gas operations is Fracking. Focusing on Fracking is a Red Herring. There are many other impacts associated with those operations. Some are related directly to fracking. Some of them have nothing to do with fracking but are as damaging or more than the fracking impacts themselves. Here are some examples. I and other speakers today will be presenting on only a few of these.



I will be addressing Property Value Impacts and what this does to the financial health of the citizenry and therefore the County as well.

Property Devaluation

Property owners near shale gas wells are liable to suffer a major loss in value because of worries over water contamination, according to economists from Duke University and the nonprofit research organization Resources for the Future. Their study found Pennsylvania homeowners who use local groundwater for drinking lost up to 24 percent of their property value if they are within a mile and a quarter of a shale gas well.

In Wise County, Texas, a family living with drilling facilities that included a thermal oxidizer burning emissions constantly that has allegedly led to health problems in a 10-year-old daughter, found that the value of their home went from \$260,000 to \$75,000 in one year after drilling started. The local realtors Association said they would neither be able to sell the

property, nor even consider listing the property. Appraisal district staff members told the board they have decreased values by 75 percent when a gas well sits on the land in such conditions.

Difficulty in Securing Mortgages and Insurance

Fannie Mae and Freddie Mac's standard mortgage agreement, commonly used by lenders, prohibits borrowers from signing gas leases without first obtaining written consent from their local lender, Fannie Mae, or Freddie Mac.

If borrowers fail to get permission from Fannie Mae or Freddie Mac before they sign a gas lease on their mortgaged property, they risk foreclosure. Bankers are concerned because many leases allow drillers to operate in ways that violate rules in landowners' mortgages—a fact that most landowners don't know.

Some banks have become reluctant to grant mortgages on properties leased for gas drilling because they don't meet secondary mortgage market guidelines. Some Credit Unions have started requiring gas companies to promise to pay for any damage caused by drilling that may lead to devaluation of its mortgaged properties, or make home loans only to people who expressly agree not to sign a gas lease as long as they hold the mortgage.

"Gas/oil leases are generally NOT accepted by many prominent lenders such as Wells Fargo and Bank of America."

These mortgage difficulties can cause many problems, including 1) land that has been in a family for generations may be lost when heirs cannot borrow against the land to keep it in their hands. 2) Retirees who planned to use the value of their property for their retirement find that they have lost their entire retirement.

Our home is our most valuable asset financially and otherwise. When we purchase our home we also buy bundles of rights that encompass the air space above and the ground below the land surface. This is called "fee simple absolute title". If we think of this as bundles of rights, another bundle is the right to add on to our home and to use the home and property for a mortgage loan, and to lease and sell the property. We also purchase the right to clean, running water and access to utilities. Another bundle of rights consists of the intangibles that make a house a home, such as peaceful sanctuary, and a safe secure place for our children.

Our culture favors land use that keeps heavy industrial activity out of residential neighborhoods. This is for both safety and aesthetics. Fracking and the associated activities carries heavy industrial risks, and the effects can be tremendous. Fracking in and around homes challenges all of the attributes of home ownership. Homeowners can be confronted with uninsurable property damage for activities that they cannot control.

When a house is rented to a tenant, the owner requires the tenant to post a security deposit to cover damage and liability insurance naming the landlord as an additional named insured. Gas leases do not contain a similar provision covering costs for uninsured damage despite the fact

that they occupy the space. Absent negotiation, gas leases contain no insurance and no provision to pay for damage and losses. By not restoring liability to the companies that control drilling operations and coupling it with economic reasons to prevent casualties, a homeowner will have to first experience the property damage or personal injury, then successfully arbitrate or litigate against the gas lessee for reimbursement and remediation, a burden most homeowners can't afford or mentally handle. Homeowners can be confronted with uninsurable property damage that they cannot control.

Other property losses occur for ranchers that lose livestock that have access to the unfenced facilities that are part of operations allowing the livestock to lick up methanol. Ranchers in the four corners region complain of significant livestock losses and unthrifty livestock. The loss of land mass, 5 acres per well pad, and the fracturing of the ranch property by the roads and pipelines that connect every well, have rendered some ranches unbranchable and the owners sell out.

Wildlife losses are reported on public lands as well, from the same problem of lack of fencing of facilities.

Split Estate

Every issue I have brought up refers to properties where the surface and mineral rights have not been severed. According to New Mexico Energy, Minerals and Natural Resource Department between 65% and 75% of land in New Mexico is under Split Estate. Land that is, or was part of the Spanish land grants is almost entirely under split estate. Split estate means the ownership of the mineral rights has been separated from the ownership of the surface, additionally the mineral estate is the dominant right.

For Split Estate property owners we may be entering uncharted waters where the issues described above will be greatly exaggerated. The surface owners under Split Estate get no remuneration for the minerals extracted, and they have no say at all in the negotiations of a lease to drill and frack on their property.

New Mexico does have the Surface Owners Protection Act that purports to provide some protections against unscrupulous operators. However, if the drilling company and the surface owner do not come to an agreement within 30 days, the company can post a \$10,000 bond and drilling will proceed. The County Ordinance must include mechanisms to fill in the gaping holes in SOPA to fully compensate the surface owner's true losses before any royalties are paid out. All damages need to be covered by the Industry. What is at issue here is the requirement that the industry pay the true and complete costs of their activities. Otherwise we as private citizens are subsidizing the industry's activities and in some cases being totally devastated by that subsidy.

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