

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 15-0907

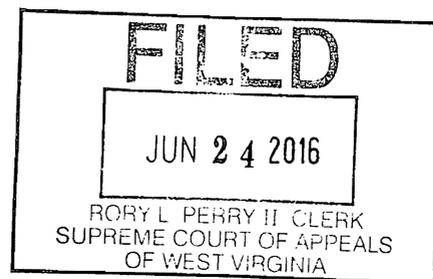
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Defendants Below, Petitioners,

v.

LBR HOLDINGS, LLC,

Plaintiff Below, Respondent.



**AMICUS CURIAE BRIEF OF
WEST VIRGINIA SURFACE OWNERS' RIGHTS ORGANIZATION**

Pursuant to W.V.R.A.P. 19 the West Virginia Surface Owners' Rights Organization provides this brief *amicus curiae* in opposition to the petition for appeal filed in this matter. The interest of the West Virginia Surface Owners' Rights Organization in the issues raised in this petition and the reasons that this brief *amicus curiae* is desirable were set forth below and in the motion for leave to file brief *amicus curiae* of the West Virginia Surface Owners' Rights Organization filed contemporaneously herewith.

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IDENTITY AND INTEREST OF AMICUS¹

The West Virginia Surface Owner's Rights Organization ("WVSORO") has over 900 citizens who have paid dues and are considered its members.² Only about 30% of WVSORO's members also own an interest in the minerals underlying their land (and many of that 30% are subject to antiquated leases that the drillers claim are held by production or storage).

In the present case WVSORO supports the position of the respondent, LBR Holdings, LLC, that the Supreme Court of Appeals should reaffirm the holdings of *Energy Dev. Corp. v. Moss*, 214 W.Va. 577, 591 S.E.2d 135 (2003).

Many surface owners are the successors to grantors of deeds or wills which conveyed out, reserved or separately devised oil and gas interests. These severances of oil and gas took place long before the production of coalbed methane ("CBM") by even conventional vertical wells was contemplated, let alone the more recent horizontal, pinnate drilling of CBM wells. So these severances were long before it was understood that drilling vertical wells for producing CBM could have a much larger and different surface impact than drilling for conventional natural gas. More about that will be set out below. Therefore a bright line rule that the CBM (and the incumbent rights to use the surface to produce it) belongs to the gas owner would

¹Pursuant to Rule 30(e)(5): No counsel for a party authored this brief in whole or in part. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. In the interest of full disclosure, Counsel filing this brief was co-founder in 2007 of the West Virginia Surface Owners' Rights Organization and remains active in it. The issue of contemplation of the parties at the times of severances is of paramount importance to WVSORO, and he is preparing this brief pro bono in that general regard and for the particular interests of surface owners described in the brief. Also, in his part-time private practice he is involved in at least two cases where the ownership of CBM is at issue.

² As a technical legal matter the West Virginia Surface Owner's Rights Organization is a registered trade name used by West Virginia Citizen Action Group Incorporated, a West Virginia Corporation, in order to organize, to serve as a resource for, and to advocate for surface landowners dealing with oil and gas related activities on their land and in their communities.

adversely affect the residual property interest owner's ownership of CBM and therefore his or her financial interest. More importantly the new owner/driller would claim the right to impose an increased burden, and a different burden, on their surface as is necessary for CBM production -- a shift in burden which was not contemplated at the time of the severance in the days of conventional gas well drilling.

Instead of oil and gas, many landowners deeded out, reserved or separately devised only the coal. Perhaps the most typical example would be the severance of only the Pittsburgh seam of coal across vast swaths of northern West Virginia in the early 1900's. A bright line rule that the CBM belongs to the oil and gas owner where only the coal was severed might help the residual property interest owner in this situation financially (unless their chain of title was affected as noted in the previous paragraph). A bright line rule, on the other hand, that the CBM belongs to the coal owner in this situation might take royalties that would otherwise come to the residual interest, who is often also the surface owner and give them as a windfall to the coal owner. This would be a windfall because the CBM producer drilled its well without relying on receiving the 1/8th (typically) royalty. The driller's business plan found plenty of economic incentive to drill CBM wells based its entitlement to 7/8th of the proceeds from the sale of CBM from the wells. They were able to drill these wells using West Virginia's forced pooling statute for coal bed methane which required the royalty to be placed in escrow until the ownership of the CBM and its royalty rights was decided, eventually, pursuant to the *Moss* test. W.Va. Code §§22-21-15 and 17.

So WWSORO's interest is principally in the impact on the use of its members surface contemplated, or not, pursuant to conveyances, devises and reservations of CBM, or not. In

addition some surface owners with residual mineral interest may be entitled to royalties if it is they who own the CBM because it was not a contemplated part of a conveyance, reservation or devise.

ARGUMENT

A. *Energy Development Corporation v. Moss* should not be overturned.

This Court has already addressed the issue presented in the well-reasoned decisions of *Energy Development Corporation v. Moss*, 214 W. Va. 577, 591 S.E.2d 135 (2003) and *CBC Holdings, LLC v. Dynatec Corp, USA*, 224 W. Va. 25, 680 S.E.2d 40 (2009). Because the petitioners predecessors did not, when they merely reserved “one-half of the oil and gas,” specifically reserve the coalbed methane gas (“CBM”) they are not the owners of the CBM, and the Order of the trial court should be affirmed.

Production of CBM has become more economically viable fairly recently. In *EQT Production Co v. Adair*, 764 F.3d 347, 353 (2014), the Fourth Circuit stated that only “[b]y the 1970’s . . . it became apparent that CBM could be used as an energy resource, and producers began to capture it for commercial use.” And prior to 1994, the exploration and production of CBM by the drilling of wells was inhibited in part by conflicting claims between the coal owners of a parcel and any owners of other interests in the same parcel over who owned the coalbed methane and who had the right to produce the coalbed methane. In order to remove the barrier to exploration and production of CBM related to conflicting ownership claims, the West Virginia Legislature enacted legislation in 1994 that included a procedure (as part of a whole new article on CBM exploration and production) by which the conflicting ownership interests of CBM could be included in a unit, or even “force pooled” into a unit so drilling could proceed even with ownership and right to the royalty in dispute. *W.Va. Code* § 22-21-15(a)(iii)(1994). The legislation also contained a provision requiring that the royalties (or other payments) to which

the CBM owners were entitled would be placed in an escrow account. *W. Va. Code* § 22-21-17(j) (1994). The legislation contained a further provision that carried out the distribution of the escrowed funds in the event of “a voluntary agreement of the parties or a final judicial determination” regarding the conflicting claims to ownership of the CBM and the resulting entitlement to the royalties. *W. Va. Code* § 22-21-17(k) (1994). Importantly, the West Virginia Supreme Court of Appeals has held that the legislation does not provide State government with the power to decide who owns the CBM. *CBC Holdings, LLC v. Dynatec Corp, USA*, 224 W. Va. 25, 680 S.E.2d 40 (2009).

In *Moss*, the West Virginia Supreme Court of Appeals determined that the CBM did not inherently belong to the coal owner or to the gas (or other residual interest) owner. Instead, Syllabus Point 4 held: “A deed will be interpreted and construed as of the date of its execution.” *Id.* ““In order for usage or custom to affect the meaning of a contract in writing because [it was] within the contemplation of the parties thereto, it must be shown that the usage or custom was one generally followed at the time and place of the contract’s execution.”” Syl. pt. 7, *Moss*, 214 W. Va. at 577, 591 S.E.2d at 135 (citations omitted).

In *Moss*, the question was whether an oil and gas lease executed in 1986 conveyed to the lessee the right to drill into the lessor’s coal seams in order to produce the CBM. 214 W. Va. at 580, 591 S.E.2d at 138. The Court found: “[T]he representative of [the lessee] may have been aware of the value of coalbed methane but that the appellees [the lessors] were not, and that no coalbed methane wells had been drilled in the area as of 1986.” *Id.* at 588, 591 S.E.2d at 146. Therefore, the Court held that “In the absence of specific language to the contrary or other

indicia of the parties' intent, an oil and gas lease does not give the oil and gas lessee the right to drill into the lessor's coal seams to produce coalbed methane gas." *Id.* at Syl. pt. 8.

Reversing *Moss* would unfairly impose additional surface burdens on citizens who own surface lands and remaining interests after the conveyances, reservations or devises that severed the ownership of just the oil or gas or just the coal from other interests in the tract.

In the absence of actual language limiting or specifically providing surface use in a severance deed or will, the owner of minerals as a general rule has the right to reasonable use of the surface in order to explore for and produce the minerals in the tract underlying the surface tract. However, this right is not unlimited. Instead, it has been described as allowing only use that is "fairly necessary," giving "due regard" to surface use, and a right that must "accommodate" surface use. Clinton W. Smith, *Disturbing Surface Rights: What Does "Reasonably Necessary" Mean in West Virginia?* 85 West Virginia Law Review 817 (1983).

Another limitation on reasonable use of surface by a mineral interest owner or lessee is that the right to use the surface is only for producing from the mineral tract lying directly under the surface tract and not from neighboring mineral tracts. This Court said in *dicta* in the oil and gas context in *King v. South Penn Oil Co.*, 110 W. Va. 107, 157 S.E. 82, 84 (1931), "[T]he [reasonable use] rule quoted applies to the mining and production of minerals from a given tract of land, and does not contemplate the use of such tract in connection with the production of minerals from another and different tract[.]" In the coal context in an actual holding as early as 1883, this Court held that the right to use the surface of one tract to extract coal from a

neighboring tract has to be specially stated in a conveyance – i.e., it is not implied. *Findley v. Armstrong*, 23 W. Va. 113 (1883). A chorus of general oil and gas law treatises agree.³

And finally and most relevant for this case the surface use must be within the contemplation of the parties at the time of the severance according to cases of this Court ranging in surface use from strip mining (*Pittsburgh_Coal v. Strong*, 129 W.Va. 832, 42 S.E.2d 46 (W.Va. 1947)) to the spraying of herbicides on power line right of ways (*Kell v. Appalachian Power Co.*, 170 W.Va. 14, 289 S.E.2d 450 (1982)). A new method of extraction is not prohibited, but according to Justice McHugh citing Syllabus Point 3 of *Buffalo Mining Company v Martin*, 165 W.Va. 10, 267 S.E.2d 721 (1980), for an implied right, “[I]t must be demonstrated not only that the [surface use] right is reasonably necessary for the extraction of the mineral, but also that the right can be exercised without substantial burden to the surface owner.” *Phillips v Fox*, 193 W. Va. 657 at 665, 458 S.E.2d 327, at 335 (1995).

B. Development of CBM imposes a significant different and additional burden on the surface lands.

Surface use for CBM is different from surface use for conventional natural gas wells. This was recognized by the Legislature at time of the passage of the new Article 21 of Chapter 22, "Coalbed Methane Wells and Units". This article took over the permitting of CBM wells

³ The usual express easements and implied surface easements of a mineral owner or lessee are limited to such surface use as is reasonably necessary for exploration, development and production **on the premises described in the deed or lease**. Of course the instrument may expressly grant easements in connection with operations on other premises. . . . **Absent such express provision, clearly the use of the surface by a mineral owner or lessee in connection with operation on other premises constitutes an excessive user of his surface easements. . . .** [Emphasis added]” Howard R. Williams, et al., *Conduct of Operator Injurious to Others*, OIL AND GAS LAW, §§ 218.4 and 218.6. See also Eugene Kuntz, A TREATISE ON THE LAW OF OIL AND GAS, § 12.8; and Nancy Saint-Paul, SUMMERS OIL AND GAS, § 56:9 (3d ed.).

from other provisions of the Code, and it set up a forced pooling procedure for coalbed methane exploration and production (as well as an escrow procedure where the receipt of royalties due to the owners of the CBM was disputed). W.Va. §§22-21-15 and 17 (1994). As part of the CBM well permitting process as in other oil or gas well permitting statutes, surface owners get notice of the permit application (W.Va. §22-21-9(a)(1) (1994)) and have a right to comment on the permit (W.Va. §22-21-10 (1994)). Very much UNLIKE any other well permitting processes in West Virginia, "[T]he review board shall consider . . . surface topography and use. . .[Emphasis added]," *W. Va. Code* § 22-21-13(b) and can modify the permit based on these surface considerations. *Supra* at (d).⁴ So the different nature of surface use for CBM wells was recognized by the Legislature!

After CBM production wells first started to be drilled and until recently, CBM wells (like conventional natural gas wells) were drilled vertically. There are two big differences between the use of these vertical wells for CBM and their use for drilling vertical wells for conventional natural gas. First, coalbed methane is found in coal seams which are found at much shallower, and therefore, lower pressured formations. So drilling vertical wells for CBM requires wells to be drilled closer together resulting in a much larger number of wells and well pads than is required for drilling for conventional natural gas which is generally found in deeper, more highly pressured formations.

Second, in order to liberate the CBM that is "adsorbed" to the coal, large amounts of water must be pumped out of the formation. This produced water is a much greater volume than

⁴ Counsel writing the present brief was there in the office of Chuck Chambers, then the Speaker of the House of Delegates, along with representatives from the coal and the oil and gas industries. He was advocating on behalf of a predecessor surface organization and on behalf of the West Virginia Farm

the water that results from the drilling of a conventional natural gas well. In addition, the water continues to be produced during the entire production life of the CBM well, not just during the drilling phase as in conventional natural gas wells. See attached Exhibit 1 from the United States Geological Survey showing that CBM wells can produce from 25 to 400 barrels⁵ of water per day. This water must somehow be disposed of in a manner which is environmentally responsible and only a reasonable, contemplated burden on the surface. And there is a pump or compressor with noise etc. that is significantly different from even an oil well pump jack, and it must run during the entire, lengthy productive life of the well.

More recently a newer form of CBM production described as pinnate, horizontal well drilling has been developed. Also new to CBM and combined with that is "frac'ing" the formation. The horizontal technology may result in less of an increase in the number of surface wells and well pads, but (1) the location where the one horizontal well wellhead is located has a significantly increased burden over even a vertical CBM well, and (2) pinnate horizontal drilling does not change the need to pump out and dispose of large, maybe even larger, amounts of water.

Of particular concern to citizens who have water wells nearby is that the frac'ing of these shallower coal formations is much more likely to cause problems with water tables than the frac'ing of generally much deeper conventional natural gas formations and the even deeper Marcellus Shale formations. That is because some of the cracks in the rock caused by frac'ing propagate travel not just horizontally but vertically. So because coal seams are generally shallowed than conventional oil and natural gas formations, these vertically propagated cracks

Bureau for these provisions for the reasons stated in this brief when the language of the statute was agreed upon that was subsequently enacted.

⁵In the oil and gas industry a barrel is 42 gallons.

are more likely to reach directly or indirectly into and pollute the water table, particularly in a state where there are thousands of shallow orphaned wells that need to be plugged.

So the determination of whether CBM was conveyed or reserved, or even whether it was leased, does not just affect the commercial users of the land involved. It is not just about royalties and profits and working interest payments of the owners of the various mineral rights. It is about the impact on value of the surface estate and about the quality of life of the citizens living on the surface.

That point is not just for the sake of showing the interest of WVSORO in this case. It is why the ownership of the rights to CBM should not pass or be reserved without the clear contemplation that they are passing or being reserved. If it was not clear that a grantor who was conveying away oil and gas, or conveying away coal, was contemplating conveying the right to the additional surface impositions on his or her property for CBM production, then no deed or devise should be held to do so. The same for a reservation. If the grantor was conveying the surface but reserving the right to burden the surface for not just conventional natural gas production, but also for the burden of coalbed methane production, then no reservation should be held to do so. And that is true even if it takes some investigation to determine whether CBM was being produced in the area at the time of the severance. The cost of the investigation will be much less than the value of the loss to surface owners that the application of any bright line rule would cause.

C. Bright lines should not be drawn backwards.

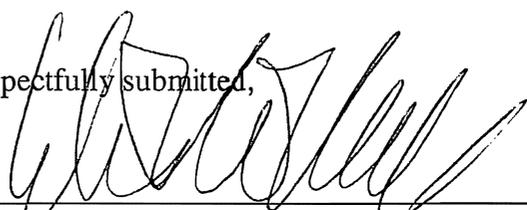
Bright lines in law are desirable. No denying that. But drawing bright lines is not always in reality right – or even possible. The benefits of bright lines do not justify drawing bright lines

where the line of division is not in fact bright. The benefits do not justify drawing bright lines that cross over and back from the actual bargains made by parties and the contemplations of those parties and their successors. Those contemplations include the value of the commercial interests of CBM production which vary greatly over time. Much more importantly, those contemplations include the existing property rights of our citizens farming or living there, and their families' lives on the surface. And those benefits certainly do not justify looking over our shoulders to draw bright lines retrospectively particularly where this Court has already wrestled with the issue and decided it more than a decade ago – where parties may since have relied upon this Court's wisdom at that time.

CONCLUSION

Because the Circuit Court appropriately applied this Court's previous holding in Moss and because the severance deed at issue does not contain actual language limiting or specifically providing for the surface use for the production of CBM, the decision of the trial Court should be **AFFIRMED.**

Respectfully submitted,



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Water Produced with Coal-Bed Methane

Introduction

Natural gas produced from coal beds (coal-bed methane, CBM) accounts for about 7.5 percent of the total natural gas production in the United States. Along with this gas, water is also brought to the surface. The amount of water produced from most CBM wells is relatively high compared to conventional natural gas wells because coal beds contain many fractures and pores that can contain and transmit large volumes of water. In some areas, coal beds may function as regional or local aquifers and important sources for ground water. The water in coal beds contributes to pressure in the reservoir that keeps methane gas adsorbed to the surface of the coal. This water must be removed by pumping in order to lower the pressure in the reservoir and stimulate desorption of methane from the coal (fig. 1). Over time, volumes of pumped water typically decrease and the production of gas increases as coal beds near the well bore are dewatered.

The need to decrease CO₂ emissions favors the increased use of natural gas as an alternative to coal. The contribution of CBM to total natural gas production in the United States is expected to increase in the foreseeable future (Nelson, 1999). Estimates of the amount of recoverable CBM have increased from about 90 trillion cubic feet (TCF) 10 years ago to about 141 TCF, spurred by advances in technology, exploration, and production (Nelson, 1999). As the number of CBM wells increases, the amount of water produced will also increase. Reliable data on the volume and composition of associated water will be needed so that States and communities can make informed decisions on CBM development. Most data on CBM waters have been gathered at two historically large production areas, the San Juan Basin in Colorado and New Mexico (sparse data) and the Black Warrior Basin in Alabama (extensive data). Rapid development in basins with limited data on CBM waters—i.e., the Powder River Basin in Wyoming and Montana—is currently a concern of producers; land owners; Federal, State, and local agencies; coal mining companies; and Native Americans.

Volumes and Compositions of CBM Water

As shown in table 1, the amount of water produced, as well as the ratio of water to gas, varies widely among basins with CBM production. Causes of variations include the duration of CBM production in the basin, original depositional environment, depth of burial, and type of coal. Relatively recent regulations concerning disposal and withdrawal of produced water have led to more accurate report-

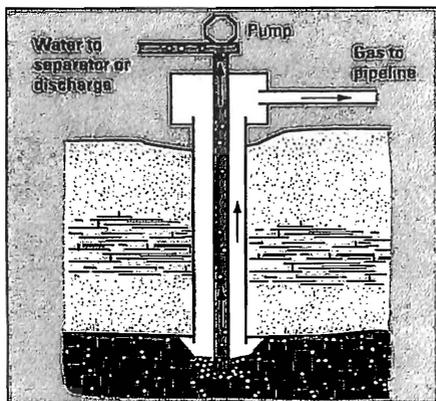


Figure 1. Simplified illustration of a coal-bed methane production well.

Table 1. Water production in some major coal-bed-methane-producing basins.

[Bbl, barrel (42 gallons); MCF, thousand cubic feet; No., Number; Avg., Average; disch., discharge. Data for Black Warrior Basin from Alabama State Oil and Gas Board as of 5/00; data for Powder River Basin from Wyoming Oil and Gas Commission as of 5/00; data for Raton and San Juan Basins from Colorado and New Mexico Oil and Gas Commissions as of 2/00; data for Uinta Basin from Utah Division of Oil and Gas as of 6/00]

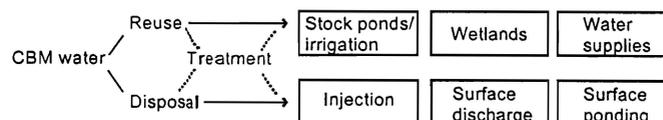
Basin	State	No. of wells	Avg. water production (Bbl/day/well)	Water/gas ratio (Bbl/MCF)	Primary disposal method
Black Warrior	Ala.	2,917	58	0.55	Surface disch.
Powder River	Wyo., Mont.	2,737	400	2.75	Surface disch.
Raton	Colo.	459	266	1.34	Injection
San Juan	Colo., N. Mex.	3,089	25	0.031	Injection
Uinta	Utah	393	215	0.42	Injection

ing of water data. Volume data for produced water from specific coal beds has the potential to provide information on exploration and production of CBM. Compositional data is commonly limited to the major dissolved ion species in water (cations and anions), whereas information on trace metals and isotopic composition is sparse.

Generally, dissolved ions in water coproduced with CBM contain mainly sodium (Na), bicarbonate (HCO₃), and chloride (Cl). The composition is controlled in great part by the association of the waters with a gas phase containing varying amounts of carbon dioxide (CO₂) and methane. The bicarbonate component potentially limits the amount of calcium (Ca) and magnesium (Mg) through the precipitation of carbonate minerals. CBM waters are relatively low in sulfate (SO₄) because the chemical conditions in coal beds favor the conversion of SO₄ to sulfide. The sulfide is removed as a gas or as a precipitate. The total dissolved solids (TDS) of CBM water ranges from fresh (200 mg/L or parts per million) to saline (170,000 mg/L) and varies among and within basins. For comparison, the recommended TDS limit for potable water is 500 mg/L, and for beneficial use such as stock ponds or irrigation, the limit is 1,000–2,000 mg/L. Average seawater has a TDS of about 35,000 mg/L. The TDS of the water is dependent upon the depth of the coal beds, the composition of the rocks surrounding the coal beds, the amount of time the rock and water react, and the origin of the water entering the coal beds. Trace-element concentrations in CBM water are commonly low (<1 mg/L) as are volatile organic compounds (Gas Research Institute, 1995; Rice, 2000). In general, most CBM water is of better quality than waters produced from conventional oil and gas wells.

Fate of CBM Water

Water coproduced with methane is not reinjected into the producing formation to enhance recovery as it is in many oil fields. Instead, it must be disposed of or used for beneficial purpose:



The choice depends in large part on the composition of the water. Important composition information should include TDS (often equated to the amount of "salt" a water contains), pH, concentrations of dissolved metals and radium, and the type and amounts of dissolved organic constituents. If, with minor to no treatment, the water is of sufficient quality, it may be used with caution to supplement area water supplies. This water must meet requirements under several Federal and State regulations, including the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. If the water does not meet Federal and State standards for reuse, or if the cost of treatment is excessive, the water is disposed of by injection into a compatible subsurface formation or by surface discharge. Disposal of CBM water is also regulated by Federal and State agencies and must meet criteria for each type of disposal. For example, subsurface injection requires compatibility studies of the proposed injection formation and the water that is injected, whereas discharge to surface streams must meet daily effluent limits on constituents such as chlorides along with other criteria. For any CBM field, the cost of handling coproduced water varies from a few cents per barrel to more than a dollar per barrel and can add significantly to the cost of gas production. In some areas, the volumes of water produced and the cost of handling may prohibit development of the resource.

USGS Studies of CBM-Produced Water

The U.S. Geological Survey (USGS) has ongoing studies designed to provide information on the composition and volumes of CBM water in some of the most active areas of production in the United States. Data obtained on CBM waters provides information on the heterogeneity of the CBM reservoir, the potential flow paths in the reservoir, the source and evolution of the water, and the quality of the water prior to disposal or reuse. The USGS Energy Resources Team is conducting multidisciplinary studies in the Uinta and Powder River Basins that include sampling waters coproduced with CBM (fig. 2). These studies combine investigations of regional geology and hydrology as well as reservoir-specific studies such as coal fracture orientation, coal composition, gas composition and isotopic values,

methane desorption, and water composition and isotopic values. Researchers from the USGS, Bureau of Land Management, Bureau of Indian Affairs, State agencies, and private companies are cooperating in an effort to provide a better understanding of CBM resources and associated water.



CBM water studies include sampling wells throughout a field as well as analyzing the volumes of water that are produced. Analyses include major, minor, and trace constituents, including arsenic (As), selenium (Se), copper (Cu), cadmium (Cd), lead (Pb), molybdenum (Mo), chromium (Cr), mercury (Hg), and zinc (Zn) (fig. 3). The major anions (Cl^- , SO_4^{2-} , and HCO_3^-) are measured as well as selected other constituents, such as ammonia and total organic carbon. Isotopic analyses of the samples for deuterium, oxygen, and carbon provide data to help determine the origin of the water and its solutes as well as the compositional evolution of the water. Volumes of water produced from a CBM field are analyzed to determine trends in production that may be related to reservoir parameters such as permeability. In some areas of CBM development, USGS Water Resources District Offices are cooperating with State and Federal agencies to perform targeted studies such as measuring concentrations of selenium in wetlands and dating waters.

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Average Water Composition

Uinta Basin (Ferron CBM, Utah) 1				
Field	mg/L			
	TDS	Cl	HCO ₃	Br / Cl
Buzzard Bench	11000	2300	8500	0.0063
Drunkards Wash	8900	2500	5500	0.0032
Helper State	26000	14000	5200	0.0013

Powder River Basin (Wyoming) 2				
	µg/L		µg/L	
	CBM	DWS	CBM	DWS
Arsenic	<3	50	Manganese	32 50
Barium	620	2000	Mercury	<0.3 2
Chromium	<2	100	Selenium	<2 50

Figure 3. Concentrations of selected components in CBM water from three fields in the Ferron CBM area, Utah, and from 47 wells in Wyoming. TDS, total dissolved solids; DWS, drinking water standards. 1, Rice (1999); 2, Rice (2000).

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 15-0907

GREGORY G. POULOS,
JASON S. POULOS,
PAMELA F. POULOS,
SHAUN D. ROGERS,
KEVIN H. ROGERS,
DEREK B. ROGERS, and
T.G. ROGERS, III,

Defendants Below, Petitioners,

v.

LBR HOLDINGS, LLC,

Plaintiff Below, Respondent.

CERTIFICATE OF SERVICE

The undersigned, Counsel for the West Virginia Surface Owners' Rights Organization, does hereby certify that a true and correct copy of the *Amicus Curiae Brief of West Virginia Surface Owners' Rights Organization* was served via U.S. Mail to the counsel listed below on this the 24th day of June, 2016.

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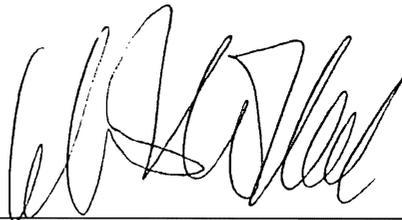
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