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Court to hear Chief Logan drilling appeal

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CHARLESTON, W.Va. -- The state Supreme Court has agreed to hear an appeal of a lower court ruling regarding new natural gas drilling proposed for Chief Logan State Park.

Manchin administration officials and environmental groups filed the appeal, seeking to overturn Logan Circuit Judge Roger Perry's decision last year in favor of Cabot Oil & Gas.

Justices voted 5-0 to hear the case. No date was immediately set for oral arguments, but the case would likely not be heard until the fall.

"My clients are very happy that they will have an opportunity to present their case to our court," said Tom Rodd, attorney for the West Virginia Highlands Conservancy, the Friends of Blackwater and former parks chief Cordie Hudkins. "And I think Chief Logan is smiling down on us today for helping to protect his namesake state park."

Rodd's clients, as well as the Sierra Club, joined the case after Perry had already ruled to overturn the state Department of Environmental Protection's decision to deny Cabot a permit for nearly three dozen new wells to extract gas from under the 3,600-acre park in Logan County.

Cabot holds lease agreements for the gas, which is owned by the heirs of Anthony Lawson, one of the first English settlers of what is now Logan County.

DEP lawyers have also appealed, as has the state Division of Natural Resources, which runs the state park system.

Cabot has vowed to either drill the site or sue the state in a "takings" case to try to be compensated for millions of dollars in lost profits.

In December 2007, then-DEP Secretary Stephanie Timmermeyer rejected Cabot's permit application, citing a state law that prohibits the DNR from allowing "extraction of minerals ... on

or under any state park."

Cabot appealed, and Perry ruled for the company. Among other things, the judge said the DEP has no authority to enforce a section of state law prohibiting the DNR from allowing gas drilling in parks.

But Ray Franks, the DEP's general counsel, said in his Supreme Court petition that Perry was wrong to conclude that "the plain language of the DNR statute can be interpreted in any manner other than an utter and universal proscription of the exploitation of minerals for commercial purposes in any state park.

"If DNR is prohibited by law from allowing the exploitation of natural resources underlying a state park because the Legislature has made a judgment that this sort of development cannot be squared with the need to protect the park's unique surface aesthetic, that is precisely the sort of environmental policy that DEP is required to acknowledge and to which it must conform its own conduct," Franks wrote.

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