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Court gives OK to Chief Logan gas drilling

By Ken Ward Jr.

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CHARLESTON, W.Va. -- The state Supreme Court has upheld a Logan County judge's decision to allow oil and natural gas drilling in Chief Logan State Park, saying that a ban on mineral extraction in West Virginia's parks does not apply.

In an unsigned, unanimous decision, the justices rejected appeals by the state Department of Environmental Protection and state conservation groups opposed to the drilling.

The decision paves the way for Cabot Oil and Gas to drill for the natural gas reserves it leased from the Lawson Heirs, the family company that previously owned the land.

Justices ruled that the ban on mineral extraction in West Virginia's state parks, passed in 1961 and effective July 1 of that year, was enacted too late to apply to Chief Logan. The Lawson Heirs had sold 3,300 acres of property for the park to the Logan Civic Association in November 1960, reserving their rights to the oil and gas beneath the area.

"In the present appeals, the 1960 deed reflects the agreement of the Lawson Heirs and the Logan Civic Association vis-à-vis the oil and gas rights underlying the property conveyed therein," the court said. "As such, the 1960 deed is a contract."

The justices continued, "There is no indication that the Legislature intended either the 1961 version of this statutory language ... or its subsequent recodified version ... to be applied retroactively.

"Absent a direct expression of such intent by the Legislature, we are constrained to apply the law in effect at the time of the deed's execution," the court said.

The case goes back to December 2007, when then-DEP Secretary Stephanie Timmermeyer rejected Cabot's permit requests, citing a section of state park law that prohibits mineral extraction.

Logan Circuit Judge Roger Perry overturned the DEP decision and the Manchin administration appealed. The Sierra Club, the West Virginia Highlands Conservancy and Friends of Blackwater joined the DEP and the state Division of Natural Resources in asking justices to overturn the lower court decision.

In a prepared statement, Cabot and the Lawson Heirs said they "appreciate the decision" by the Supreme Court.

Tom Rodd, a lawyer for some of the citizen groups opposed to the drilling, said his clients were disappointed in the decision and expect to file a petition for rehearing.

"As we see it, just because a 50-year-old deed permitted pollution and destruction of parkland doesn't mean that the Legislature can't prohibit that pollution and destruction today," Rodd said.

"We think the gas company may have a financial claim, but they don't have a right to ignore the law," Rodd said. "This ruling puts much of our state parkland at risk, and West Virginians should be very concerned."

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