IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 16-0136

PATRICK D. LEGGETT;
KATHERINE F. LEGGETT;
GEORGE D. MCKAIN, by his
attorney in fact, ANITA
KATHRYN MCKAIN GREER;
and ADELE S. MCDOUGAL,

Plaintiffs/Petitioners,

v.

EQT PRODUCTION COMPANY,
a Pennsylvania corporation, et al.

Defendants/Respondents.

Upon Certified Questions from the United States District Court
For the Northern District of West Virginia
Case No. 1:13-cv-00004-FPS

AMICUS CURIAE BRIEF OF THE WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION IN SUPPORT OF RESPONDENT

Timothy M. Miller (WVSB ID No. 2564)
Mychal S. Schulz (WVSB ID No. 6092)
Babst, Calland, Clements & Zomnir, P.C.
300 Summers Street, Suite 1000
Charleston WV 25301
(681) 205-8888
(681) 205-8814 - Facsimile
tmiller@babstcalland.com

Counsel for Amicus Curiae
West Virginia Oil and Natural Gas Association

Submitted July 25, 2016

Table of Contents

TABLE OF AUTHORITIES

Cases

Constitution and Statutes

Other Authorities

STATEMENT OF INTEREST[1]

The West Virginia Oil and Natural Gas Association (WVONGA), chartered in 1915, is one of the oldest trade organizations in West Virginia, and is the only association that serves the entire oil and gas industry. The activities of its members include construction, environmental services, drilling, completion, gathering, transporting, production, processing and distribution of valuable and essential natural gas resources. WVONGA's members are responsible for over 85% of the state's unconventional oil and gas production and hold over 95% of the permits for the same. With over 200 member companies, its members operate in almost every county in West Virginia and employ thousands of people with payrolls totaling hundreds of millions of dollars annually. WVONGA members contribute substantial severance and other taxes which benefit the citizens of West Virginia. WVONGA represents the interests of the oil and gas industry and routinely provides comments and participates in matters which affect its members. In addition, many of WVONGA's members have flat-rate leases and wells drilled before the enactment of West Virginia Code § 22-6-8 (the flat-rate royalty statute) and therefore have a direct interest in the outcome of this case.

WVONGA respectfully requests the Court consider the points and authorities in this brief submitted on the certified questions presented to the Court.

WVONGA has provided all counsel of record with notice of its intent to file this amicus brief at least five (5) days prior to the filing of the due date for the brief of the Respondent, EQT Production Company, in accordance with W. Va. R. of App. P. 30(b).

---

[1] Pursuant to W. Va. R. App. P. 30(e)(5), WVONGA states that no counsel for any party authored this *amicus curiae* brief, in whole or in part, and no party or its counsel made a monetary contribution specifically intended to fund the preparation or submission of this *amicus curiae* brief.

STATEMENT OF RELEVANT FACTS

The procedural history and factual background relevant to this case is set forth in the *Order of Certification to the Supreme Court of Appeals* entered by the United States District Court for the Norther District of West Virginia, Judge Stamp, on February 10, 2016. Joint Appendix, at 4. The District Court presented two certified questions:

1. Does *Tawney v. Columbia Natural Resources, L.L.C.,* 219 W. Va. 266, 633 S.E.2d 22 (2006), which was decided after the enactment of West Virginia Code § 22-6-8, have any effect upon the Court's decision as to whether a lessee of a flat-rate lease, converted pursuant to West Virginia Code § 22-6-8, may deduct post-production expenses from his lessor's royalty, particularly with respect to the language of "1/8 at the wellhead" found in West Virginia Code § 22-6-8(e)?

2. Does West Virginia Code § 22-6-8 prohibit flat-rate royalties only for wells drilled or reworked after the statute's enactment and modify only royalties paid on a per-well basis where permits for new wells or to modify existing wells are sought, or do the provisions of West Virginia Code § 22-6-8 abrogate flat-rate leases in their entirety?

WVONGA will address Certified Question No. 2 first.

ARGUMENTS

A. THE FLAT-RATE ROYALTY STATUTE APPLIES ONLY TO NEW OR REWORKED WELLS TO BE PERMITTED AFTER 1982. ABROGATING FLAT-RATE LEASES IN THEIR ENTIRETY IS NOT CONSISTENT WITH PUBLIC POLICY AND COULD ADVERSELY AFFECT MANY ROYALTY OWNERS IN THE STATE.

Certified Question No. 2 can be easily answered by reference to the plain and unambiguous provisions of W. Va. Code § 22-6-8. "Where the language of a statute is free from ambiguity, it's plain meaning is to be accepted and applied without resort to interpretation." Syl. Pt.

2, *Crockett v. Andrews*, 153 W.Va. 714, 172 S.E.2d 384 (1970). Moreoever, the legislature is presumed to have intended to use every word and phrase in a statute and the Court's duty is to give meaning to the statute as written. See Syl. Pt. 3, *Meadows v. Walmart Stores, Inc.* 207 W. Va. 203, 503 S.E.2d 676 (1999).

On its face the statute is clear. The Legislature expressly recognized the Constitutional prohibition on the enactment of laws impairing the obligations of contract, W. Va. Const., Art. III, § 4. See W. Va. Code § 22-6-8(a)(4). The legislature therefore chose to exercise its police power to prospectively withhold the issuance of a permit for any new wells drilled, or existing wells re-worked, after the effective date of the statute. W. Va. Code § 22-6-8(c) ("...no permit shall be hereafter issued...."). There simply is nothing in the plain and unambiguous provisions of the statute that purports to "abrogate flat-rate leases in their entirety."

Petitioners and the *amici curiae,* the West Virginia Land and Mineral Owners Association and West Virginia Royalty Owners Association (WVLMOA/ROA), however, ask this Court to go far beyond the application of the statute as written, and instead embark on a judicial declaration of the public policy of the state as it relates to conventional gas wells that pay royalties on a flat-rate basis, thereby judicially amending the statute to declare all flat-rate leases void as a matter of public policy. The Constitutional and legal obstacles to this result are numerous and would require the Court to ignore the separation of the power of the legislative and judicial branch and it is anticipated this will be well briefed by Respondent, so WVONGA will not re-hash the argument. WVONGA instead will point out that the blanket assumption that all flat-rate leases result in inequitable treatment of all royalty owners and should be therefore abrogated is fundamentally flawed and should not be relied upon by this Court in its analysis of Certified Question No. 2.

The brief of the Petitioners and the *amici* WVLMOA/ROA incorrectly assumes that payment of royalties on a flat-rate basis always results in an economic windfall for the producer and an unconscionably low return to the royalty owner. This is incorrect and a dangerous assumption, as will be demonstrated by an economic analysis.

West Virginia is one of the first, if not the first, state to have discovered and economically produced oil and gas, with production dating back to the 1820's, with commercial production well before the Civil War. McKairn, David L., *Where it All Began, the Story of the People and Place Where the Oil & Gas Industry Began – West Virginia and Southeastern Ohio*, Foreword, pg. 4. (1994). As a result, many wells were drilled and have been producing for over 100 years and it is a well-known fact that West Virginia conventional wells in many formations produce at low annual production volumes, but over many years.

The United States Energy Information Administration (EIA) and the West Virginia Geological and Economic Survey (WVGES) study and maintain a wealth of data and information regarding natural gas production throughout the United States. One of those data compilations incudes a *Table of Distribution and Production of Oil and Gas Wells by State*, that includes a breakdown of the *Distribution of Wells by Production Rate Bracket* (hereinafter "EIA Distribution Table." See http://www.eia.gov/pub/oil_gas/petrosystem/wv_table.html; Appendix of Amicus WVONGA at 3. The EIA Distribution Table for West Virginia production from 1995-2009[2], for Gas Wells, shows that in 2009, there were 18,609 gas wells producing at an average rate of 2.6 Mcf/Day, which accounted for 16,894.6 million cubic feet (MMcf) of annual production. *Id.*

The WVGES similarly has documented the long history of gas well production in West Virginia. A data compilation provided by the WVGES breaks down the number of wells that

[2] This is the most recent data table for West Virginia compiled by EIA but is indicative of the vast number of old, low volume wells, most of which still exist today.

have produced at a rate of 1-500 Mcf/Year, and wells that have produced at a rate of 501-1,000 Mcf/Year, for calendar years 2005-2015. For production year 2015, there were 11,742 wells producing in the 1-500 Mcf/Year category, and 6,003 producing in the 501-1,000 Mcf/Year category, or a total of 17,745 wells producing less than 1,000 Mcf/Year. Appendix of Amicus WVONGA at 2. Undoubtedly, a large number of these wells are old wells subject to flat-rate leases.

Using the EIA Distribution Table for year 2009 for analysis, a well producing at a rate of 2.6 Mcf/Day produces an annual volume of 949 Mcf. Assuming a gas sales rate of $2.15 per Mcf,[3] the annual production revenue generated by a well producing 2.6 Mcf/Day would equal $2,040.36 (949 Mcf x $2.15). A $300 annual flat-rate royalty on that production would equate to 14.70% rate of return for the royalty owner ($300 ÷ $2,049.36). Paying the royalty on a one-eighth volumetric basis would result in the royalty owner receiving $256. At a price of $2.50 per Mcf, the $300 annual royalty would equate to a 12.64% rate of return to the royalty owner on a volumetric basis ($300 ÷ $2,372.50). For a well producing 500 Mcf/Year, the gas would have to be sold at or above $4.80/Mcf, a rate more than double current market prices, before the royalty owner would receive a return that exceeded a one-eighth royalty.

Wells that produce at an annual production rate lower than 949 Mcf/year, such as the 11,742 wells WVGES reports are producing at less than 500 Mcf annually, or any combination of low volume production and/or low price environment (like the one that currently exists), that results in an annual production revenue of less than $2,400 ($300 = one-eighth of $2,400), would yield similar results and a similar conclusion; in a number of scenarios flat-rate leases generate

---

[3] $2.15 per dekatherm (the Mcf volume adjusted to reflect btu value of the gas) is the average monthly sales price of gas at the interstate pipeline transmission delivery points year to date in calendar year 2016. See the Table, NYMEX – Natural Gas Contract Settlement Price History; http://gsfi.net/common/NYMEXSettlementHistory.pdf.

better returns to the royalty owner than if the royalty owner was paid on a one-eighth volumetric basis.

West Virginia has a history of conventional, "low and slow" gas production. It would be a serious mistake to assume that the public policy of West Virginia as stated in W. Va. Code § 22-6-8 compels the Court to issue a declaration that flat-rate leases are void or abrogated as such would not necessarily be beneficial to all lessors. In short, the law of unintended consequences would be the result of any broad pronouncement to abrogate all flat-rate leases because in many cases the royalty owner would receive less royalty on a volumetric, one-eighth basis.

In answer to Certified Question No. 2, the Court should answer that the plain and unambiguous terms of the flat-rate royalty statute applies only to wells drilled or reworked after the statute's enactment; the statute does not abrogate all flat-rate leases; and, the Court will defer in this instance to the Legislature on the declaration of the public policy of the state and the extent to which it may use its police powers.

B. THE RULES OF CONSTRUCTION APPLIED IN *TAWNEY* ARE NOT APPLICABLE TO AND SHOULD NOT BE USED TO INTERPRET W. VA. CODE § 22-6-8.

Reliance on *Tawney* as the starting point for the analysis and interpretation of West Virginia Code § 22-6-8, is fundamentally flawed.

First, *Tawney* cited the venerable treatise Donley, *The Law of Coal, Oil and Gas in West Virginia and Virginia* (1951) (hereinafter "*Donley*") for the concept that historically royalty owners have "received a royalty based on the sale price of gas received by the Lessee." 633 S. E. 2d at 27, citing *Donley*, § 104. The Court concluded this was support for the concept that the royalty owner should now be paid royalty based on the price received from the sale of the gas at the current market and regulatory driven sales point—the interstate gas transmission lines, rather than at the wellhead—the historic market and regulatory driven sales point. *Id.*

This erroneous application of *Donley* in *Tawney* was noted in one of the leading treatises in the United States on oil and gas law, as follows:

> The court's analysis began with an assumption that was based on a false premise or different set of circumstances. It concluded that historically, royalty owners have "received a royalty based on the sale price of the gas received by the lessee." (citation omitted). Undoubtedly, at the time that the treatise relied on by the court was published (1951), the sale of natural gas was almost universally at the well head so there would be no need to utilize the netback methodology to calculate royalties whether they be based on proceeds/amount realized or market value. In addition, the West Virginia court had earlier indicated that it favored *Rogers* approach in *Wellman v. Energy Resources, Inc.*, (citation omitted)) where it expressly recognized the general duty of a lessee to market the oil or gas produced.
>
> The ultimate issue was whether the terminology used in the lease that referred to the well was sufficient to overcome the implied covenant to market. (citation omitted). West Virginia appears to give more weight to the express language used in the instrument than does Colorado, but in the end the court's conclusion that use of "wellhead" language was ambiguous leaves one scratching one's head as to whether the court was really looking at a bargain struck between the parties of just imposing what it perceived to be a "fair" and/or "equitable" result. For example, the court concluded that "wellhead" language lacks "definiteness" and is "imprecise." If anything, the term "wellhead" is very precise and definite because it is a clearly recognizable place which even laypersons can understand. Nonetheless, the *Tawney* court concluded that the express language really did not deal with the issue of using the netback methodology. It also said that CNR apparently did not begin to use the netback methodology until 1993, but did not explore the historic wellhead sales practice of the natural gas industry until the price and transportation of natural gas was deregulated in the decade of the 1980s. Since it was treating the language as ambiguous, the court should have admitted extrinsic evidence to explore the nature of the changing natural gas market in the United States, which might have explained why it would have been unlikely for a producer to use the netback methodology when gas sales took place at the well. (citation omitted).

Williams & Meyers, *Oil and Gas Law*, § 645.2, at page 614.12(3 (hereinafter "*Williams and Meyers*").

The reference in *Williams & Meyers* to the deregulation of the natural gas industry in the 1980s, refers to the fact that with the passage of the National Gas Policy Act of 1978 (NGPA), Pub.

No. 95-621, 92 Stat. 3350, 15 U.S.C.§§ 3301-3432, Congress started the process of deregulating and breaking up the functions of natural gas producers, pipeline companies and merchants. It was not until the Federal Energy Regulatory Commission (FERC) enacted a series of regulatory reforms implementing the NGPA, that the actual unbundling process began and producers then had "open access" to ship and sell directly to the end users. See FERC Order No. 636, *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, III F.E.R.C. Stats. & Reg. Para. 39, 59 FERC ¶ 61,030 (1992).

In short, in 1992, the oil and gas industry changed dramatically so that gas sales now could take place at various points, including the wellhead, on gathering systems, at interconnections to interstate transmission pipelines, or to end users. See Judith Matlock, *New Roles of Wellhead, Gathering System and Gas Plant Operators After Order No. 636*, 40 Rocky Mtn. Min. L. Inst. 15-1 (1994).

The impact of this regulatory reform on the calculation of royalties is that, as summarized in the *Williams & Meyers* quotation cited above, reliance on pre-NGPA/Order 636 case law to conclude the implied covenant to market means the lessee must bear all the costs to enhance the value of the gas at the point of sale, regardless of where the gas is first marketable, simply ignores leases which specified the wellhead as the point of valuation and ignores the changes in the market place which resulted in a change of the value of the gas at the point of sale versus the value at the wellhead. As stated in *Williams & Meyers*, simple reliance on historical case law which indicated it was the duty of the producer to bear the cost of "discovery and production" of the gas, i.e., *Davis v. Hardman*, 148 W.Va. 82, 133 S.E.2d 77 (1963), does not mean it should be implied the parties intended the lessee should solely bear the costs of discovery, production, gathering, transportation and marketing far down stream of the wellhead in the era after enactment of FERC Order 636. Similarly, failure to recognize that the netback method is proper where, as in this case an unambiguous *statute* specifies the wellhead as the valuation point, ignores that federal statutory and regulatory enactments moved the point of sale far downstream of the wellhead.

The most fundamental flaw in relying on *Tawney* to interpret West Virginia Code § 22-6-8, would, however, be adopting *Tawney's* pivotal holding that any ambiguity in an oil and gas lease is generally to be liberally construed in in favor of the lessor and strictly against the lessee, and that controls the outcome of this case. See Syl. Pt. 7, *Tawney*; see *Martin v. Consolidated Coal & Oil Corp.*, 101 W.Va. 721, 133 S.E. 626 (1926).

Judge Donley's treatise and the cases like *Martin*, that have applied the concept of resolving the ambiguity against the lessee, derives from the general rule of contract construction that ambiguities in a contract are resolved against the <u>drafter</u>. Judge Donley noted this distinction and stated that where the evidence showed the *lessor* drafted the lease, any ambiguity should be resolved against the *lessor*. *Donley*, §§ 60, 61.

The rule that generally applies an ambiguity in an oil and gas lease against the lessee is based on the fact that in many cases, form contracts and leases were drafted by oil and gas operators or industry form leases were used. In such cases, the court has been loathe to resolve an ambiguity against anyone other than the lessee. See *Bettman v. Harness*, 42 W.Va. 433, 26 SE. 271 (1896) ("agents armed with printed leases...and they are forms already prepared, and the people in many instances know little of them, are inexperienced in oil operations, and are without legal advice."); *Donley*, § 60. Thus, the courts have concluded ambiguities should be resolved against the lessee because it was clear the lessee drafted a form lease and it was assumed the lessor was not sophisticated enough to understand the nuances of a legal document. *Donley*, § 61. That assumption is not always the case and where the lessor prepared the Lease, the lease should be interpreted against the lessor. *Id.* Yet, in *Tawney*, when faced with this key distinction, the Court choose to ignore the fundamental question—who drafted the lease—and apply the general rule even where there was evidence the lessor was a sophisticated commercial entity, with able counsel and form leases were not used. See 633 S.E.2d at 22-23. This incorrect application of the law should not be compounded by now declaring the public policy pronouncements in the flat-rate royalty statute means the Court should conclude the legislature was unsophisticated, without legal advice and accordingly the "at the wellhead" language in the statute is ambiguous and the rule of ambiguity should be resolved against the Respondent, EQT Production Company. The statute was not drafted by the Respondent and we are not dealing with interpretation of a form, industry standard lease.

Reliance on the rule that ambiguities should always be resolved against the lessee as a way to ignore or delete the phrase "at the wellhead" from the flat-rate royalty statute is just not sound or consistent with the *reason* for the rule, as explained in *Bettman* and *Donley*.

In answer to Certified Question No. 1 the Court should take this opportunity to clarify the rules of construction as stated in *Tawney*. First, reliance on the proposition that the historical expectation that the royalty owner was to receive royalty based on the gas as valued at the well, does not support the blanket rule that the point of valuation for royalty purposes can be shifted to a distant, downstream point of sale. Second, the correct legal principle when interpreting an ambiguity in an oil and gas lease is that any ambiguity should be resolved against the <u>drafter</u> of the lease, and where the identity of the drafter cannot be determined from the face of the instrument, the court should admit extrinsic evidence to answer the question.[4] Third, W.Va. Code § 22-6-8 is not a

[4] See, Syl. Pt. 4, *Watson v. Buchannon River Coal Co.*, 95 W. Va. 164, 120 S.E. 390 (1923). In the majority of cases likely to come before the courts it will be apparent if a form, industry produced lease is in question. But where a

lease and the rules of construction relied upon in *Tawney* do not apply.

C. WHEN THE FLAT-RATE ROYALTY STATUTE WAS ENACTED, THE PHRASE "AT THE WELLHEAD" HAD A SPECIFIC MEANING.

The certified questions presented to the Court are premised on whether West Virginia Code § 22-6-8, should be interpreted consistent with the reasoning and outcome in the *Tawney* case. However, ascribing to the legislature in 1982 an intent that use of the phrase "at the wellhead" was ambiguous and meaningless based on a decision by the Supreme Court in 2006 is not chronologically possible.

Petitioners argue that the decisions in *Wellman v. Energy Resources, Inc.*, 210 W. Va. 200, 557 S.E.2d 254 (2001) and *Tawney* were really not much of a change of the law of West Virginia, and the legislature in 1982 is thus presumed to have known that "at the wellhead" really did not mean anything. See Petitioner's Brief, at 18. This simply defies logic. The only other time the Court came close to discussing the question of sales of gas "at the wellhead" was prior to the enactment of the flat-rate royalty statute, in *Cotiga Development Company v. United Fuel Gas Company*, 147 W. Va. 484, 128 S.E.2d 626 (1962). In *Cotiga*, the court noted the distinction between the wellhead price of gas and the downstream selling price of gas and any logical reading of that case leads to the conclusion "at the wellhead" had a specific meaning to the Court, the industry and the public at that time. The fact that in 2006, the Court decided the language in *Cotiga* was "unhelpful" and essentially dicta, 633 S.E.2d 22, does not support the Petitioner's argument that the legislature made only casual, unintentional reference to the "at the wellhead" in 1982, which can now be ignored.

---

form lease is not in dispute, the rule of resolving ambiguities against the drafter will turn on the factual determination as to who drafted the lease, or whether it was drafted by the mutual effort of the parties.

There have been numerous, well publicized class action lawsuits since *Tawney* dealing with the interpretation of "at the wellhead". Yet, the legislature has not seen fit to amend the flat-rate royalty statute to delete the phrase at the wellhead. Declaring that the court can "interpret" the flat-rate statute to delete the clear point of valuation at the wellhead is improper. No such intent appears from the language of the statute itself. The legislature picked a specific point for valuation of the gas for purposes of royalty calculations, the wellhead.

More importantly, the underlying reason the legislature enacted the flat-rate royalty statute does not support the conclusion the legislature intended to abrogate flat rate leases or that they intended that no post-production costs incurred downstream of the wellhead could be shared with the lessor.

The statute clearly states the Legislature was attempting to deal with a situation of perceived economic disparity that would result from new methods of drilling wells and technological advances which would result in much greater volumes of gas being produced from a well.

> a great portion, if not all, of such leases ...calling for an annual flat well royalty, have been in existence for a great many years and were entered into at a time when the techniques by which oil and gas are currently extracted, produced or marketed, were not known or contemplated by the parties, nor was it contemplated by the parties that oil and gas would be recovered or extracted or produced or marketed from the depths and horizons currently being developed by the well operators.")

See, W.Va. Code § 22-6-8(a)(3). Thus, the greater volumes produced from new wells and with new technology made payment of royalty on a volumetric rather than flat-rate basis all the more important and valuable. The legislature therefore chose to deal with situations where new permits would be required for new or reworked wells employing modern technology. The legislative analysis therefore was focused on the concept of economic parity related to new wells, new methods of production and the use of the police powers of the state in order to prohibit the acquisition of a permit. The Legislature did not declare it saw any inequity by computing the royalty based on the point the gas was brought to the surface and placed into a pipeline. Reading *Tawney* as somehow consistent with the intent of the legislature in 1982 is comparing apples to oranges.

The *Tawney* analysis should not be used and should have no effect on the interpretation of West Virginia Code § 22-6-8. The statute should be applied as written. The answer to Certified Question No. 1 should be "No."

CONCLUSION

For all of these reasons, WVONGA asks that this Court answer Certified Question No. 1 in the negative, and in answer to Certified Question No. 2, state that West Virginia Code § 22-6-8 applies only to wells drilled or reworked after the statute's enactment and does not abrogate flat-rate leases in their entirety.

Respectfully submitted,

WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION

Timothy M. Miller (WVSB ID No. 2564)
Mychal S. Schulz (WVSB ID No. 6092)
Babst, Calland, Clements & Zomnir, P.C.
300 Summers Street, Suite 1000
Charleston WV 25301
(681) 205-8888
(681) 205-8814 - Facsimile
tmiller@babstcalland.com

Counsel for Amicus Curiae
West Virginia Oil and Natural Gas Association

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 16-0136

PATRICK D. LEGGETT;
KATHERINE F. LEGGETT;
GEORGE D. MCKAIN, by his
attorney in fact, ANITA
KATHRYN MCKAIN GREER;
and ADELE S. MCDOUGAL,

Plaintiffs/Petitioners,

v.

EQT PRODUCTION COMPANY,
a Pennsylvania corporation, et al.

Defendants/Respondents.

Upon Certified Questions from the United States District Court
For the Northern District of West Virginia
Case No. 1:13-cv-00004-FPS

CERTIFICATE OF SERVICE

I, Timothy M. Miller, hereby certify that on the 25th day of July, 2016, a copy of the foregoing **"AMICUS CURIAE BRIEF SUBMITTED BY THE WST VIRGINIA OIL AND NATURAL GAS ASSOCIATION IN SUPPORT OF RESPONDENTS"** was mailed, postage prepaid, by First Class Mail to the following:

Marvin W. Masters (WVSB #2539)
Richard A. Monahan (WVSB #6489)
April D. Ferrebee (WVSB #8034)
The Masters Law Firm lc
181 Summers Street
Charleston, WV 25301
(304) 342-3106

and

Michael W. Carey (WVSB #635)
Carey, Scott, Douglas & Kessler, PLLC
7078 Virginia Street East, Suite 901
Charleston, WV 25301
Counsel for Plaintiffs

David K. Hendrickson
Carl L. Fletcher, Jr.
Hendrickson & Long PLLC
P.O. Box 11070
Charleston, WV 25339
Counsel for Defendants

Howard M. Persinger, III
Persinger & Persinger
237 Capitol Street
Charleston, WV 25301
Counsel for Amicus Curiae, WV Land and Mineral Owners Association/WV Royalty Owners

Timothy M. Miller (WVSB ID No. 2564)