



**Before the Ohio House Energy & Natural Resources
Committee**

House Bill 152 – Opponent Testimony

Thursday, June 24, 2021

Barry L Browne, President

National Association of Royalty Owners – Ohio Chapter



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Chair Stephens, Vice Chair Stewart, Ranking Member Weinstein, and members of the Ohio House Energy & Natural Resources Committee, thank you for giving our members the opportunity to provide testimony in opposition to House Bill 152.

My name is Barry Browne and I represent Ohio land, mineral and royalty owners through the National Association of Royalty Owners as president of the Ohio Chapter since our recent start-up in 2019. Our members participate in thousands of Ohio's legacy and recent Utica and Marcellus wells as land, mineral and royalty owners. We are a volunteer organization without paid lobbyists or attorneys even though some of our members are attorneys and lobbyists. Most of our local members live on the land they have leased; and, many have done so for generations.

Based on the initial Interested Parties meeting held in April, there are three items in the Bill the Sponsors wanted to hear feedback from Interested Parties: 1) forced pooling timeline, 2) terms and conditions for the force pooling mineral interests, and 3) force pooling State mineral interests. If the above were the only issues needing resolution, we would be proponents of a slightly revised HB 152. However, contrary to the Sponsors testimony that the Bill's "...overriding goal of House Bill 152 is to establish firm, predictable timelines for the ODNR to meet in order to



get unitization [forced pooling] applications processed and approved in an efficient manner.”; 90% of the proposed changes to the existing ORC involve issues unrelated to the stated Sponsor and Proponent goals! **For this reason, we are strongly opposed to House Bill 152 and sub House Bill 152 as written.**

Defeating sub House Bill 152 and having all Interested Parties sit down and focus on the three items discussed during the Interested Parties meeting and write a Bill addressing only those issues will benefit producer and landowner alike and provide efficient and congenial development of Ohio’s world class resource, as envisioned by the Sponsors!

1) TIMELINE

NARO supports the responsible development of Ohio’s world class natural gas resource. To do so Ohio must have a known, predictable forced pooling timeline for the three classes of unleased interests so unit applications can be efficiently processed and producers efficiently plan and execute development:

- 1) Unleased mineral interest owners willing to negotiate and obtain a fair bonus and royalty based on what the existing leased interests received in the proposed unit.
- 2) Unleased mineral interests unwilling to negotiate no matter what bonus or royalty is offered.
- 3) Lost mineral interest holders who cannot be found through the title chain as evidenced through an affidavit.

We propose the force pooling timeline should be a minimum of 90 days once an application is submitted. During the first fifteen (15) days the DNR Division of Oil and Gas Mineral Management (DOGRM) is to determine if the application is complete based on a defined



checklist the unit applicant can follow. If the DOGRM does not advise the application is incomplete and identify the deficiencies within the first 15 days, the application is assumed to be complete and must be processed and evaluated by the DOGRM. When the application is returned with the identified deficiencies within the first fifteen days, the applicant has fifteen (15) days to correct the deficiencies. Once corrected, the DOGRM has five (5) days to review the corrections and determine if the application is complete. If the DOGRM determines the deficiencies are not corrected; or, the corrections are not submitted within the fifteen days, the application is rejected and cannot be resubmitted for ninety (90) days.

2) TERMS AND CONDITIONS

We are opposed to any forced pooling process that enhances or decreases a unit operator's net royalty interest (NRI) in the unit. Applying the average unit NRI and bonus to the forced pooled interest accomplishes this task simply and can be determined through the examination of the proposed existing unit leases under lease by the unit applicant in an open and transparent manner.



Let's use Mr. Hammond's 320 acre unit as an example of how the producer's NRI is enhanced. The forced pooled interests are 29 acres. Because most of the leases within the unit were taken ten years ago during the leasing boom, let's say the average landowner royalty is 18% as a mix of legacy 12.5% and new leases

of up to 20%. The 29 acre parcel represents $29/320 = \sim 9\%$ of the total drilling unit and would hold that as a carried working interest. The applicant's NRI would be composed of:

$320 - 29 = 291$ acres @ 82% NRI and 29 acres @ 87.5% NRI as proposed.

The producer's NRI after the 29 acres are force pooled would now be 82.5%! The producer has enhanced their NRI at the expense of the force pooled interest! The enhanced economic impact to the producer is significant and incentivizes producers to force pool unleased landowners without entering into good faith negotiations. Our members want forced pooling terms and conditions to neither incentivize producers or landowners to go through the costly and time consuming process. Increasing required minimum leased interests from 65% to 85% would also decrease the producer incentive to seek forced pooling.

The 300% penalty is egregious! The US Energy Information Agency reports Belmont County Utica wells have the highest estimated ultimate recovery (EUR) over 30 years of 6.34 Bcf. Let's say the average cost to drill and complete an example well in Mr. Hammond's 320 acre unit is \$700 per lateral foot. Based on the proposed unit, the one lateral would be



approximately 11,000 feet long, using the scale on the plat. Therefore, the overall cost to drill and complete the well would be ~\$7.7 million and produce ~6.34 Bcf of gas. The force pooled interest would have a 300% penalty as proposed in the Bill. The producer would retain the forced pooled interest's royalty until the ~9% carried working interest would be paid out of the force pooled royalty to cover the ~9% carried working interest. How long would the interest have to live before receiving any royalty **AFTER** post production expenses (PPE), as proposed in the bill, are deducted? Existing royalty statement data shows ~6% of a landowner's royalty remains after net post production expenses are deducted. That figure does not include Lease Operating Expenses (LOE) that would also be deducted as involuntary signatory to a Joint Operating Agreement! The force pooled interests would also be subject to potential significant liability from a blowout, environmental impact through a spill, etc. from activities they have no ability to challenge. The Bill even proposes the DOGRM cannot change or regulate unit operations! Continuing:

$29/320 \times \$7,700,00 \times 300\% = \mathbf{\$2,093,000}$ cost to be reimbursed from royalty payments.

Let's assume the producer receives an AVERAGE \$3.00 per Mcf of gas over the life of the well.

$29/320 \times 6,340,000 \text{ Mcf} \times \$3 \times 6\% \text{ net royalty after PPE} = \mathbf{\sim\$103,000}$ royalty

The force pooled landowner would never live long enough to receive any royalty! Most of the production happens in the first 5 years! The average gas price, gross proceeds, AND a



very high EUR well would have to happen before the force pooled landowner would see any royalty from their mineral estate! We recommend keeping the existing ORC penalty clauses intact and include gross proceeds for force pooled interests. Gross proceeds from sale to a non-affiliated third party would result in appropriate compensation.

3) STATE LANDS

We support the forced pooling of state lands with no surface occupancy. We have members with stranded mineral interests next to State minerals. Fernwood State Forest has horizontal Utica wells under the State Forest. The Muskingum Water Conservancy District has realized over \$200,000,000 income from responsibly developing their mineral resource. The same can be done for State minerals to the benefit of all Ohioans.

EVERYTHING ELSE IN HOUSE BILL 152 NOT RELATED TO THE ABOVE THREE ITEMS WE ARE STRONGLY OPPOSED TO AS THEY HAVE NOTHING TO DO WITH A TIMELINE, TERMS AND CONDITIONS OR FORCE POOLING STATE LANDS!