

No. 35509
(Consolidated with Nos. 35508,35510,35511)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CABOT OIL AND GAS CORPORATION,

Petitioner below, Appellee,

vs.

RANDY HUFFMAN, CABINET SECRETARY,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
OFFICE OF OIL AND GAS,

Respondent below, Appellant,

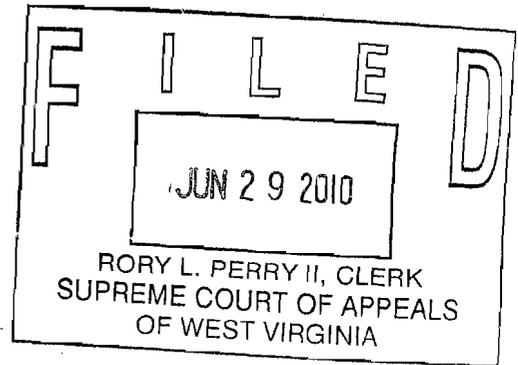
vs.

LAWSON HEIRS, INC., SIERRA CLUB, INC.,
CORDIE HUDKINS, THE WEST VIRGINIA
HIGHLANDS CONSERVANCY, FRIENDS OF
BLACKWATER,

Intervenors below, Appellants,

THE WEST VIRGINIA
DIVISION OF NATURAL RESOURCES,

Intervenor below, Appellant.



REPLY OF APPELLANT WEST VIRGINIA
DIVISION OF NATURAL RESOURCES

I.

INTRODUCTION

Appellant, the West Virginia Division of Natural Resources ("DNR"), submits the following reply in support of its appeal from the Circuit Court of Logan County on June 17, 2009, and October

15, 2009, reversing the denial of a drilling permit by the West Virginia Department of Environmental Protection (“DEP”) to Cabot Oil and Gas Corporation for drilling in Chief Logan State Park.

II.

DISCUSSION

Appellant respectfully reminds the Court that its involvement in this appeal arose after the final orders were entered by the Circuit Court and was undertaken based upon concerns, with which DNR disagrees, that DNR would somehow be estopped from enforcing the clear and unambiguous provisions of W. Va. Code § 20-5-2, which unequivocally precludes the Director of DNR from allowing gas drilling in State parks.

As DNR noted in its initial brief, it recognizes that there are significant issues raised by the facts underlying this action. This is evidenced by the plethora of amicus briefs submitted and by the arguments of the Appellee. The current circumstance simply does not lend itself to a thoughtful thorough resolution of the issues raised. The record is woefully incomplete which doesn't allow for the thoughtful resolution to which the parties in interest are entitled.

DNR respectfully submits that the only issue properly before this Court in this matter is whether or not DEP may properly rely on the provisions of W. Va. Code § 20-5-2(b)(8) in denying a permit. Specifically, whether the provisions of W. Va. Code § 22-6-6 and §22-6-6 authorize DEP to consider another code provision, § 20-5-2, in making its decision. The record below hinged on this issue and, effectively, it alone.

The doctrine of ripeness would seem perfectly applicable in this case. Should this Court venture outside the boundaries of the core issue presented it would be doing so upon an incomplete record. DNR respectfully suggests that this Court limit its decision to DEP's authority to invoke “a

DNR statute” consistent with its “. . . long standing principles of ripeness. . .”, *Zaleski v. WV Mutual Insurance Co.*, 224W. Va. 544, 687 S.E.2d 123 (2009).

III.

CONCLUSION

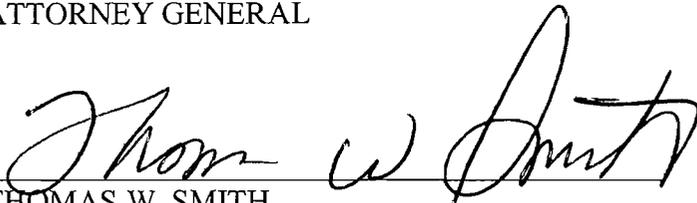
WHEREFORE, based upon the foregoing and DNR’s previously filed brief, Appellant DNR respectfully requests this Court find that the Circuit Court’s orders of June 17, 2009 and October 15, 2009 have no effect upon DNR’s ability to enforce the provisions of W. Va. Code § 20-5-2.

Respectfully submitted,

WEST VIRGINIA DIVISION OF
NATURAL RESOURCES,

By Counsel,

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CERTIFICATE OF SERVICE

I, Thomas W. Smith, Managing Deputy Attorney General, do hereby certify that I served the foregoing "Reply of Appellant West Virginia Division of Natural Resources" upon the parties hereto by depositing true copies thereof in the regular United States mail, postage prepaid, this 29th day of June 2010, addressed as follows:

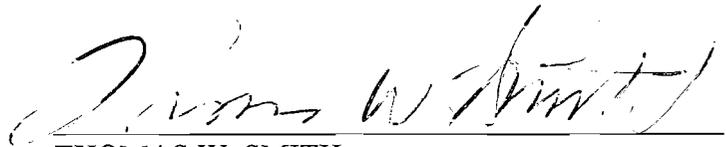
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