

Judge voices frustration during extensive legal debate over natural gas escrow account

BY MICHAEL L. OWENS | BRISTOL HERALD COURIER | Posted: Thursday, September 12, 2013 7:59 pm

ABINGDON, Va. – Two hours of legal debate on Virginia’s natural gas laws passed Thursday when U.S. District Judge James P. Jones suddenly voiced frustration over the seeming inability of anyone to easily access an escrow account holding nearly \$30 million in gas royalties.

“Are we going to throw up our hands and say ‘oh well, that’s how the world works?’” he directed at coal and energy company lawyers during a hearing. “All these people don’t get their money in escrow?”

In all, Jones heard three hours of arguments on whether five cases filed against CNX Gas and EQT Production for the royalties on natural gas siphoned from beneath Southwest Virginia can move forward as class-action lawsuits representing more than a thousand landowners. The cases might die without his certification for class action.

A decision will come as soon as possible, the judge said.

Energy company lawyers say the accounts can be accessed only if landowners battle over each and every deed in local circuit courts, and not as a handful of cases in federal court.

“It’s going to require many trials to ascertain who the [royalty] owners are,” said CNX attorney Jonathan T. Blank.

But landowner attorneys say the solution is as simple as handing a judicial declaration of ownership to the Virginia Gas and Oil Board, which oversees the escrow account and can dole out royalties only under a certain set of legal conditions.

“This is not rocket science, your honor,” landowner representative David S. Stellings said.

In one set of cases, a small group of landowners say they were shortchanged when leasing out gas because the energy companies deducted from royalties the post-production costs of moving and cleaning the product.

The other cases involve a 20-year-old state law allowing energy companies to siphon gas from coal seams without the owners’ permission, and then dump a percentage of the disputed royalties into a closed escrow account until ownership can be decided later.

The dispute revolves around the fact that Virginia legislators never declared whether the natural gas pulled from coal seams – called coalbed methane – belongs to the person holding the deed to the coal or the person holding the deed to the gas estate.

Ownership, and access to the royalties, must be decided either in court, in out-of-court arbitration, or by an agreement signed to split the money among the gas and the coal owners. State lawmakers added out-of-court arbitration in 2010 in hopes of speeding along access to royalties. No one has tried that option, according to the Gas and Oil Board.

On Thursday, Jones blasted the arbitration method as a dead end that, like a court battle, would include lawyers and high fees for landowners.

“Does anybody really believe that arbitration process is any quicker than going to court?” he asked. “It doesn’t seem to me that would cure anything.”

Moments later, he noted his frustration because case lawyers and state lawmakers have yet to come up with a viable solution for property owners.

“I had hoped that in the three years this case has been going on there would be some attempt to settle the matter or the Virginia legislature would attempt to settle the matter,” he said.

In June, the case became a hot topic in Virginia’s gubernatorial race after U.S. Magistrate Judge Pamela Meade Sargent noted shock that a staffer for the state attorney general’s office seemed to be emailing legal advice to energy company lawyers. Sargent, usually the first judge to hear arguments in this case, pointed out the emails in an 85-page report recommending that Jones greenlight class-action status for all but one of the cases.

Attorney General Ken Cuccinelli, the Republican candidate for governor, argues that his office jumped into the court battle years ago only to fight the constitutional challenges to the Virginia Gas Act, which set up the escrow account.

Democratic gubernatorial candidate Terry McAuliffe points to the more than \$110,000 in campaign cash that CNX parent company, CONSOL, has dropped into Cuccinelli’s campaign coffers since 2012 and questions his motivation in the cases.

In July, CONSOL blasted both candidates in a series of full-page newspaper advertisements headlined “Virginians want solutions.”

“Urge Virginia’s candidates for governor to pledge support for a plan that gets these gas royalty payments to their rightful owners,” the ads stated.

Jones referenced the ads Thursday, when noting that no one seems to have figured out how to easily access the escrow account.

“Your client has run ads saying that they want solutions to this problem,” he said to CNX attorney Blank. “What is your client’s solution?”

State legislators proposed laws that never passed, Blank replied, and there are the three legal avenues already in place.

"We'd like to see the money get out," he said.

Jones responded: "Again, what is your client's solution?"