

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4426**

BY DELEGATES IRELAND, ANDERSON, ZATEZALO,  
D. EVANS, CANTERBURY, R. SMITH AND STATLER

[Introduced February 5, 2016; Referred  
to the Committee on Energy.]

1 A BILL to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4 and §22C-9-5 of the Code  
2 of West Virginia, 1931, as amended; and to amend said code by adding thereto a new  
3 section, designated §22C-9-7a, all relating to oil and gas conservation; providing for the  
4 unitization of interests in drilling units in connection with horizontal oil or gas wells  
5 generally; establishing prerequisites to filing of an application for a horizontal well unit  
6 order; setting forth application requirements; establishing the standard of review; providing  
7 for horizontal well unit orders and parameters thereof; requiring notice and timeliness;  
8 providing for hearings; permitting adjoining landowners to intervene in a horizontal well  
9 unit application proceeding in certain circumstances; addressing oil and gas produced  
10 from horizontal wells, vertical wells and unconventional reservoirs; requiring royalties be  
11 paid on all commercial marketable hydrocarbons produced from a horizontal unit well;  
12 providing for declaration of public policy and legislative findings; specifying applicability of  
13 article; limiting the liability of nonconsenting owners in certain circumstances; increasing  
14 the number of members of the Oil and Gas Conservation Commission; granting additional  
15 authority to the Oil and Gas Conservation Commission; providing for the award of  
16 unitization consideration in certain circumstances; providing alternative and deemed  
17 elections to nonconsenting owners in certain circumstances; providing for dispute  
18 resolution; providing for treatment of interests of unknown and unlocatable interest  
19 owners, including moneys payable thereto; providing for judicial review of commission  
20 orders; permitting the modification of horizontal well unit orders under certain  
21 circumstances; providing for the expiration of horizontal well unit orders under certain  
22 circumstances; requiring the filing of a summary of the prevailing economic terms of  
23 certain leases and the prevailing consideration paid for modification of certain leases prior  
24 to hearings; establishing procedures where certain information shall be deemed  
25 confidential; exempting certain information from disclosure; addressing additional drilling  
26 activity; providing that horizontal well unit orders do not grant surface rights; authorizing

27 contemporaneous permit and unit applications; providing for reunification of interests of  
 28 unknown and unlocatable interest owners with surface owners in certain circumstances  
 29 and providing procedures therefor; providing for conflict resolution; providing for  
 30 severability; adding new definitions; modifying existing definitions; providing a funding  
 31 mechanism for the Oil and Gas Reclamation Fund; and establishing the Horizontal Well  
 32 Unitization and Landowner Protection Act of 2016.

*Be it enacted by the Legislature of West Virginia:*

1 That §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4 and §22C-9-5 of the Code of West Virginia,  
 2 1931, as amended, be amended and reenacted; and that said code be amended by adding  
 3 thereto a new section, designated §22C-9-7a, all to read as follows:

## **ARTICLE 9. OIL AND GAS CONSERVATION.**

### **§22C-9-1. Declaration of public policy; legislative findings.**

1 (a) It is hereby declared to be the public policy of this state and in the public interest to:

2 (1) Foster, encourage and promote exploration for and development, production,  
 3 utilization and conservation of oil and gas resources;

4 (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas  
 5 and their constituents;

6 (3) Encourage the maximum recovery of oil and gas; and

7 (4) Safeguard, protect and enforce the correlative rights of operators and royalty owners  
 8 in a pool of oil or gas to the end that each such operator and royalty owner may obtain his or her  
 9 just and equitable share of production from ~~such~~ that pool, unit or unconventional reservoir of oil  
 10 or gas.

11 (b) The Legislature hereby determines and finds that oil and natural gas found in West  
 12 Virginia in shallow sands or strata have been produced continuously for more than one hundred  
 13 years; that oil and gas deposits in such shallow sands or strata have geological and other  
 14 characteristics different than those found in deeper formations; and that in order to encourage the

15 maximum recovery of oil and gas from all productive formations in this state, it is not in the public  
16 interest, with the exception of shallow wells utilized in a secondary recovery program and oil and  
17 gas produced from horizontal wells, to enact statutory provisions relating to the exploration for or  
18 production from oil and gas from vertical shallow wells, ~~as defined in section two of this article~~ but  
19 that it is in the public interest to enact statutory provisions establishing regulatory procedures and  
20 principles to be applied to the exploration for or production of oil and gas from deep wells ~~as~~  
21 ~~defined in said section two~~ and horizontal wells.

### **§22C-9-2. Definitions.**

1 (a) As used in this article:

2 (1) "Commission" means the Oil and Gas Conservation Commission and "commissioner"  
3 means the Oil and Gas Conservation Commissioner as provided for in section four of this article;

4 (2) "Director" means the Secretary of the Department of Environmental Protection and  
5 "chief" means the Chief of the Office of Oil and Gas;

6 (3) "Person" means any natural person, corporation, limited liability company, partnership,  
7 receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind,  
8 and includes any government or any political subdivision or any agency thereof;

9 (4) "Operator" means any owner of the right to develop, operate and produce oil and gas  
10 from a pool and to appropriate the oil and gas produced therefrom, either for that person or for  
11 that person and others; in the event that there is no oil and gas lease in existence with respect to  
12 the tract in question, the owner of the oil and gas rights therein is the "operator" to the extent of  
13 seven-eighths of the oil and gas in that portion of the pool underlying the tract owned by ~~such~~ the  
14 owner, and as "royalty owner" as to one-eighth interest in such oil and gas; and in the event the  
15 oil is owned separately from the gas, the owner of the substance being produced or sought to be  
16 produced from the pool or unit is the "operator" as to that pool or acreage included in a unit; the  
17 term operator includes owners of a working interest in a lease but does not include owners whose  
18 interest is limited to working interest in a wellbore only, overriding royalties, or net profits interests.

19 To the extent that this definition of “operator” conflicts with the definition of “working interest”  
20 contained within section seven-a of this article, the definition of “working interest” shall control;

21 ~~(5)~~ “Royalty owner” means any owner of oil and gas in place or ~~oil and gas rights, to the~~  
22 ~~extent that the owner is not an operator as defined in subdivision (4) of this section~~ interest derived  
23 from the oil and gas in place. Royalty is not carved out of a leasehold interest. For example, if a  
24 fee owner of oil and gas executes a lease for oil and gas production and conveys to another the  
25 right to receive one half of the oil and gas when produced, both parties are royalty owners;

26 ~~(6)~~ “Independent producer” means a producer of crude oil or natural gas whose allowance  
27 for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on  
28 July 1, 1997;

29 ~~(7)~~ “Oil” means natural crude oil or petroleum and other hydrocarbons, regardless of  
30 gravity, which are produced at the well in liquid form by ordinary production methods and which  
31 are not the result of condensation of gas after it leaves the underground reservoir;

32 ~~(8)~~ “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil in  
33 subdivision (7) of this section;

34 ~~(9)~~ “Pool” means an underground accumulation of petroleum or gas in a single and  
35 separate reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single  
36 natural-pressure system so that production of petroleum or gas from one part of the pool affects  
37 the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all  
38 directions, such as geologic structural conditions, impermeable strata, and water in the  
39 formations, so that it is effectively separated from any other pools that may be presented in the  
40 same district or on the same geologic structure;

41 ~~(10)~~ “Well” means any shaft or hole sunk, drilled, bored or dug into the earth or  
42 underground strata for the extraction of oil or gas;

43 ~~(11)~~ “Shallow well” means any well other than a coalbed methane well, drilled no deeper  
44 than one hundred feet below the top of the “Onondaga Group”: *Provided*, That in no event may

45 the "Onondaga Group" formation or any formation below the "Onondaga Group" be produced,  
46 perforated or stimulated in any manner;

47 ~~(12)~~ "Deep well" means any well, other than a shallow well or coalbed methane well, drilled  
48 to a formation below the top of the uppermost member of the "Onondaga Group;"

49 ~~(13)~~ "Drilling unit" or "unit" means the acreage on which one ~~well~~ or more wells may be  
50 drilled;

51 ~~(14)~~ "Waste" means and includes:

52 (A) Physical waste, as that term is generally understood in the oil and gas industry;

53 (B) The locating, drilling, equipping, operating or producing of any oil or gas well in a  
54 manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately  
55 recoverable from a pool under prudent and proper operations, or that causes or tends to cause  
56 unnecessary or excessive surface loss of oil or gas; or

57 (C) The drilling of more horizontal wells or deep wells than are reasonably required to  
58 recover efficiently and economically the maximum amount of oil and gas from a pool, unit, or an  
59 unconventional reservoir. Waste does not include gas vented or released from any mine areas  
60 as defined in section two, article one, chapter twenty-two-a of this code or from adjacent coal  
61 seams which are the subject of a current permit issued under article two of chapter twenty-two-a  
62 of this code: *Provided*, That this exclusion does not address ownership of the gas;

63 ~~(15)~~ "Correlative rights" means the reasonable opportunity of each person entitled thereto  
64 to recover and receive without waste the oil and gas in and under his or her tract or tracts within  
65 a unit or the equivalent thereof; ~~and~~

66 ~~(16)~~ "Just and equitable share of production" means, as to each person, an amount of oil  
67 or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool  
68 unit or unconventional reservoir underlying the person's tract or tracts;

69 "Unconventional reservoir" means any geologic formation that contains or is otherwise  
70 productive of oil or natural gas that generally cannot be produced at economic flow rates or in

71 economic volumes except by wells stimulated by multiple hydraulic fracture treatments, a  
72 horizontal wellbore, or by using multilateral wellbores or some other technique to expose more of  
73 the formation to the wellbore;

74 "Horizontal drilling" means a method of drilling a well for the production of oil and gas that  
75 is intended to maximize the length of wellbore that is exposed to the formation and in which the  
76 wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to  
77 parallel one or more particular geologic formations; and

78 "Horizontal well" means an oil and gas well, other than a coalbed methane well, where a  
79 wellbore is drilled using a horizontal drilling method. A horizontal well may include multiple  
80 horizontal side laterals. A horizontal well may have completions into multiple formations from the  
81 same well. Multiple horizontal wells may be drilled from the same well pad.

82 (b) Unless the context clearly indicates otherwise, the use of the word "and" and the word  
83 "or" are interchangeable, as, for example, "oil and gas" means oil or gas or both."

84 (c) A person with an interest in oil and gas in a unit formed under this article who does not  
85 consent to the unit shall have no liability in connection with well site preparation, drilling,  
86 completion, maintenance, reclamation, plugging, and other operations with respect to wells drilled  
87 in the unit unless the person elects Option 2 or Option 3 provided in subdivision (9), subsection  
88 (g), section seven-a of this article with respect to his working interest in the horizontal well unit.

### **§22C-9-3. Application of article; exclusions.**

1 (a) Except as provided in subsection (b) of this section, the provisions of this article shall  
2 apply to all lands located in this state, however owned, including any lands owned or administered  
3 by any government or any agency or subdivision thereof, over which the state has jurisdiction  
4 under its police power. The provisions of this article are in addition to and not in derogation of or  
5 substitution for the provisions of article six, chapter twenty-two of this code.

6 (b) This article shall not apply to or affect:

7 (1) Shallow wells other than those utilized in secondary recovery programs as set forth in

8 section eight of this article;

9 (2) Any well commenced or completed prior to March 9, 1972, unless ~~such~~ the well is,  
10 after completion ~~(whether such completion is prior or subsequent to that date)~~ drilling;

11 (A) Deepened subsequent to that date to a formation at or below the top of the uppermost  
12 member of the "Onondaga Group"; ~~or~~

13 (B) Involved in secondary recovery operations for oil under an order of the commission  
14 entered pursuant to section eight of this article; or

15 (C) Drilled laterally as a horizontal well at any depth.

16 (3) Gas storage operations or any well employed to inject gas into or withdraw gas from a  
17 gas storage reservoir or any well employed for storage observation; ~~or~~

18 (4) Free gas rights; or

19 (5) Coalbed methane wells.

20 (c) The provisions of this article shall not be construed to grant to the commissioner or the  
21 commission authority or power to:

22 (1) Limit production or output, or prorate production of any oil or gas well, except as  
23 provided in subdivision (6), subsection (a), section seven of this article; or

24 (2) Fix prices of oil or gas.

25 (d) Nothing contained in either this chapter or chapter twenty-two of this code may be  
26 construed so as to require, prior to commencement of plugging operations, a lessee under a lease  
27 covering a well to give or sell the well to any person owning an interest in the well, including, but  
28 not limited to, a respective lessor, or agent of the lessor, nor shall the lessee be required to grant  
29 to a person owning an interest in the well, including, but not limited to, a respective lessor, or  
30 agent of a lessor, an opportunity to qualify under section twenty-six, article six, chapter twenty-  
31 two of this code to continue operation of the well.

**§22C-9-4. Oil and gas conservation commissioner and commission; commission  
membership; qualifications of members; terms of members; vacancies on**



**commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.**

1 (a) The "oil and gas conservation commission" shall be composed of ~~five~~ seven members.  
2 The ~~director of the Division~~ Secretary of the Department of Environmental Protection, and the  
3 chief of the office of oil and gas and the state geologist shall be members of the commission ex  
4 officio. The remaining ~~three~~ four members of the commission shall be appointed by the Governor,  
5 by and with the advice and consent of the Senate, and may not be employees of the ~~Division~~  
6 Department of Environmental Protection. Each of the four members appointed by the Governor  
7 shall be a resident of this state. Of the ~~three~~ four members appointed by the Governor, ~~one~~ the  
8 first shall be an independent oil and gas producer. ~~and at least one shall be a public member not~~  
9 ~~engaged in an activity under the jurisdiction of the Public Service Commission or the federal~~  
10 ~~energy regulatory commission~~ The second appointee shall be an individual who has significant  
11 experience in the agricultural industry and who is engaged in the business of farming in this  
12 state. When this member is to be appointed, the Governor shall request from the primary trade  
13 association representing the agriculture and forestry industries in this state a list of three  
14 nominees for the member to be appointed. The third appointee shall be an owner of minerals in  
15 this state who is not affiliated with an operator of oil and gas wells, or an oil or gas transmission  
16 company. The term "affiliated" as used in the preceding sentence means someone who either  
17 directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under  
18 common control with, an operator of oil and gas wells by virtue of the power to direct or cause the  
19 direction of the management and policies of that operator or transmission company, whether  
20 through the ownership of voting shares, by contract or otherwise. When this member is to be  
21 appointed, the Governor shall request from the primary trade association representing mineral  
22 owners in this state a list of three nominees from which a member shall be appointed. The ~~third~~  
23 fourth appointee shall ~~possess a degree from an accredited college or university in petroleum~~  
24 ~~engineering or geology~~ and must be a registered professional engineer as registered by the West

25 Virginia State Board of Registration for Professional Engineers, with who possesses particular  
26 knowledge and experience in the oil and gas industry and shall serve as commissioner and he or  
27 she shall serve as chair of the commission.

28 (b) The members of the commission appointed by the Governor shall be appointed for  
29 overlapping terms of six years each, except that the original appointments shall be for terms of  
30 two, four, five and six years, respectively. Each member appointed by the Governor shall serve  
31 until the members successor has been appointed and qualified. Members may be appointed by  
32 the Governor to serve any number of terms. The members of the commission appointed by the  
33 Governor, before performing any duty hereunder, shall take and subscribe to the oath required  
34 by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership  
35 appointed by the Governor shall be filled by appointment by the Governor for the unexpired term  
36 of the member whose office is vacant and ~~such~~ the appointment shall be made by the Governor  
37 within sixty days of the occurrence of ~~such~~ the vacancy. Any member appointed by the Governor  
38 may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or  
39 malfeasance in office. A commission member's appointment shall be terminated as a matter of  
40 law if that member fails to attend three consecutive meetings. The Governor shall appoint a  
41 replacement within ~~thirty~~ sixty days of the termination.

42 (c) The commission shall meet at such times and places as ~~shall be~~ are designated by the  
43 chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the  
44 commission upon the written request of two members or upon the written request of the oil and  
45 gas conservation commissioner or the chief of the office of oil and gas. Notification of each  
46 meeting shall be given in writing to each member by the chair at least fourteen calendar days in  
47 advance of the meeting. ~~Three~~ Four members of the commission, at least two of whom are  
48 appointed members, shall constitute a quorum for the transaction of any business.

49 (d) The commission shall pay each member the same compensation as is paid to  
50 members of the Legislature for their interim duties as recommended by the citizens legislative

51 compensation commission and authorized by law for each day or portion thereof engaged in the  
52 discharge of official duties and shall reimburse each member for actual and necessary expenses  
53 incurred in the discharge of official duties.

54 (e) The commission is hereby empowered and it is the commission's duty to execute and  
55 carry out, administer and enforce the provisions of this article in the manner provided herein.  
56 Subject to the provisions of section three of this article, the commission has jurisdiction and  
57 authority over all persons and property necessary therefor. The commission is authorized to make  
58 such investigation of records and facilities as the commission deems proper. In the event of a  
59 conflict between the duty to prevent waste and the duty to protect correlative rights, the  
60 commission's duty to prevent waste ~~shall be~~ is paramount.

61 (f) Without limiting the commission's general authority, the commission shall have specific  
62 authority to:

63 (1) Regulate the spacing of deep wells;

64 (2) Issue horizontal well unit orders;

65 ~~(2)~~ (3) Make and enforce reasonable rules and orders reasonably necessary to prevent  
66 waste, protect correlative rights, govern the practice and procedure before the commission and  
67 otherwise administer the provisions of this article;

68 ~~(3)~~ (4) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for  
69 the production of any books, records, maps, charts, diagrams and other pertinent documents, and  
70 administer oaths and affirmations to ~~such~~ the witnesses, whenever, in the judgment of the  
71 commission, it is necessary to do so for the effective discharge of the commission's duties under  
72 the provisions of this article; and

73 ~~(4)~~ (5) Serve as technical advisor regarding oil and gas to the Legislature, its members  
74 and committees, to the chief of office of oil and gas, to the ~~Division~~ Department of Environmental  
75 Protection and to any other agency of state government having responsibility related to the oil  
76 and gas industry.

77 (g) The commission may delegate to the commission staff the authority to approve or deny  
78 an application for new well permits, to establish drilling units or special field rules if:

79 (1) The application conforms to the rules of the commission; and

80 (2) No request for hearing has been received.

81 (h) The commission may not delegate its authority to:

82 (1) Propose legislative rules;

83 (2) Approve or deny an application for new well permits, to establish drilling units or special  
84 field rules if the conditions set forth in subsection (g) of this section are not met; or

85 (3) Approve or deny an application for the pooling of interests within a drilling unit.

86 (i) Any exception to the field rules or the spacing of wells which does not conform to the  
87 rules of the commission, and any application for the pooling of interests within a drilling unit, must  
88 be presented to and heard before the commission.

**§22C-9-5. Rules; notice requirements.**

1 (a) The commission may propose rules for legislative approval in accordance with the  
2 provisions of article three, chapter twenty-nine-a of this code, to implement and make effective  
3 the provisions of this article and the powers and authority conferred and the duties imposed upon  
4 the commission under the provisions of this article.

5 (b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of  
6 this code, any notice required under the provisions of this article shall be given at the direction of  
7 the commission by personal or substituted service or by certified United States mail, addressed,  
8 postage prepaid, to the last-known mailing address, if any, of the person being served, with the  
9 direction that the same be delivered to addressee only, return receipt requested. In the case of  
10 providing notice upon the filing of an application with the commission, the commission shall ~~cause~~  
11 ~~notice~~ within fourteen days of the filing of an application, submit for publication notice of the  
12 application to be published as a Class II legal advertisement in compliance with the provisions of  
13 article three, chapter fifty-nine of this code, and the publication area for ~~such~~ the publication shall

14 be the county or counties wherein any land which may be affected by ~~such~~ the order is situate.

15 In addition, the commission shall mail a copy of ~~such~~ the notice to all other persons who  
 16 have specified to the commission an address to which all such notices may be mailed. The notice  
 17 shall issue in the name of the state, shall be signed by the one of the commission members, shall  
 18 specify the style and number of the proceeding, the time and place of any hearing and shall briefly  
 19 state the purpose of the proceeding. Each notice of a hearing must be provided no fewer than  
 20 twenty days preceding the hearing date. Personal or substituted service and proof thereof may  
 21 be made by an officer authorized to serve process or by an agent of the commission in the same  
 22 manner as is now provided by the "West Virginia Rules of Civil Procedure" ~~for Trial Courts of~~  
 23 ~~Record~~ for service of process in civil actions in the various courts of this state.

24 A certified copy of any pooling or unit order entered under the provisions of this article  
 25 shall be presented by the commission to the clerk of the county commission of each county  
 26 wherein all or any portion of the pooled or unit tract is located, for recordation in the record book  
 27 of ~~such~~ the county in which oil and gas leases are normally recorded. The recording of the order  
 28 from the time noted thereon by ~~such~~ the clerk shall be notice of the order to all persons.

**§22C-9-7a. Unitization of interests in horizontal well drilling units.**

1 (a) Declaration of public policy; legislative findings regarding unitization for all horizontal  
 2 wells. -- The Legislature finds that horizontal drilling is a technique that effectively and efficiently  
 3 recovers natural resources and should be encouraged as a means of production of oil and gas  
 4 and it is hereby declared to be the public policy of this state and in the public interest to:

5 (1) Foster, encourage and promote exploration for and development, production,  
 6 utilization and conservation of oil and gas resources by horizontal drilling in deep and shallow  
 7 formations;

8 (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas  
 9 and their constituents;

10 (3) Encourage the maximum recovery of oil and gas;

11 (4) Safeguard, protect and enforce the correlative rights of operators and royalty owners  
12 of oil and gas in a horizontal well unit to the end that each such operator and royalty owner may  
13 obtain his or her just and equitable share of production from that pool, horizontal well unit or  
14 unconventional reservoir of oil or gas;

15 (5) Safeguard, protect and enforce the private property rights of mineral owners in this  
16 state to the greatest extent practical while ensuring that private property owners who wish to  
17 develop their property have an opportunity to do so; and

18 (6) Provide for increased protections for the state's surface owners by limiting the  
19 occurrences of land encroachment by oil and gas operators where compulsory pooling is being  
20 utilized.

21 (b) *Horizontal Well Unitization and Landowner Protection Act of 2016.* -- Therefore, in  
22 order to encourage conservation of oil and gas resources, and in order to encourage maximum  
23 recovery of oil and gas, the Legislature enacts the Horizontal Well Unitization and Landowner  
24 Protection Act of 2016, and it is collectively comprised of the following:

25 (1) This section; and

26 (2) Amendments to:

27 (A) Section one of this article regarding public policy and legislative findings with respect  
28 to this article;

29 (B) Section two of this article providing certain definitions;

30 (C) Section three of this article regarding the application of this article 9;

31 (D) Section four of this article regarding the Oil and Gas Conservation Commission; and

32 (E) Section five of this article regarding rules and notice under this article.

33 (c) *Definitions.* -- Unless the context in which used clearly requires a different meaning, as  
34 used in this section, the term:

35 "Bonded operator" means a person that has posted a bond under article six or six-a,  
36 chapter twenty-two of this code; is registered as an oil and gas well operator with the West Virginia

37 Department of Environmental Protection, Office of Oil and Gas; and operates eight or more oil  
38 and gas wells, as defined in articles six and six-a of chapter twenty-two of this code, in West  
39 Virginia that are active, producing oil and gas wells.

40 "Executive interest" and "executory interest" means the interest entitling the owner to  
41 lease the oil and gas estate or amend an existing oil and gas lease. For purposes of this section,  
42 the owner of the executive interest is considered to be the royalty owner and interested party for  
43 purposes of notice and participation in proceedings under this article, and all horizontal well unit  
44 orders are binding on the owners of executive interests and nonexecutive interests in a horizontal  
45 well unit. The owners of the executive interest and the associated nonexecutive interest owners  
46 are considered to be the same interest for purposes of computing percentages pursuant to  
47 paragraph (A), subdivision (2), subsection (d) of this section.

48 "Horizontal well unit" means the area in which horizontal drilling may occur, and that is  
49 designated for the allocation of production from one or more horizontal wells drilled in the unit to  
50 all oil and gas tracts, or portions of tracts, included in the unit for production of oil and gas and  
51 payment of royalty and proceeds of production regardless of the tract or tracts in which the  
52 horizontal well is drilled or completed, and the corresponding authorization to drill and produce oil  
53 and gas from that area as a unit, notwithstanding the lack of adequate consensual rights allowing  
54 pooling or unitization of oil and gas or allowing drilling horizontally across tract lines. When a  
55 horizontal well unit is formed, the portion of the production allocated to each tract or portion of the  
56 tract or tracts included in the horizontal well unit shall, when produced, be considered for all  
57 purposes to have been actually produced from the tract by an oil and gas well drilled, completed  
58 and producing on the tract.

59 "Interested Party" means owners of the executive interest in the oil and gas in the target  
60 formation within the horizontal well unit in the tracts, or portions of the tracts, to be included in  
61 the proposed horizontal well unit, including owners of leased and unleased oil and gas to be  
62 included in the horizontal well unit; operators of all target formation acreage in the horizontal

63 well unit, and operators of all oil and gas wells located in the unit that have been drilled to or  
64 through the target formation.

65 "Lateral" means the portion of a well bore that deviates from approximate vertical  
66 orientation to approximate horizontal orientation and all wellbore beyond the initial deviation to  
67 total depth or terminus of the wellbore.

68 "Overriding royalty" means an interest carved out of the leasehold or out of the working  
69 interest and is not included within the meaning of royalty.

70 "Target formation" means the primary geologic formation from which oil or gas is intended  
71 to be produced from a horizontal drilling operation and, where completions can reasonably be  
72 expected to produce from formations above or below the target formation, includes the  
73 formations from which production can reasonably be expected.

74 "Unitization" means the combination of two or more tracts of oil and gas or portions  
75 thereof, and leases or other agreements related to oil and gas, for drilling of horizontal wells and  
76 production of oil and gas from the unit with allocation of production to the net acreage of each  
77 tract included in the unit to operate as a consolidated horizontal well unit.

78 "Unitization consideration" means consideration provided as set forth in subsection (g) of  
79 this section. Unitization consideration relates to the net acreage of the nonconsenting royalty  
80 owner included in a horizontal well unit and is as determined to be just and reasonable by the  
81 commission.

82 "Unknown and unlocatable interest owner" means a royalty owner, operator or other  
83 person vested with an interest in oil and gas in the target formation to be included in a horizontal  
84 well unit, whose present identity or location, or both, cannot be determined from:

85 (A) A reasonable review of the records of the clerk of the county commission for the county  
86 or counties where the oil and gas is located;

87 (B) Diligent inquiry to known interest owners in the same tract;

88 (C) Inquiry to the sheriff's and assessor's offices of the county or counties in which the oil



89 and gas interest is located;

90 (D) A reasonable inquiry utilizing available Internet resources that could reasonably lead  
91 to the identification of the person; and

92 (E) A mailing to the last known address, if available, of the person as reflected in the  
93 records of the sheriff's or assessor's office, and includes the unknown heirs, representatives,  
94 successors and assigns of the person.

95 "Working Interest" means the right to develop, operate and produce oil and gas and to  
96 appropriate the oil and gas produced therefrom, either for that person or for that person and  
97 others; in the event that there is no oil and gas lease in existence with respect to the tract in  
98 question, the owner of the oil and gas rights therein shall be considered as an owner of a "working  
99 interest" to the extent of a portion of the oil and gas owned by the owner, and as "royalty owner"  
100 as to a portion of such oil and gas; and in the event the oil is owned separately from the gas, the  
101 owner of the substance being produced or sought to be produced from the unit shall be considered  
102 the "working interest" owner as to that acreage included in a unit; the term working interest does  
103 not include owners whose interest is limited to working interest in a wellbore only, overriding  
104 royalties, or net profits interests.

105 (d) Applicability. --

106 (1) For all horizontal wells, including shallow and deep horizontal wells, the commission  
107 may unitize tracts, or portions of tracts, in a horizontal well unit established under this section  
108 upon the filing of an application with the commission by a person that controls the horizontal well  
109 unit and upon the issuance of a horizontal well unit order pursuant to this section.

110 (2) Before filing an application under this section, an applicant must have:

111 (A) With respect to the royalty interest, obtained by ownership, lease, lease amendment,  
112 assignment, farmout, contract or other agreement the right, consent or agreement to pool or  
113 unitize the acreage to be included in the horizontal well unit from executory interest royalty owners  
114 of eighty percent or more of the net acreage proposed to be included in the horizontal well unit,

115 as provided and determined in subdivision (3) of this subsection; and

116 (B) With respect to the working interest, obtained by ownership, lease, lease amendment,  
117 assignment, farmout, contract, or other agreement, the right, consent or agreement to pool or  
118 unitize as to eighty percent or more of the net acreage proposed to be included in the horizontal  
119 well unit owned, leased, or operated by bonded operators and the applicant, collectively, by  
120 ownership, lease, farmout, assignment, contract or other agreement; and

121 (C) Made good faith offers to consent or agree to unitization to, and has negotiated in good  
122 faith with, all known and locatable royalty owners having executory interests in the oil and gas in  
123 the target formation within the acreage to be included in the proposed horizontal well unit who  
124 have not previously consented or agreed to the pooling or unitization of the interests, and made  
125 good faith offers to participate or consent or agree to the proposed horizontal well unit to, and has  
126 negotiated in good faith with, all known and locatable working interest owners who have not  
127 previously agreed to participate or consent or agree to pooling and unitization of the acreage to  
128 be included in a proposed horizontal well unit.

129 A person who satisfies the conditions of paragraphs (A) through (C) of this subdivision is  
130 referred to in this section as a person that controls the horizontal well unit.

131 (3) For purposes of determining whether a person has obtained the requisite control of the  
132 proposed horizontal well unit, the commission may not include overriding royalty owners,  
133 nonexecutive interest royalty owners, acreage owned or otherwise held by working interest  
134 owners, operators who are not bonded operators, or acreage owned or otherwise held by  
135 unknown and unlocatable interest owners, except any acreage made subject to a lease or other  
136 agreement with pooling or unitization rights either voluntarily or under article twelve-a, chapter  
137 fifty-five of this code shall be included for such determination. Furthermore, for purposes of  
138 determining whether a person has the requisite control of the proposed horizontal well unit, the  
139 identity and rights of royalty owners and bonded operators shall be determined as of the date on  
140 which the application for a horizontal well unit is filed.

141 (4) If the applicant has not met all the provisions of this subsection, the application shall  
142 be dismissed without prejudice.

143 (5) If the applicant meets all of the provisions of this subsection, the commission shall  
144 authorize unitization of tracts, or portions of tracts, as to all interests in oil and gas in the target  
145 formation acreage proposed to be unitized for horizontal drilling, including interests of unknown  
146 and unlocatable interest owners, for production of oil and gas from the target formation as a  
147 horizontal well unit, and shall issue a horizontal well unit order in accordance with this section.

148 (e) Application requirements. --

149 (1) An applicant who is a person that controls the horizontal well unit proposed for a  
150 horizontal well unit order and has drilled or plans to drill one or more horizontal wells in the  
151 proposed horizontal well unit may file an application with the commission for a horizontal well unit  
152 order. The application must contain:

153 (A) A description of the proposed horizontal well unit and identification of the target  
154 formation or formations;

155 (B) A statement of the nature of the operations contemplated;

156 (C) A plat that depicts the boundaries and acreage of the proposed horizontal well unit,  
157 the tracts in the horizontal well unit, the surface tax map and parcel numbers of the tracts to be  
158 included in the horizontal well unit in accordance with county assessor's records, and the  
159 district(s) and county or counties where the proposed horizontal well unit is located. The plat shall  
160 show the surface location of the vertical borehole of the horizontal well(s) to be included in the  
161 proposed horizontal well unit determined by survey, the courses and distances of the surface  
162 location from two permanent points or landmarks on those tracts, the deviation from vertical, and  
163 also the proposed horizontal lateral portion of each proposed horizontal well to be included in the  
164 proposed horizontal well unit. The plat shall show the proposed horizontal well unit name, the  
165 proposed horizontal well names, the well number, if any, of each horizontal well to be drilled in  
166 the horizontal well unit, and the other oil and gas wells within the horizontal unit to the extent

167 depicted on the publicly available maps of the West Virginia Department of Environmental  
168 Protection, Office of Oil and Gas;

169 (D) A listing of all oil and gas tracts, or portions thereof, within the proposed horizontal well  
170 unit, the size of each tract, and the extent to which each tract is leased;

171 (E) The names and last known addresses of royalty owners of the target formation of each  
172 tract within the proposed horizontal well unit, specifying:

173 (i) Which, if any, of them are unknown and unlocatable;

174 (ii) Which of them hold executive rights; and

175 (iii) With respect to owners of an executory interest, whether they have consented to  
176 pooling or unitization of the acreage proposed to be included in the horizontal well unit.

177 (F) The names and last known addresses of working interest owners of proposed  
178 horizontal well unit target formation acreage whose interest is of record in the county where the  
179 property is located, specifying:

180 (i) Which, if any, of them are unknown and unlocatable; and

181 (ii) Which, if any of them, are bonded operators, and if a bonded operator, whether he or  
182 she has consented to pooling or unitization as to the acreage proposed to be included in the  
183 horizontal well unit;

184 (G) Information regarding the applicant's actions to identify and locate unknown and  
185 unlocatable interest owners of target formation acreage to be included in the horizontal well unit.

186 (H) The percentage of the net acreage in the proposed horizontal well unit owned by  
187 executory interest target formation royalty owners who have consented to pooling or unitization;

188 (I) The percentage of the net acreage in the proposed horizontal well unit held by bonded  
189 operators and the applicant, collectively, as to which consent or agreement to pooling or  
190 unitization has been granted;

191 (J) A percentage allocation to the separately owned tracts, or portions thereof, in the  
192 proposed horizontal well unit of the oil and gas that will be produced from the horizontal well unit

193 as determined by the proportion that each tract's net acreage within the horizontal well unit bears  
194 to the total net acreage in the horizontal well unit;

195 (K) A certification that the applicant meets the requirements of subsection (c) of this  
196 section with respect to the proposed horizontal well unit, a list of the instruments granting the  
197 control and a certification that the applicant has mailed a copy of the application to all known  
198 and locatable interested parties by United States certified mail, return receipt requested, to their  
199 last known address and to the most current address filed with the West Virginia Department of  
200 Environmental Protection, Office of Oil and Gas, if any; and

201 (L) A statement whether the applicant has submitted, either previously or  
202 contemporaneously with the application filed pursuant to this section, an application for a well  
203 work permit with the Department of Environmental Protection for one or more horizontal wells to  
204 be completed within the boundaries of the proposed horizontal well unit.

205 (2) Upon the filing of an application for a horizontal well unit order, the commission shall  
206 provide notice of a hearing to all interested parties, as defined in this section, in accordance with  
207 section five of this article and subsection (d) of this section.

208 (f) Standard of review. --

209 (1) The commission shall evaluate the application and shall consider:

210 (A) The ownership and control of the tracts, or portions of the tracts, in the proposed  
211 horizontal well unit;

212 (B) Whether the tracts, or portions of the tracts, proposed to be made subject to a  
213 horizontal well unit order are owned, in whole or in part, by unknown and unlocatable interest  
214 owners;

215 (C) Information regarding the applicant's actions to locate unknown and unlocatable  
216 interest owners for the tracts, or portions of the tracts, sought to be included in the horizontal well  
217 unit;

218 (D) The percentage of executory interest royalty owner target formation acreage to be

219 included in the horizontal well unit as to which consent or agreement for pooling or unitization has  
220 been granted;

221 (E) The percentage of proposed horizontal well unit target formation acreage held,  
222 collectively, by the applicant and bonded operators who have consented or agreed to the unit in  
223 accordance with subsection (d) of this section;

224 (F) Whether the applicant is a person that controls the horizontal well unit proposed for  
225 unitization;

226 (G) The area to be drained by well(s) completed or to be completed in the horizontal well  
227 unit;

228 (H) Correlative rights;

229 (I) The extent to which the application will prevent waste;

230 (J) Whether the applicant has complied with subsection (d) of this section; and

231 (K) Whether notice has been provided in accordance with this section.

232 (2) The commission may not issue a horizontal well unit order pursuant to this section  
233 unless it finds that the applicant has before the filing of the application met the requirements of  
234 subsection (d) of this section.

235 (3) The commission may not change the operator of an existing well drilled in the proposed  
236 horizontal well unit, or a well actually being drilled within the proposed horizontal well unit as of  
237 the date the application is filed under this section, and shall consider and protect the interests of  
238 owners of such wells when issuing a horizontal well unit order.

239 (g) Horizontal Well Unit Orders. -

240 (1) Regarding Specifications of Unit Order. A horizontal well unit order under this section  
241 shall specify:

242 (A) The size and boundaries of the horizontal well unit giving due regard for maximization  
243 of the amount of oil and gas produced to prevent waste and protect correlative rights: *Provided,*  
244 That a horizontal well unit's size may not exceed six hundred forty acres: *Provided, however,* That

245 the commission may exceed the acreage limitation by ten percent if the applicant demonstrates  
246 that the proposed horizontal well unit area would be drained efficiently and economically by a  
247 larger horizontal well unit;

248 (B) The horizontal wells which may be drilled in the horizontal well unit, and whether the  
249 horizontal wells to be drilled are shallow or deep;

250 (C) If there are vertical wells completed in the target formation in the horizontal well unit,  
251 the area where a horizontal well may not be completed;

252 (D) The target formation or target formations to which the horizontal well unit applies; and

253 (E) Any unitization consideration due.

254 (2) Regarding Identification of Unknown and Unlocatable Owners. A horizontal well unit  
255 order authorizing unitization of tracts with unknown and unlocatable interest owners shall contain  
256 a finding that identifies the persons as unknown and unlocatable interest owners.

257 (3) Regarding Unit Tract Allocation. A horizontal well unit order shall specify that the  
258 allocation of the percentage of production of the horizontal wells drilled in the horizontal well unit  
259 to the separately owned tracts, or portions of the tracts, included within the horizontal well unit  
260 shall be in the proportion that each tract's net acreage within the horizontal well unit bears to the  
261 total net acreage within the horizontal well unit.

262 (4) Regarding Effect of a Unit Order. A horizontal well unit order shall authorize and  
263 perfect unitization of all interests in the target formation as to the tracts, or portions of the tracts,  
264 or leases, or portions of leases, included in the horizontal well unit.

265 (5) Regarding Unit Formation. If the applicant is a person that controls the horizontal well  
266 unit proposed for a horizontal well unit order under this section, the commission shall form a  
267 horizontal well unit pursuant to this section and authorize the drilling and operation of one or more  
268 horizontal wells in the unit for the production of oil or gas from the target formation from any tract  
269 within the horizontal well unit.

270 (6) Regarding Voluntary Agreements. Unitization consideration shall not be ordered to

271 be paid to any royalty owner who has consented or agreed to pooling or unitization by virtue of  
272 the terms contained in an oil and gas lease, pooling or unitization agreement, contract, or other  
273 agreement which permits pooling or unitization.

274 (7) Regarding Existing Leases Without Unitization Rights. With respect to any royalty  
275 owners of leased tracts who have not consented to pooling or unitization at the time of the  
276 hearing, the commission shall require in a horizontal well unit order that unitization consideration  
277 be provided to such executive interest royalty owners equivalent to just and reasonable  
278 consideration for the modification of rights under a lease. Further, if an award of unitization  
279 consideration differs from the rights under a bona fide arms-length lease, the applicant, all  
280 associated royalty owners, owners of leasehold, working interest, overriding royalty interest and  
281 other interests in the oil and gas are bound by the order: *Provided*, That if the applicable lease  
282 is a bona fide arms-length lease, the terms of any unitization consideration shall be no less  
283 favorable than the economic terms contained in such applicable lease on the date the  
284 application for the unit order was filed with the commission: *Provided, however*, That if the  
285 applicable lease is not a bona fide arms-length lease the commission may make such order as  
286 is just and reasonable. Unitization consideration shall be provided by the participating working  
287 interest owners, including the applicant, to the extent of their interest in the horizontal well unit.

288 (8) Regarding Unleased Oil and Gas. With respect to interests in oil and gas as to which  
289 there is no lease in existence:

290 (A) Any owner of unleased oil and gas included in the horizontal well unit may elect to  
291 surrender the target formation oil and gas underlying the unleased tract to the participating  
292 working interest owners, including the applicant, to the extent of their interest in the horizontal  
293 well unit for consideration, which if not agreed upon, shall be just and reasonable as determined  
294 by the commission; or

295 (B) Executive interest owners of unleased oil and gas may make an election for unitization  
296 consideration, which, if not agreed upon by the applicant and such owner, shall be just and



297 reasonable as determined by the commission. If the executive interest owner elects unitization  
298 consideration, the interests of the electing executive interest owner and the associated  
299 nonexecutive interest owners shall be deemed leased to the participating working interest owners  
300 including the applicant to the extent of their interest in the horizontal well unit, on terms determined  
301 by the commission, which shall stipulate that the production royalty shall not be reduced by  
302 production or post-production expenses and shall be just and reasonable and set forth in the  
303 horizontal well unit order. Following an election by the executive interest owners to receive  
304 unitization consideration under this paragraph (B), the participating working interest owners,  
305 including the applicant, to the extent of their interest in the horizontal well unit, will provide the  
306 unitization consideration and will be the working interest owners of the oil and gas with respect to  
307 the interest as to which an election of unitization consideration has been made.

308 (C) This paragraph does not apply if an owner's property is deemed leased. This  
309 paragraph does not change the legal ownership of oil and gas. Owners of oil and gas interests as  
310 to which there is no lease in existence who do not elect paragraph (A) or (B) of this subdivision  
311 shall be deemed to be a royalty owner with respect to a portion of their ownership interest in that  
312 tract, and a working interest owner with respect to a portion of their ownership interest, but shall  
313 not receive unitization consideration. In the event the proportion of royalty and working interest  
314 is not agreed upon, the proportion shall be just and reasonable as determined by the commission  
315 considering relevant evidence: *Provided*, That the production royalty as to a tract shall not be less  
316 than twelve and one-half percent, and may, where warranted by the commission's review of the  
317 relevant evidence, exceed twelve and one-half percent, and in that event the proportion of working  
318 interest shall be reduced accordingly, and in the event the ownership interest is less than all of  
319 the oil and gas in that tract, the royalty and working interest shall be proportionately reduced: The  
320 royalty interest determined by the commission shall not be reduced by production or post-  
321 production expenses and shall be just and reasonable. With respect to the working interest portion  
322 of the unleased oil and gas, regardless of whether the proportion of royalty and working interest

323 is agreed by the applicant and the royalty owner or is determined by the commission, the owner  
324 of the working interest in oil and gas as to which there is no lease in existence may elect Option  
325 1, Option 2 or Option 3 set forth in subdivision (9) of this subsection, but only as to the working  
326 interest portion.

327 (9) Regarding Participation in a Horizontal Well Unit. When the commission issues a  
328 horizontal well unit order pursuant to this section, the commission shall permit all working interest  
329 owners to participate in the risk and expense of drilling, completing, equipping and operating the  
330 horizontal wells in the horizontal unit and share in the production revenue to the extent of their  
331 working interest in the horizontal well unit. The commission shall permit each working interest  
332 owner who does not elect to participate in the risk and cost of drilling in the horizontal well unit to  
333 choose from the following options with respect to their working interest:

334 (A) Option 1. To surrender the working interest or a portion thereof to the participating  
335 owners on a reasonable basis and for a just and reasonable consideration, which, if not agreed  
336 upon, shall be determined by the commission.

337 (B) Option 2. To participate to the extent of the working interest in the drilling, completion  
338 and operations in the horizontal well unit on a limited or carried basis on terms and conditions  
339 which, if not agreed upon, shall be determined by the commission to be just and reasonable.

340 (C) Option 3. To enter into a farmout agreement, sublease, or other contract to permit  
341 drilling, completion, operation and unitization with respect to the working interest for consideration  
342 and on terms and conditions which, if not agreed upon, shall be determined by the commission  
343 to be just and reasonable.

344 (10) Regarding Election of a Carried Interest. If a nonconsenting working interest owner  
345 elects Option 2 identified in subdivision (9) of this subsection, and an owner of any working interest  
346 in any portion of the horizontal well unit drills and operates, or pays the costs of drilling, completing,  
347 equipping and operating a horizontal well for the benefit of the nonparticipating owner as provided  
348 in the horizontal well unit order, then the working interest owners in the horizontal well unit are

349 entitled to the share of production from the tracts or portions thereof subject to the horizontal well  
350 unit order accruing to the working interest of the nonparticipating owner, exclusive of any unitization  
351 consideration, royalty, overriding royalty, and burdens reserved in any deeds, leases, assignments  
352 thereof or agreements relating thereto, of the tracts or portions of the tracts included in the  
353 horizontal well unit, until the market value of the nonparticipating owner's share of the production,  
354 exclusive of the unitization consideration, royalty, overriding royalty, and burdens equals double  
355 the share of the costs payable by or charged to the interest of the nonparticipating owner. Working  
356 interest owners pay the costs of drilling, completing, equipping and operating the horizontal well  
357 unit and all horizontal wells drilled in the horizontal well unit.

358 (11) Regarding Cost Disputes. If a dispute arises as to the costs of drilling, completing,  
359 equipping and operating a horizontal well in a horizontal well unit formed pursuant to this section,  
360 the commission shall determine and apportion the costs, within ninety days from the date of  
361 written notification to the commission of the existence of the dispute.

362 (12) Regarding Unit Modification Request by Applicant When Unit Not Fully Developed.  
363 If the horizontal well unit approved by the commission is not fully developed as approved in the  
364 order, the applicant shall file a request to modify the horizontal well unit with the commission within  
365 sixty days from the later of: completion of all drilling and completion activities within the horizontal  
366 well unit; or the date that is five years after the date the last drilling and completion in the horizontal  
367 well unit occurred.

368 (13) Regarding Modification by Interested Party if Unit is Not Fully Developed. An  
369 interested party may, within five years after the latter of either the drilling and completion of the  
370 initial horizontal well in the horizontal well unit or the drilling and completion of the most recent  
371 horizontal well within the horizontal well unit file a request to modify the horizontal well unit, and  
372 the commission may modify the horizontal well unit.

373 (14) Regarding Distributions in the Event of Unit Modification. Upon the modification of a  
374 horizontal well unit, the commission shall recalculate the allocation of production from the tracts in

375 the modified horizontal well unit from and after the modification order date and the modification  
376 order shall be binding on the property subject to the horizontal well unit order, and all owners  
377 thereof, their heirs, representatives, successors and assigns for so long as the horizontal well unit  
378 order remains in effect.

379 (15) Regarding the Effect of a Horizontal Well Unit Order. All operations, including, but  
380 not limited to, the commencement, drilling, or operation of a horizontal well upon any portion of a  
381 horizontal well unit for which a unit order has been entered pursuant to this section, shall be  
382 considered for all purposes the conduct of the operations upon each separate tract or portion of  
383 the tract in the horizontal well unit. That portion of the production allocated to each tract or portion  
384 of the tract included in a horizontal well unit shall, when produced, be considered for all purposes  
385 to have been actually produced from the tract by an oil and gas well drilled, completed and  
386 producing on the tract, or portion of the tract included in the horizontal well unit.

387 (16) Regarding Unit Modification by the Applicant. The applicant may file a request to  
388 modify a horizontal well unit order at any time.

389 (17) Regarding Unit Order Modification for Clerical Errors. Any interested party may file  
390 an application to correct a clerical error in a horizontal well unit order at any time.

391 (18) Regarding Expiration of a Horizontal Well Unit. A horizontal well unit order under  
392 this section shall expire if a horizontal well has not been drilled in the horizontal well unit within  
393 three years of the date the order is final and not appealable, unless the commission extends the  
394 order for good cause, and if a well has been drilled within said three years, or within any  
395 extension period granted by the commission, the horizontal well unit shall continue in force and  
396 effect until all wells in the horizontal well unit are no longer capable of producing oil, gas, natural  
397 gas liquids or other substances emitted from the borehole and marketed off the premises.

398 (19) Regarding Escrow for Unknown and Unlocatable Owners. Where the commission  
399 finds that the interest of one or more unknown and unlocatable interest owners are included in the  
400 horizontal well unit, the horizontal well unit operator shall hold the moneys payable to the owner in

401 an escrow account paying a market rate of interest, to be held, administered and disbursed in  
402 accordance with an order of the commission and subsection (q) of this section.

403 (20) Regarding Just and Reasonable. For purposes of this section, the commission shall  
404 determine what is "just and reasonable" based on relevant evidence adduced at a hearing  
405 including but not limited to amounts paid or consideration given in arm's length transactions in the  
406 vicinity of the horizontal well unit and within a reasonable time prior to the hearing for transactions  
407 of the same nature and involving similar geologic conditions as that transaction being considered  
408 by the commission. When determining a production royalty rate, the commission may consider  
409 all material terms of the relevant leases.

410 (21) Regarding Binding Effect of a Horizontal Well Unit. When the commission issues a  
411 horizontal well unit order, the applicant and all oil and gas well operators, royalty owners and  
412 owners of leasehold, working interest, overriding royalty interest and other interests in the oil and  
413 gas in the horizontal well unit shall be bound by the order. So long as the order remains in force  
414 and effect as provided in this section, a horizontal well unit order shall be binding on the property  
415 subject to the horizontal well order and all owners of the property and their heirs, representatives,  
416 successors and assigns.

417 (22) Regarding Production Royalty. Any royalty payable under a horizontal well unit order  
418 shall be calculated and paid on all oil, natural gas, natural gas liquids, and all other substances  
419 emitted from the borehole and marketed off the premises.

420 (h) Notice, timelines, hearings and orders. --

421 (1) Interested parties shall be provided with notice of the filing of an application for a  
422 horizontal well unit in accordance with the provisions of section five of this article.

423 (2) Owners and others with executive interests in target formation oil and gas property  
424 not within the horizontal well unit but located within five hundred feet of a proposed horizontal well  
425 unit boundary need not be given notice of the horizontal well unit application by certified mail in  
426 accordance with section five of this article, but may, before the approval of an application as to

427 which no objection has been filed, or at any time before the hearing if an objection is filed,  
428 intervene in the horizontal well unit application proceeding, and upon intervention will be an  
429 interested party and may participate in the hearing.

430 (3) Each notice issued in accordance with section five of this article shall describe the  
431 area for which a horizontal well unit order is proposed in recognizable, narrative terms, include  
432 a map or plat which identifies the location of the proposed horizontal well unit, and contain such  
433 other information as is essential to the giving of proper notice, including the time and date and  
434 place of a hearing. As soon as practicable the commission shall establish a website. Within  
435 three business days of the filing of an application under this section, the commission shall  
436 publish on its website a copy of: (A) The horizontal well unit application notice required to be  
437 published pursuant to section five of this article; and (B) the proposed horizontal well unit plat  
438 filed with the application. The horizontal well unit application and plat shall be indexed on the  
439 commission's website by each county and district where acreage to be included in the proposed  
440 horizontal well unit is located. Timely publication on the website for a period of ten business  
441 days or completion of newspaper publication shall be notice to all working interest owners.

442 (4) Upon request of any interested party or the commission, the commission shall conduct  
443 a hearing and receive evidence regarding the application. All interested parties may participate in  
444 any hearing. If a hearing has been held regarding an application, the order shall be a final order.  
445 If no hearing has been requested by the commission or an interested party within fifteen days  
446 after notice of the application is posted on the commission website in accordance with subdivision  
447 (2) of this subsection, the commission may issue a proposed order and provide a copy of the  
448 proposed order, together with notice of the right to appeal to the commission and request a  
449 hearing, to all interested parties. Any interested party aggrieved by the proposed order may  
450 appeal the proposed order to the commission and request a hearing. Notice of appeal and request  
451 for hearing shall be made within fifteen days of entry of the proposed order. If no appeal and  
452 request for hearing has been received within fifteen days, the proposed order shall become final.

453 If a hearing is requested, the hearing shall commence within forty five days of issuance of the  
454 initial notice. The commission may, upon written request, extend the date for the hearing:  
455 Provided, That the hearing must be convened within forty five days of the initial notice issued by  
456 the commission. The commission shall, within twenty days of the hearing, enter an order  
457 authorizing the unit, dismiss the application or for good cause continue the process.

458 (5) At least ten days prior to a hearing to consider an application for a horizontal well unit  
459 order, the applicant shall file with the commission a summary of:

460 (A) The prevailing economic terms of the leases of the oil and gas property within the  
461 proposed horizontal well unit and the prevailing economic terms of the leases by the applicant of  
462 the oil and gas property adjoining the proposed horizontal well unit, including the bonus payment  
463 per net acre, production royalty rate, whether the production royalty under such leases is subject  
464 to reduction for post-production expenses and any other common conditions or terms of the  
465 leases; and

466 (B) The prevailing consideration paid by the applicant to the executive interest royalty  
467 owners for the modification of oil and gas leases within the proposed horizontal well unit to allow  
468 the lessee to pool or unitize the leased tract with other tracts for purposes of drilling horizontal  
469 wells and, as to oil and gas leases adjoining the property within the proposed horizontal well unit,  
470 the prevailing consideration paid to the executive interest royalty owners for the modification of  
471 oil and gas leases to allow the lessee to pool or unitize the leased tract with other tracts for  
472 purposes of horizontal drilling.

473 The applicant may mark the summary of the prevailing economic terms of leases and  
474 consideration paid for lease modifications filed with the commission, and any associated  
475 documents or information, as "CONFIDENTIAL" if the documents contain confidential,  
476 commercial information. Any information marked "CONFIDENTIAL" may only be used for the  
477 purpose of the underlying hearing and may only be reviewed at the offices of the commission for  
478 purposes of preparing for the underlying hearing by interested parties who are either executive

479 interest owners of unleased tracts or executive interest royalty owners of leased tracts within the  
480 proposed unit who have not consented or agreed to pooling or unitization, and for no other  
481 purpose. Prior to an executive interest owner of an unleased tract or an executive interest owner  
482 of a leased tract within the proposed unit who has not consented to pooling or unitization  
483 disclosing any document or other material marked as "CONFIDENTIAL," or any information  
484 contained therein, to an attorney, expert witness, consultant or other person assisting the owner  
485 with a hearing under this section, the party making the disclosure must first inform the person that  
486 he or she is bound by the duty of confidentiality established under this subdivision and the person  
487 to whom disclosure is to be made shall sign an acknowledgment that the information is and shall  
488 remain at all times confidential, and that the person agrees to abide by the duty of confidentiality  
489 established by this subdivision and to refrain from using the information for any purpose other  
490 than the applicable hearing. All information marked "CONFIDENTIAL" pursuant to this subdivision  
491 shall retain that character in any court of competent jurisdiction on appeal, and the applicant may  
492 file a motion with the court seeking to have the documents sealed and withheld from the public  
493 record throughout the appeal from a final order of the commission pertaining to a horizontal well  
494 unit order. Furthermore, any information marked "CONFIDENTIAL" pursuant to this subdivision  
495 is exempt from disclosure under article one, chapter twenty-nine-b of this code.

496 (6) An order establishing a horizontal well drilling unit or dismissing an application shall be  
497 a final order. Any interested party aggrieved by the order may seek judicial review pursuant to  
498 section eleven of this article, and must, notwithstanding the provisions of subsection b, section  
499 four, article five, chapter twenty-nine-a of this code to the contrary, be commenced by filing a  
500 petition in a circuit court with jurisdiction within fifteen days after the date upon which the horizontal  
501 well unit order being appealed was entered. If no petition for review has been filed in a circuit  
502 court with jurisdiction within the fifteen day period, the horizontal well unit order shall be final and  
503 not appealable.

504 (i) A unit order does not grant surface rights. -- A horizontal well unit order under this



505 section does not grant surface use rights. If a tract was made subject to a horizontal well unit  
506 order without the consent of the executive interest owner of the oil and gas, then no horizontal  
507 well unit drilling site shall be constructed or other horizontal well unit surface disturbance occur  
508 upon the surface of that tract unless the surface owner consents to such construction or  
509 disturbance.

510 (j) Commission approval required for certain additional drilling. -- After the filing of an  
511 application for a horizontal well unit order but before the horizontal well unit order requested by  
512 the application is entered, no well may be drilled or completed to or through the target formation  
513 of the proposed horizontal well unit unless authorized by the commission. After a horizontal well  
514 unit order is entered, no well shall be completed in the horizontal well unit in the target formations  
515 of the horizontal well unit unless authorized by the commission. This subsection addresses the  
516 times at which oil and gas wells may be drilled and does not limit the ability of a lessor to lease  
517 oil and gas.

518 (k) Contemporaneous unit and permit applications authorized. -- Notwithstanding anything  
519 to the contrary in article six-a, chapter twenty-two of this code, upon the filing of an application for  
520 a horizontal well unit order pursuant to this section, an applicant may file an application for a well  
521 work permit under article six-a, chapter twenty-two of this code for any proposed development  
522 within the horizontal well unit for which the unit order is sought.

523 (l) A party may appear in person. -- At any hearing an interested party may represent  
524 themselves or be represented by a duly licensed attorney-at-law.

525 (m) Post production expenses are not deductible with respect to royalty determined by  
526 commission. -- The provisions of this section regarding post production expenses are unique to  
527 this section and to interests included within a horizontal well unit without the consent of the interest  
528 owner. Nothing in this section expresses any legislative finding or policy regarding the deduction  
529 of post-production expenses in contexts outside of administrative hearings before the commission  
530 conducted pursuant to this section or the appeal of horizontal well unit orders pursuant to this

531 section.

532 (n) *Unknown and unlocatable interest owners.* -- Notwithstanding the existence of  
533 unknown and unlocatable interest owners, a horizontal well unit order may be entered and  
534 development, drilling and production may occur in the horizontal well unit. Unknown and  
535 unlocatable interest owners of target formation oil and gas not subject to lease shall be deemed  
536 to have leased such interest to the applicant and the participating working interest owners on  
537 terms determined by the commission to be just and reasonable, which shall be set forth in the  
538 horizontal well unit order and, with respect to such interest, shall be entitled to receive unitization  
539 consideration as determined by the commission in accordance with paragraph (B), subdivision  
540 (8), subsection (g) of this section. Unknown and unlocatable interest owners of working interest  
541 in target formation oil and gas subject to lease when the application is filed who are entitled to  
542 make an election under this section shall be deemed to have elected Option 3 with respect to  
543 such interest, and the commission shall determine whether such interest is thereafter subject to  
544 a farmout, sublease, or other arrangement and the terms of such arrangement, which shall be  
545 just and reasonable as determined by the commission. Any funds payable to unknown and  
546 unlocatable interest owners under the horizontal well unit order shall be deposited in the interest  
547 bearing escrow account provided for in this section.

548 (o) *Owners who are not unknown and unlocatable declining to make an election.* --

549 (1) If an owner is not an unknown and unlocatable interest owner, but is an owner of an  
550 executive interest in proposed horizontal well unit target formation oil and gas not subject to oil  
551 and gas lease at the time a horizontal well unit application encompassing such oil and gas is  
552 filed, and the owner is entitled to make an election under this section but does not do so, then  
553 such owner shall be deemed to have leased such interest to the applicant and participating  
554 working interest owners on terms determined by the commission to be just and reasonable and,  
555 with respect to such interest, shall be entitled to receive unitization consideration as determined  
556 by the commission in accordance with paragraph (B), subdivision (8), subsection (g) of this

557 section. The commission shall send notice of the unitization consideration determined to such  
558 known and locatable owner at the address shown in the application. Thereafter, the applicant  
559 shall tender to such owner the unitization consideration determined by the commission.

560 (2) If an owner is not an unknown and unlocatable interest owner, but is, by virtue of a  
561 lease, assignment, contract or other agreement, an owner of a working interest in target  
562 formation oil and gas within the proposed horizontal well unit at the time the application is filed,  
563 and such owner is entitled to make an election under this section but does not do so, then such  
564 owner shall be deemed to have elected Option 3 identified in subdivision (9), subsection (g) of  
565 this section with respect to such interest on terms determined by the commission to be just and  
566 reasonable. The horizontal well unit order shall set forth the commission's determination, and  
567 the commission shall send a copy of the horizontal well unit order to such known and locatable  
568 owner at the address shown in the application.

569 Notwithstanding the refusal or failure of any owner to make any election permitted by this  
570 section, a horizontal well unit order shall be binding on the property subject to the horizontal well  
571 order and all owners of all interests in such property and their heirs, representatives, successors  
572 and assigns.

573 (p) Opportunity of surface owners to acquire interests of unknown and unlocatable interest  
574 owners in oil and gas underlying their surface tract. --

575 (1) When the interests of unknown and unlocatable interest owners' property is included  
576 in a horizontal well unit, if the applicant has not filed a proceeding pursuant to article twelve-a,  
577 chapter fifty-five of this code (entitled Lease and Conveyance of Mineral Interests Owned by  
578 Missing or Unknown Owners or Abandoning Owners) with respect to the interest of an unknown  
579 and unlocatable interest owner in the horizontal well unit, and taxes on the unknown and  
580 unlocatable interest owners' property are not delinquent, then within three months after a  
581 horizontal well unit order is entered by the commission and is final and not appealable, the  
582 applicant shall inform the party or parties with an assessed interest in the surface overlying such

583 portion of the oil and gas included in the horizontal well unit at the address maintained in the tax  
584 records of the sheriff (the "Tax-Paying Surface Owner" or "TSO") that the surface owner or owners  
585 may acquire the underlying interest of the unknown and unlocatable interest oil and gas owners  
586 in the oil and gas of the unknown and unlocatable interest owner underlying the surface of the  
587 TSO's surface property pursuant to this subsection (the "TSO notice"), but only the oil and gas  
588 interest within the target formation made subject to the commission's unit order. Upon written  
589 request to the applicant by any TSO, the applicant shall, to the extent practicable under the  
590 circumstances, furnish the requesting TSO the following information: *Provided*, That applicant is  
591 not required to provide confidential, trade secret, attorney-client communications or attorney work  
592 product:

593 (A) An identification of the last known owner, and information in the possession of the  
594 applicant regarding the last known identity and address of, the interest in the horizontal well unit  
595 believed to be held by unknown and unlocatable interest owners,

596 (B) The efforts to locate such unknown and unlocatable interest owners,

597 (C) Such other information known to the applicant which might be helpful in identifying or  
598 locating the present owners of the oil and gas interests in the horizontal well unit of unknown and  
599 unlocatable interest owners, and

600 (D) A copy of the most recent recorded instrument embracing the interest of the unknown  
601 and unlocatable interest owners in the horizontal well unit as necessary to show the vesting of  
602 title to the oil and gas minerals in the last record owner of the title to the oil and gas minerals.

603 (2) When an unknown and unlocatable interest in oil and gas is included in a horizontal  
604 well unit, the owners of the surface overlying such interest may, within two years of the horizontal  
605 unit well order becomes final and not appealable, file a verified petition with respect to all the  
606 interests of unknown and unlocatable interest owners' oil and gas interests underlying the surface  
607 of the property underlying the surface owner's property subject to the horizontal well unit order.  
608 The circuit court in which the majority of the property subject to the petition authorized by this

609 subsection is located has jurisdiction of the proceeding. The petition shall refer to this subsection  
610 and identify the surface tract and all oil and gas property subject to the petition. The prayer in any  
611 such petition shall be for the court to order, in the case of any defendant or heir, successor or  
612 assign of any defendant who does not appear to claim ownership of the defendant's interest for  
613 five years after the date the petition is filed, a conveyance of the defendants' oil and gas mineral  
614 interest under this subsection, subject to the terms of the horizontal well unit order approved by  
615 the commission, to the petitioners.

616 (3) The proceeding authorized by this subsection does not authorize review of any unit  
617 order. In any proceeding authorized in this subsection the circuit court in which the petition is  
618 filed shall consider the property within the horizontal well unit fully subject to the horizontal well  
619 unit order.

620 (4) The person filing a petition under this subsection shall join as defendants to the action  
621 all unknown and unlocatable interest owners having record title to the particular oil and gas  
622 minerals subject to the petition, and the unknown heirs, successors and assigns of all such owners  
623 not known to be alive. The court may appoint a guardian ad litem. All persons not in being who  
624 might have some contingent or future interest therein, and all persons whether in being or not in  
625 being, having any interest, present, future or contingent, in the oil and gas mineral interests  
626 subject to the petition, shall be fully bound by the proceedings under this subsection.

627 (5) Any owner of the overlying surface tract may join as a petitioner in the proceeding. Any  
628 person purporting to be the unknown and unlocatable interest owner, or any heir, successor or  
629 assign of an unknown and unlocatable interest owner, may appear as a matter of right at any time  
630 prior to the entry of judgment confirming the deed authorized by this subsection, for the purpose  
631 of establishing his or her title to the oil and gas mineral interest subject to the petition. If the  
632 appearing unknown and unlocatable interest owner's claim is established to the satisfaction of the  
633 court, the court shall dismiss the action as to the appearing owner's interest without cost, fees or  
634 damages: *Provided*, That if the appearance of the formerly unknown and unlocatable interest

635 owner was as a result of the filing of the petition by the surface owner pursuant to this subsection,  
636 then the court may order the petitioner's reasonable attorneys' fees and costs to be paid to the  
637 petitioner out of the amounts payable to the formerly unknown and unlocatable interest owner.

638 (6) The court may appoint a special commissioner at any time to deliver a deed to the  
639 petitioners in the form provided herein five years after the petition is filed. The special  
640 commissioner shall be an attorney duly admitted to practice before the West Virginia Supreme  
641 Court of Appeals and in good standing, but may not be required to give bond. If the petitioners  
642 do not agree as to the interest each is to acquire by the deed contemplated herein, or the division  
643 of any moneys associated therewith, the court shall equitably determine the interests of the  
644 petitioners.

645 (7) In any action under this subdivision, if personal service of process is possible, shall  
646 be made as provided by the West Virginia Rules of Civil Procedure. In addition, immediately  
647 upon the filing of the petition, the petitioner shall: (A) Publish a Class III legal advertisement in  
648 compliance with the provisions of article three, chapter fifty-nine of this code, and in the county  
649 wherein the larger part of the oil and gas mineral estate described in the petition lies; and (B)  
650 no later than the first day of publication, file a lis pendens notice in the county clerk's office of  
651 the county where the petition is filed and the county wherein the larger part of the oil and gas  
652 mineral estate described in the petition lies. Both the advertisement and the lis pendens notice  
653 shall set forth: (A) The names of the petitioner and the defendants, as they are known to be by  
654 the exercise of reasonable diligence by the petitioner, and their last known addresses; (B) the  
655 date and record data of the instrument or other conveyance which immediately created the oil  
656 and gas mineral interest; (C) an adequate description of the oil and gas mineral interest and the  
657 surface; (D) the source of title of the last known owners of the oil and gas mineral interests; and  
658 (E) a statement that the action is brought for the purpose of authorizing payments from a  
659 horizontal well unit and thereafter, in the case of any defendant or heir, successor or assign of  
660 any defendant who does not appear to claim ownership of the defendant's interest within five

661 years after the date the petition is filed, for the court to order a conveyance of the defendants' oil  
 662 and gas mineral interest under this subsection, subject to the horizontal well unit order and other  
 663 instruments in the record chain of title to such oil and gas, to the owner of the surface overlying  
 664 the oil and gas mineral interest. In addition, the petitioner shall send notice by certified mail,  
 665 return receipt requested, to the last known address, if there is one, of all named defendants. In  
 666 addition, the court may order advertisement elsewhere or by additional means if there is reason  
 667 to believe that additional advertisement might result in identifying and locating the unknown and  
 668 unlocatable interest owners.

669 (8) Upon a finding by the court of the present ownership of the petitioners of the surface  
 670 estate, the court order the special commissioner to convey to the proven surface owners, fully  
 671 subject to the horizontal well unit order and other instruments in the record chain of title to such  
 672 oil and gas, the oil and gas mineral interest specified in the petition authorized herein and  
 673 approved by the court, by a deed substantially in the form as follows:

674 This deed, made the \_\_\_\_\_ day of, \_\_\_\_\_ 20\_\_\_\_, between  
 675 \_\_\_\_\_, special commissioner, grantor, to convey the  
 676 oil and gas mineral interests of \_\_\_\_\_ to \_\_\_\_\_,  
 677 grantee.

678 Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by  
 679 an order of the circuit court of \_\_\_\_\_ County, West Virginia, entered on the  
 680 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in Civil Action No. \_\_\_\_\_ therein pending,  
 681 to convey the oil and gas mineral interest more particularly described below to the grantee.

682 Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the  
 683 provisions of the horizontal well unit order of the Oil and Gas Conservation Commission  
 684 in \_\_\_\_\_ and lease terms provided therein, and further subject to all other liens and  
 685 encumbrances of record, that certain oil and gas mineral interest in  
 686 \_\_\_\_\_ County, West Virginia, more particularly described in the cited

687 order of the circuit court as follows: (here insert the description in the order).

688 Witness the following signature.

689 \_\_\_\_\_

690 Special Commissioner

691 (9) In any proceeding authorized by this subdivision, the petitioners shall bear their own  
692 costs and attorneys' fees.

693 (10) The applicant may not be joined as a party, but shall be served with copies of all  
694 pleadings and other papers filed in the proceeding, and may intervene at any time.

695 (11) After the recording of the special commissioner's deed, no action may be brought by  
696 any unknown and unlocatable interest owner or any heir, successor or assign thereof either to  
697 recover any past or future proceeds accrued or to be accrued from the property subject to the  
698 deed, or to recover any right, title or interest in and to the mineral interest subject to the deed.

699 (12) If any unknown and unlocatable interest owner or heir, successor or assign thereof  
700 appears in the proceeding in circuit court later than three years after the proceeding is filed, the  
701 unknown and unlocatable interest owner, if he or she establishes his or her claim to the  
702 satisfaction of the circuit court, shall except as provided herein be entitled to receive amounts  
703 payable to them in connection with the horizontal well unit or production therefrom. Further, the  
704 participating working interest owners, including the applicant, and the petitioning surface owners  
705 shall have no liability to the unknown and unlocatable interest owner or their heirs, successors  
706 or assigns for any amount paid with respect to the unknown and unlocatable interest or the  
707 horizontal well unit or production therefrom paid in accordance with this subsection.

708 (g) Disbursement of Escrow. --

709 (1) The escrow account established pursuant to subdivision (19), subsection (g) of this  
710 section shall continue for a period of at least three years after the horizontal well unit order is  
711 entered unless an unknown and unlocatable owner establishes ownership prior to the end of the  
712 three year period.



713 (2) If a TSO does not file a petition pursuant to this subsection within two years after a  
714 horizontal well unit order becomes final and not appealable, escrowed and other amounts payable  
715 with respect to the unknown and unlocatable interest owners' interests included in a horizontal  
716 well unit shall be paid to the Oil and Gas Reclamation Fund established pursuant to section  
717 twenty-nine, article six, chapter twenty-two of this code, the escrow account may be closed and  
718 paid to the Oil and Gas Reclamation Fund. Payment to the Oil and Gas Reclamation Fund shall  
719 relieve the participating working interest owners including the applicant, of all liability of the  
720 participating working interest owners, including the applicant, with respect to the horizontal well  
721 unit and all operations therein and production therefrom to any unknown and unlocatable interest  
722 owners, their heirs, successors and assigns and to any owners of surface overlying the unknown  
723 and unlocatable interest owners' interest, their heirs, successors and assigns, with respect to the  
724 payment.

725 (3) If a petition by a TSO to acquire the oil and gas pursuant to this subsection is filed within  
726 two years after the date a horizontal well unit order becomes final and not appealable, then the  
727 money deposited in escrow attributable to the interests subject to the petition shall remain in  
728 escrow until the petition case is final and not appealable. If the petition case does not result in a  
729 deed to the surface owner, the escrow account may be closed and paid to the Oil and Gas  
730 Reclamation Fund and additional amounts payable to the unknown and unlocatable owners shall  
731 be paid to the Oil and Gas Reclamation Fund and payment shall relieve the participating working  
732 interest owners, including the applicant, of all liability of the participating working interest owners  
733 with respect to the horizontal well unit and all operations therein and production therefrom to any  
734 unknown and unlocatable interest owners, their heirs, successors and assigns and to any owners  
735 of surface overlying the unknown and unlocatable interest owners' interest, their heirs, successors  
736 and assigns, with respect to the payment.

737 (4) If a special commissioner delivers the deed authorized herein, the grantee shall  
738 deliver a copy of the deed to the applicant and record the deed in the office of the clerk of the

739 county commission of the county in which the property described in the deed is located. Upon  
740 the delivery and recording of the special commissioner's deed, the surface owner grantee in the  
741 special commissioner's deed is entitled to receive all proceeds due and payable under a  
742 horizontal well unit order that are attributable to the oil and gas mineral interests specified in the  
743 special commissioner's deed and that become due after three years from the date the horizontal  
744 well unit order becomes final and not appealable. The balance of the escrow shall be paid to the  
745 Oil and Gas Reclamation Fund established pursuant to section twenty-nine, article six, chapter  
746 twenty-two of this code. Payment to the grantee of the deed and to the Oil and Gas Reclamation  
747 Fund as provided herein shall relieve the participating working interest owners including the  
748 applicant of all liability of the participating working interest owners including the applicant with  
749 respect to the horizontal well unit and all operations therein and production therefrom to any  
750 unknown and unlocatable interest owners, their heirs, successors and assigns and to any owners  
751 of surface overlying the unknown and unlocatable interest owners' interest, their heirs, successors  
752 and assigns, with respect to the payments.

753 (r) Severable provisions. -- If any part of this section is adjudged to be unconstitutional or  
754 invalid, the invalidation shall not affect the validity of the remaining parts of this section; and to  
755 this end, the provisions of this section are hereby declared to be severable. The titles used in this  
756 section are for ease of reference only and should not be considered when construing this section.

757 (s) Conflict resolution. -- After the effective date of this section, all applications requesting  
758 unitization for horizontal wells shall be filed pursuant to this section. Deep well horizontal unit  
759 applications filed before the effective date of this section shall continue to proceed under and be  
760 governed by the provisions of section seven of this article. With respect to horizontal well unit  
761 applications filed after the effective date of this section, if this section conflicts with section seven  
762 of this article, the provisions of this section shall prevail. When considering an application pursuant  
763 to this section, rules regarding deep wells promulgated before the effective date of this section do  
764 not apply. The commission may modify any special field rules, spacing orders, and deep well units

765 in connection with horizontal well unit orders under this section as necessary to protect correlative  
766 rights, prevent waste, or ensure that working interest owners and royalty owners receive their just  
767 and equitable share of production. The commission's existing deep well regulations requiring  
768 notification of offset operators when applying for a deep horizontal well drilling permit, and the  
769 commission's requirement to seek distance limitation exceptions or waivers regarding the location  
770 of deep horizontal wells, are hereafter of no force or effect with respect to horizontal wells.

NOTE: The purpose of this bill is to establish the Horizontal Well Unitization and Landowner Protection Act of 2016. The bill provides for the unitization of interests in drilling units in connection with all horizontal oil or gas wells. The bill creates key landowner protections. The bill sets forth unit application requirements. The bill establishes the standard of review. The bill provides for shallow horizontal well orders. The bill requires notice and timeliness. The bill provides for hearings. The bill adds new definitions. The bill modifies existing definitions. The bill provides a method for the reunification of surface and subsurface estates. The bill provides an alternate mechanism for funding the Oil and Gas Reclamation Fund.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.