

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA  
Wheeling**

**CHARLES WENDT**, an individual,

Plaintiff,

v.

**Civil Action No. 5:23-cv-196**  
Judge Bailey

**WEST VIRGINIA LAND RESOURCES, INC. and  
MARSHALL COUNTY COAL RESOURCES, INC.**

Defendants.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
REGARDING COUNTERCLAIM PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

**INTRODUCTION**

1. Pending before this Court is the May 30, 2023 Motion for Preliminary Injunction [Doc. 7] of Marshall County Coal Resources, Inc. ("MCCR") and West Virginia Land Resources, Inc. ("WVLR") against Charles W. Wendt ("Wendt").

2. WVLR and MCCR seek injunctive relief prohibiting Wendt from interfering with the plugging of an oil and gas well pursuant to the West Virginia Abandoned Well Act.

3. By Order dated June 5, 2023 [Doc. 12], this Court scheduled an evidentiary hearing on the Motion for Preliminary Injunction for 11:00 a.m. on June 12, 2023.

4. On June 12, 2023, this Court held an evidentiary hearing on the Motion for Preliminary Injunction.

5. MCCR and WVLR, via the testimony of Mr. John “Jay” Hores and Mr. Paul McGee and the admission of documents and other materials in support, placed evidence on the record in support of the Motion for Preliminary Injunction.

6. Wendt introduced no testimony or documents into the record at the evidentiary hearing.

## **FACTUAL BACKGROUND**

### The Parties

7. MCCR is a Delaware Corporation with an address at 46226 National Road St. Clairsville, Ohio 43950.

8. MCCR operates an underground coal mining facility known as the Marshall County Coal Mine (formerly known as the McElroy Coal Mine) in Marshall County, West Virginia, which was previously operated by Consolidation Coal Company.

9. WVLR is a Delaware Corporation with an address at 46226 National Road St. Clairsville, Ohio 43950.

10. WVLR provides land-related services for its affiliate, MCCR.

11. MCCR and WVLR are affiliates of American Consolidated Natural Resources, Inc. (“ACNR”).

12. Wendt is an individual residing at 3582 Waynesburg Pike Road, Moundsville, West Virginia 26041.

### The Surface Property and Underlying Coal

13. Wendt is the surface owner of a parcel of real property in Liberty District, Marshall County, West Virginia, known as Tax Parcel No. 7-4-4 (“Surface Property”). A map of the Surface Property was admitted into evidence at the hearing as Exhibit 1.

14. The Pittsburgh or River Vein seam of coal, and the rights associated with mining the same, underlying certain properties, including the subject Surface Property, were previously sold and severed from the surface.

15. All of the Pittsburgh coal and mining rights underlying the subject Surface Property were severed and conveyed by way of a deed dated January 25, 1906, and recorded in Marshall County at Deed Book 116, Pg. 85 (hereinafter "Severance Deed"). A copy of the Severance Deed was admitted into evidence at the hearing as Exhibit 3.

16. The Severance Deed granted all of the Pittsburgh or River vein of coal underlying the subject Surface Property along with:

. . . the free and uninterrupted right of way into, upon and under said land, at such points and in such manner as may be proper and necessary for the purpose of digging, mining, coking, draining, ventilating and carrying away said coal, hereby waiving any damages arising therefrom, or thereon, or from the removal of all the said coal, together with the privilege of mining and removing through said described premises, other coal belonging to said party of the second part, his heirs or assigns, or which may hereafter be acquired.

Ex. 3.

17. MCCR owns the coal and mining rights underlying the Surface Property, as Consolidation Coal Company conveyed its coal and mining rights underlying certain properties, including the Surface Property, to MCCR by deed dated effective September 16, 2020, and recorded in Marshall County at Deed Book 1095, pg. 393. A copy of the deed into MCCR was admitted into evidence at the hearing as Exhibit 4.

18. MCCR operates the Marshall County Coal Mine pursuant to a coal mining permit issued by the West Virginia Department of Environmental Protection (the "Permit"). A copy of the Permit was admitted into evidence at the hearing as Exhibit 21.

19. Pursuant to said Permit, MCCR is currently removing coal and plans to continue mining coal, via the longwall mining method, in an area of the mine which includes the coal underlying the subject Surface Property.

20. MCCR's undermining of the subject Surface Property is scheduled for April 2024. Mining maps depicting the planned mining were admitted into evidence at the hearing as Exhibits 10, 22 and 23.

Wendt No. 2904 Oil and Gas Well

21. An oil and gas well, assigned API No. 47-51-00752 and known as "Wendt #2904," is situated on the subject Surface Property. A map obtained from the West Virginia Department of Environmental Protection ("WV DEP") depicting the location and other information relating to Wendt #2904 was admitted into evidence at the hearing as Exhibit 2.

22. On July 9, 1993, the WV DEP Section of Oil and Gas issued a Well Register Assignment to Cameron Gas Company to operate Wendt #2904 subject to Chapters 22 and 22B of the West Virginia Code. C.E. Coleman was identified as the registered agent for the operator. A copy of the 1993 Well Register was admitted into evidence at the hearing as Exhibit 6.

23. Cameron Gas Company/C.E. Coleman ceased reporting production from Wendt #2904 in 1996. Copies of production data as to Wendt #2904 from the WV DEP

and from the West Virginia Geological & Economic Survey were introduced into evidence at the hearing as Exhibits 2 and 7.

24. On January 17, 2002, WV DEP issued a Notice of Violation to C.E. Coleman as to Wendt #2904 for the failure to have a proper bond on the same. He was ordered to abate the same by securing a bond or transferring the well to a proper bond. A copy of the Notice of Violation was admitted into evidence at the hearing as Exhibit 8.

25. On February 4, 2002, the WV DEP issued to C.E. Coleman, the designated agent of Cameron Gas Company, an Order to Cease Operations for Failure to Abate Violation as to Wendt #2904. A copy of the Order was admitted into evidence at the hearing as Exhibit 9.

26. Cameron Gas Company no longer operates oil and gas wells.

John "Jay" Hores Testimony

27. Mr. Hores is employed by ACNR as a Project Engineer for ACNR, providing services for the Marshall County Coal Mine and the Ohio County Coal Mine.

28. The Marshall County Coal Mine removes coal via the longwall method, and pursuant to state and federal law, coal operators are prohibited from mining through areas through which oil and gas wells penetrate the coal seam unless said wells are plugged in accordance with state and federal standards.

29. As Project Engineer, Mr. Hores is responsible for identifying, locating, and plugging gas wells which appear in the mine plan, including the permitting and planning attendant to the gas well plugging process.

30. In that capacity, Mr. Hores is familiar with West Virginia law, including rules enforced by the West Virginia DEP, as to the operation and the plugging of oil and gas wells, as well as the permitting requirements as to the same.

31. Mr. Hores testified that all operating oil and gas wells in West Virginia must be bonded and must have a registered Operator and Designated Agent with the WV DEP. Further, in order to avoid being deemed abandoned by WV DEP, all wells must have production reported to the WV DEP. W.Va. Code of State Rules, §35-4-10, et seq.

32. Mr. Hores identified the WV DEP forms and permits necessary for the operation of all oil and gas wells in West Virginia, including OP-1 (Operator Registration and Designation of Agent); WR-39 (Report of Monthly Production); WR-99 (Annual Well Inspection Certification); BF-1 (Bona Fide Future Use); and OP-77 and OP-77A (Well Transfer Application). These forms were admitted into evidence at the hearing as Exhibit 5.

33. As to WV DEP Form OP-77A, Mr. Hores testified that this form is required for the transfer of a well when the well has been deemed abandoned and the operator is either unknown or no longer in business. W.Va. Code of State Rules, §§ 35-4-10.5, et seq. and 35-6-3.1, et seq.

34. Mr. Hores testified that whenever an oil and gas well transfer application is submitted, the WV DEP publishes notice of the same in a circular via its website. A screenshot of the WV DEP identifying the well transfer circular was admitted into evidence at the hearing as part of Exhibit 5.

35. According to Mr. Hores, the plugging of oil and gas wells in advance of undermining includes several regulatory steps: Well Transfer (20–30 days); Plugging

Permit Application/Approval (60–90 days); Notice of Intent to Plug to Surface Owner (20 days); Plugging Operations (30–180 days); Plugging Affidavit (20–30 days); Mine-Through Application to and Approval from West Virginia Office of Miner Health Safety & Training (30–90 days); Mine-Through Application to and Approval from federal Mine Safety and Health Administration (30–90 days). A timeline depicting the well-plugging process was admitted into evidence at the hearing as Exhibit 11.

36. Mr. Hores testified that in view of the timing limitations of the well-plugging regulatory process, because undermining of Wendt #2904 is scheduled for April 2024, well-plugging operations must commence immediately.

Transfer of Wendt #2904 to WVLR and Plugging Permit

37. Mr. Hores is familiar with the Wendt property and Wendt #2904 and has personally viewed the property at issue.

38. As of January 2020, according to information on file with WV DEP, Wendt #2904 had been deemed abandoned by WV DEP, no production had been reported since 1996, and the last known operator was Cameron Gas Company, which had been ordered by WV DEP to cease operating Wendt #2904 in February 2002.

39. On January 10, 2020, pursuant to W.Va. Code § 22-10-7(a), Consolidation Coal Company (“CCC”) applied for the transfer of Wendt #2904 to its bond. Mr. Hores completed this application, using WV DEP Form OP-77A, as Wendt #2904 had already been deemed abandoned and Cameron Gas Company was no longer in business.

40. WV DEP processed the application, and on February 4, 2020, it transferred Wendt #2904 to CCC’s bond with the state (“the wells on the enclosed document met the transfer criteria and were transferred to your bond”), rendering responsible for compliance

with Chapter 22 of the West Virginia Code and all the rules and regulations promulgated thereunder. A copy of CCC's application and the February 4, 2020 Notice of Final Action to Transferee was admitted into evidence at the hearing as Exhibit 12.

41. WV DEP published notice of this well transfer in its circular and there were no comments or objections filed as to the same.

42. Because of a company re-organization, Wendt #2904 needed to be transferred to WVLR.

43. On October 12, 2022, following application by WVLR on WV DEP Form OP-77, Wendt #2904 was transferred to WVLR's bond with the state, rendering WVLR responsible for compliance with Chapter 22 of the West Virginia Code and all the rules and regulations promulgated thereunder. A copy of WVLR's application and the October 12, 2022 Notice of Final Action to Transferee was admitted into evidence at the hearing as Exhibit 13.

44. WV DEP published notice of this well transfer in its circular and there were no comments or objections filed as to the same. See Ex. 13.

45. In January 2023, WVLR, as the statutory Operator of Wendt #2904, applied with the WV DEP for a Permit to Plug and Abandon. Mr. Hores assisted in this application. Hores Testimony, pp. 31–32. A copy of the Permit Application was admitted into evidence at the hearing as Exhibit 14.

46. Wendt was provided notice, via certified mail, of the Permit Application as to Wendt #2904. Copies of the Certified Mailing Receipts were admitted into evidence at the hearing as Exhibit 15.



47. No objections to the Permit Application as to Wendt #2904 were made to WV DEP by Wendt or any other party.

48. On February 6, 2023, WV DEP issued a Well Work Plugging Permit ("Plugging Permit") to WVLR as to Wendt #2904. A copy of the Plugging Permit was admitted into evidence at the hearing as Exhibit 16.

49. By certified mailing dated April 12, 2023, WVLR provided Wendt notice of WVLR's intent to commence work on the Surface Property to plug and abandon Wendt #2904, pursuant to its Plugging Permit, in the second quarter of 2023 or after 20 days of Wendt's receipt of the notice. A copy of the April 14, 2023 Notice, which included copies of the Special Notice of Plugging of an Abandoned Oil or Gas Well by an Interested Party, WVLR's Permit Application to WV DEP, and the Permit Approval from the WV DEP, was admitted into evidence at the hearing as Exhibit 17.

50. Representatives of WVLR and MCCR attempted to move equipment onto the Surface Property to commence plugging of Wendt #2904 on May 25, 2023, but were denied access by Wendt and left the premises.

51. Because there is no available data as to the make up of Wendt #2904, WVLR does not know how long the physical plugging operations will take.

52. The anticipated plugging of Wendt #2904 will involve a footprint of less than one (1) acre and will not interfere with any surface activities such as farming or livestock. An exemplar photograph of a plugged oil and gas well was admitted into evidence at the hearing as Exhibit 20.

53. Mr. Hores testified that he recently observed the Surface Property, and that a service line to the residence has been constructed and metered to an existing public gas

service pipeline. Photographs of the new gas service line and meter were admitted into evidence as Exhibit 19.

Testimony of Paul McGee

54. Mr. McGee is the Assistant Engineering Manager for ACNR with responsibility over the Marshall County Coal Mine and the Ohio County Coal Mine. He will become Engineering Manager in July 2023.

55. Mr. McGee is part of the group responsible for the mine design and planning process. This includes planning for underground and surface activities such as ventilation shafts and fans, power distribution, water distribution, refuse impoundments, degasification, and well searching and plugging.

56. The mine plan for the Marshall County Coal Company was developed at least ten (10) years ago in anticipation of mining today.

57. Mr. McGee identified and described the September 9, 2013, Significant Revision Approval as to the Marshall County Coal Mine issued by WV DEP. Hearing Exhibit 21.

58. The 2013 permit impacts areas that the Marshall County Coal Mine is mining today and anticipates mining into the future, including specifically the Wendt property.

59. Mine permitting is completed so far in advance because significant planning, budgeting and operational support remains to be completed before longwall mining may commence—it is a slow-moving process.

60. Hearing Exhibit 22 is a map showing planned longwall mining, specifically, the position of the south longwall, the location of Wendt #2904, and the planned locations of specific locations and the timing of those activities.

61. The longwall is comprised of three (3) components: a shearer, which is the coal-cutting machine; the armored face conveyor, which takes the cut coal and conveys it off the longwall face and onto the belt; and shields, which are mobile roof supports that protect the shearer, the face conveyor and the miners on the longwall face.

62. Longwall mining requires two (2) continuous miner machines to always be mining, to always stay in advance of the longwall unit to make sure the next longwall panel is fully developed and carved out so the longwall will have a place to go once it completes the panel that it is currently mining.

63. The main reason to plug a gas well in advance of mining is safety—the law will not allow longwall mining unless the well has been properly plugged.

64. If WVLR and MCCR are not permitted to plug Wendt #2904, the long-established mine plan will be disrupted, requiring a major redesign to potentially accommodate the existence of the well by mining around it. Because everything to the north and south of the area will have been mined, it would require significant “atypical” or “abnormal” mining.

65. Hearing Exhibit 23 depicts the potential mine plan in the event Wendt #2904 is not plugged. The longwall panel would have to be stopped, two (2) additional entries to the left of the well would be required, and one (1) of the continuous miner units and its manpower would be idled. This involves extensive construction activities just to prepare for mining two (2) additional entries.

66. The atypical or abnormal work which would result from Wendt #2904 not being plugged “poses a big risk for the miners involved, for their health and safety,” based

on the unique ventilation, roof control, and dust control activities required, as well as the added danger of setting up on a section that is already active.

67. In addition, in the event MCCR cannot mine the Wendt property as previously scheduled, with the deviation from planned mining the longwall will have already completed the first panel, moved to the second panel, and started mining—meaning that production on that longwall panel will have to stop to facilitate the additional and atypical construction and mining activities.

68. The disruption and change in plans will delay longwall production by two (2) months as to the planned south longwall—from August 2024 to October 2024—causing a shutdown for that time period plus an additional twenty-one (21) days to recover the longwall off the face. The longwall crew—at least thirty (30) miners—would be idled and laid off during that time period.

69. Finally, if Wendt #2904 is not plugged, thirty-one (31) acres of coal will be sterilized and could never be mined.

## **CONCLUSIONS OF LAW**

### Jurisdiction and Venue

70. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) as it is between citizens of different states and the amount in controversy exceeds \$75,000.00.

71. The events giving rise to this action have occurred within the venue of this Court, and the real property that is the subject of this action is located in Marshall County, West Virginia. Thus, venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

72. As this is an action based on diversity, the law of the forum state, West Virginia, applies. **Providence Square Associates, LLC v. GDF Inc.**, 211 F.3d 846, 850 (4th Cir. 2000).

#### Preliminary Injunction Standards

73. “A preliminary injunction is proper when the plaintiff can ‘[1] establish that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.’ **Winter [v. Nat. Res. Def. Council, Inc.]**, 555 U.S. 7], 20 [(2008)]. ‘[A]ll four requirements must be satisfied,’ **Real Truth About Obama, Inc. [v. Fed. Election Comm.]**, 575 F.3d 342], 346 [(4th Cir. 2009), *cert. granted, judgment vacated*, 559 U.S. 1089 (2010), *and adhered to in part sub nom. The Real Truth About Obama, Inc. v. F.E.C.*, 607 F.3d 355 (4th Cir. 2010)], and ‘[a] preliminary injunction shall be granted only if the moving party clearly establishes entitlement.’ **Di Biase v. SPX Corp.**, 872 F.3d 224, 230 (4th Cir. 2017).” **Columbia Gas Transmission, LLC v. 84.53 Acres of Land, More or Less, In Calhoun, Marshall, Ritchie, Tyler, & Wetzel Ctys., W. Virginia**, 310 F.Supp.3d 685, 692 (N.D. W.Va. 2018) (Keeley, J.).

74. This Court is “mindful that ‘[a] preliminary injunction is an extraordinary remedy never awarded as of right.’ **Winter**, 555 U.S. at 24. Moreover, ‘[m]andatory preliminary injunctions do not preserve the status quo and normally should be granted only in those circumstances when the exigencies of the situation demand such relief.’ [**East Tenn. Natural Gas Co. v. Sage**, 361 F.3d [808], 828 [(4th Cir. 2004)] (quoting **Wetzel v. Edwards**, 635 F.2d 283, 286 (4th Cir. 1980))]. Having given heightened scrutiny to [the

coal companies’] request for a mandatory preliminary injunction in light of the factors outlined in *Winter*, the Court concludes that the exigencies warrant such relief.” **Columbia Gas Transmission, LLC v. 84.53 Acres of Land**, 310 F.Supp.3d at 692.

75. The West Virginia Supreme Court of Appeals adopted a balancing of hardship test when considering injunctive relief in **Jefferson Cnty. Bd. Of Educ. v. Jefferson Cnty. Educ. Assoc.**, 183 W.Va. 15, 393 S.E.2d. 653 (1990). “The test requires consideration, in ‘flexible interplay,’ of four factors, including: (1) the likelihood of irreparable harm to the plaintiff without the injunction, (2) the likelihood of harm to the defendant with an injunction, (3) the plaintiff’s likelihood of success on the merits, and (4) the public interest.” **Webb v. North Hills Grp., Inc.**, 2017 WL 2493768, at \*8 (W.Va. June 9, 2017); see also **State by & Through McGraw v. Imperial Mktg.**, 196 W.Va. 346, 352, 472 S.E.2d 792, 798 n. 8 (1996).

76. West Virginia law is clear that the “one who owns the subsurface rights to a parcel of property has the right to use the surface of the land in such a manner and with such means as would be fairly necessary for the enjoyment of the subsurface estate.” **Whiteman v. Chesapeake Appalachia**, 873 F.Supp.2d 767, 772 (N.D. W.Va. 2012) (Stamp, J.) (citing **Squires v. Lafferty**, 95 W.Va. 307, 121 S.E. 90, 91 (1924)); see also, **Buffalo Mining Co. v. Martin**, 165 W.Va. 10, 267 S.E.2d 721 (1980).

#### Applicable West Virginia Statutes and Rules

77. The West Virginia Legislature has declared that it is the public policy of this state to “[e]nsure the safe recovery of coal and gas” and to “[f]oster, encourage and

promote the fullest practical exploration, development, production, recovery and utilization of this state's coal and gas . . . ." W.Va. Code § 22C-8-1.

78. In West Virginia, "[a]ll persons owning or operating or proposing to own or operate any well in West Virginia shall register with the Chief. In all cases, an agent or attorney in fact shall be designated on Form OP-1, 'Designation of Agent by Well Owner or Operator' by and for each well or operator upon whom process, notices, orders, and other communications issued pursuant to W. Va. Code § 22 may also be served." W.Va. Code of State Rules, §35-4-10.3.a (emphasis added).

79. "When title to a well or the right to operate a well is transferred from one (1) well operator to another, the Chief shall be notified in writing within five (5) days by the transferor well operator or, if he no longer exists, by one or more of the owners of the well, the name and address of the transferee well operator. A copy of such notification shall be delivered to the transferee well operator. Failure to notify the Chief of such transfer shall be a violation of this rule by said transferor and shall be punishable under W. Va. Code § 22-6-34,[ ] and in addition, all bonds of such transferor under W. Va. Code §22-6 shall be forfeited." W.Va. Code of State Rules, § 35-4-10.3.a.1.

80. All oil and gas wells in West Virginia must be subject to a bond of at least \$5,000.00 and all unplugged wells must be inspected annually by the operator. W.Va. Code of State Rules, §§ 35-4-10.1.c. and 11.6.

81. "An annual report of oil and gas production for each well shall be filed with the Chief on or before the succeeding March 31. This report shall be on Form WR-39, 'Report of Annual Production,' or in such form as the Chief may approve. The report must identify and state the production from every oil and gas well not yet plugged and

abandoned, regardless of the status of the well. The data shall be submitted by the well operator. Oil shall be reported in barrels, and gas shall be reported in thousand cubic feet.” W.Va. Code of State Rules, §35-4-15.1.a.

82. If production is not reported or proof of an existing use or bona fide future use (both as defined in the Code of State Rules), the well will be deemed abandoned. W.Va. Code of State Rules, § 35-4-15.1.d.

83. In enacting the Abandoned Well Act (W.Va. Code § 22-10-1, et seq.), the West Virginia Legislature found that, inter alia,

“[m]any wells may exist in West Virginia which are abandoned and either not plugged or not properly plugged in a manner . . . to allow coal operators to mine through such wells safely . . . and generally to protect the environment and mineral resources of this state . . .”;

“[r]equirements for financial responsibility to assure plugging of abandoned wells have not been required in this state for older wells, and adequate financial responsibility should be established with respect to all wells”; and

“[t]he plugging of many abandoned wells may be accomplished through the establishment of rights and procedures allowing interested persons to apply for a permit to plug an abandoned well.”

W.Va. Code § 22-10-2(a)(3), (4) and (7).

84. The Legislature further declared that “it is in the public interest and it is the public policy of this state, to foster, encourage and promote the proper plugging of all wells at the time of their abandonment to protect the environment and mineral resources of this State.” W.Va. Code § 22-10-2(b).



85. The Abandoned Well Act thus makes it “lawful for any interested person, the operator, or the director to enter upon the premises where any abandoned well is situated and properly plug or replug such abandoned well . . . .” W.Va. Code § 22-10-7(a).

86. The Abandoned Well Act defines “interested party” as “any owner, operator or lessee of the surface, oil, gas, water, coal or other mineral resource under, on, adjacent or in close proximity to any lands upon which an abandoned well exists, and whose lands, rights or interests are or might be affected by such abandoned well.” W.Va. Code § 22-10-3(c).

87. An “abandoned well” is “any well which is required to be plugged under the provisions of section nineteen [§ 22-6-19], article six of this chapter and rules promulgated pursuant thereto.” W.Va. Code § 22-10-3(a).

88. Pursuant to W.Va. Code § 22-6-19, “[a]ny well which is completed as a dry hole or which is **not in use for a period of twelve consecutive months shall be presumed to have been abandoned and shall promptly be plugged by the operator** in accordance with the provisions of this article, unless the operator furnishes satisfactory proof to the director that there is a bona fide future use for such well.” (emphasis added). In this regard, **“‘Use’ for the purpose of W. Va. Code § 22-6-19 shall have the same meaning as ‘Active Status’ is defined in 35 CSR 5, which is ‘any well producing oil or gas in commercial quantities, or being operated pursuant to underground injection control permits, or being operated in conjunction with the underground storage of hydrocarbons.’”** W.Va. Code of State Rules § 35-4-2.23 (emphasis added).

MCCR and WVLR are Likely to Succeed on the Merits

89. WVLR and MCCR are likely to succeed on the merits.

90. WVLR and MCCR followed all the steps required under West Virginia law to obtain authority to plug Wendt #2904.

91. As of January 2020, the WV DEP had deemed Wendt #2904 abandoned. No production from the well had been reported since 1996, no valid operator was registered with WV DEP, there was no bond on the well, and the well had been subject to an order from the WV DEP to cease operations since February 2002.

93. The applications for transfer of Wendt #2904 in January 2020 and September 2022 pursuant to West Virginia Code of State Rules § 35-4-10.5 were published by WV DEP in its well transfer circular, and because Wendt #2904 met the criteria for transfer and because no objections were made, Wendt #2904 was properly transferred to the bond of WVLR.

95. Wendt received actual notice of WVLR's January 2023 application for a permit to plug Wendt #2904 and made no objections to WV DEP.

96. In his opposition brief [Doc. 14] and affidavit in support [Doc. 147], Wendt contends that he holds title to Wendt #2904, he owns the "right to operate the Well," and because the West Virginia statutes and regulations cannot grant WVLR and MCCR "title" to the well, WVLR and MCCR are not likely to succeed on the merits.

97. In opposing the request for an injunction, Mr. Wendt argues that the request must be denied because the coal interests are subservient to his rights in the well. This argument overlooks the fact that the 1894 lease agreement upon which Mr. Wendt relies is no longer in effect. The lessee under that agreement did not have an operator, did not

cause annual inspections and took no gas from the property for many years. Furthermore, the DEP ordered the lessee to cease operations under the lease.

98. Mr. Wendt, as the mineral owner, still has the right to drill a new well through the coal seam, assuming that he has DEP authorization and complies with all DEP requirements.

99. WVLR and MCCR do not claim “superior title” to the well or the oil and gas rights. Instead, they claim the right to plug the well, as an interested party designated as the operator of a well long ago deemed abandoned by WV DEP, and have followed all statutory and regulatory steps in support.

100. Mr. Wendt also argues that the coal companies should not be granted an injunction because they obtained their coal rights through a quitclaim deed. To the extent this argument makes sense, it is incorrect for the reasons stated above.

101. Mr. Wendt also argues that the coal companies have no interest in the well other than regulatory permission. This argument overlooks the fact that the public policy of West Virginia encourages interested parties to come forward and plug abandoned wells which may pose a danger to persons or the environment. The cases cited are inapposite—the defendants do not want to operate the well and take gas—they wish to plug the well in accordance with state law.

102. Moreover, contrary to Mr. Wendt’s argument that W.Va. Code § 22-6-8 controls and “specifically recognizes that its regulatory mechanisms cannot abridge private contracts, lease, or any rights to free gas” [Doc. 14, p. 15], the cited provision governs wells affected by flat royalty leases, and more specifically, “permits required for the drilling, redrilling, deepening, fracturing, stimulating, pressuring, converting, combining, or

physically changing to allow the migration of fluid from one formation to another,” and has no application to the instant matter, which involves a permit to plug an abandoned well.

103. Thus, WVLR and MCCR are likely to succeed on the merits.

The Companies Sustain Irreparable Harm in the Absence of Preliminary Relief

104. The coal companies must next establish that they will be irreparably harmed in the absence of an injunction. *Winter*, 555 U.S. at 20. The harm must be likely rather than merely possible. *Handsome Brook Farm, LLC v. Humane Farm Animal Care, Inc.*, 700 F.App'x. 251, 263 (4th Cir. 2017) (citing *Winter*, 555 U.S. at 22). After carefully reviewing the record, the Court concludes that the coal companies will suffer irreparable harm in the absence of an injunction. *Columbia Gas Transmission, LLC v. 84.53 Acres of Land*, 310 F.Supp.3d at 692.

105. WVLR and MCCR have no adequate remedy available at law in the absence of the issuance of an injunction requiring Wendt to allow immediate entry and operations for the plugging of Wendt #2904.

106. Without preliminary injunctive relief, as explained by Mssrs. Hores and McGee, WVLR will be denied its rights as the statutory operator and holder of the Plugging Permit and MCCR will not be able to conduct mining operations as planned, resulting in danger to its miners and incalculable damages for the delay and changes to its mining operations.

107. An “[i]njunction lies for one owning minerals in land to prevent the surface owner from unlawfully resisting and obstructing the legitimate use of the surface by the mineral owner in the development of the minerals.” *Squires, supra*.

108. Regarding the “adequacy of potential remedies, it is well-settled that unauthorized interference with a real property interest constitutes irreparable harm as a matter of law, given that a piece of property is considered to be a unique commodity for which a monetary remedy for injury is an inherently inadequate substitute.” ***SWN Prod. Co., LLC v. Edge***, 2015 WL 5786739, at \*5 (N.D. W.Va. Sept. 30, 2015) (Stamp, J.) (citations omitted).

109. Further, safety is a factor supporting irreparable harm. ***Dominion Energy Transmission, Inc. v. 0.11 Acres of Land***, 2019 WL 4781872, at \*6 (N.D. W.Va. Sept. 30, 2019) (Keeley, J.).

110. The threshold question regarding irreparable harm is whether the coal companies’ anticipated economic losses are sufficient to warrant a preliminary injunction. Typically, “[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of [an injunction] are not enough.” ***Di Biase***, 872 F.3d at 230 (quoting ***Sampson v. Murray***, 415 U.S. 61, 90 (1974)). However, this maxim is tied to “[t]he possibility that adequate compensatory or other corrective relief will be available at a later date.” ***Id.*** In other words, “[w]hile it is beyond dispute that economic losses generally do not constitute irreparable harm, this general rule rests on the assumption that economic losses are recoverable.” ***N.C. Growers’ Ass’n, Inc. v. Solis***, 644 F.Supp.2d 664, 671 (M.D. N.C. 2009) (Osteen, Jr., J.). ***Columbia Gas Transmission, LLC v. 84.53 Acres of Land***, 310 F.Supp.2d at 692.

111. A plaintiff may “overcome the presumption” against a preliminary injunction regarding wholly economic harm, ***Di Biase***, 872 F.3d at 230 (citing ***Hughes Network***

**Syss., Inc. v. InterDigital Commc'ns Corp.**, 17 F.3d 691, 694 (4th Cir. 1994)), in the “extraordinary circumstances ... when monetary damages are unavailable or unquantifiable.” **Handsome Brook**, 700 F.App'x. at 263 (citing **Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.**, 22 F.3d 546, 551–52 (4th Cir. 1994)). No one can seriously dispute that, if the coal companies suffer financial losses as the result of their inability to proceed to plug the abandoned gas well as authorized, they will not be able to recover those losses in this or any other litigation. This weighs in favor of finding irreparable harm. See **In re Transcon. Gas Pipeline Co., LLC**, 2016 WL 8861714, at \*8 (N.D. Ga. Nov. 10, 2016).

112. In **Columbia Gas Transmission, LLC v. 1.01 Acres, More or Less**, 768 F.3d 300, 316 (3d Cir. 2014), the Third Circuit held that financial harm, along with “safety and potential liability concerns,” constituted irreparable harm.

Wendt Will Not Suffer From Balancing the Equities of the Parties Favors WVLR and MCCR

113. In this case, WVLR is asserting a right (and obligation) expressly granted to it by WV DEP, and MCCR is asserting a right to enter upon the property to conduct operations necessary and proper for the mining of the coal as expressly granted in the Severance Deed.

114. The proposed well-plugging operations will not interfere with any use of the subject Surface Property, and to the extent Wendt used Wendt #2904 for “house gas” (which was never reported to WV DEP), Wendt will suffer no harm, as WVLR and MCCR have presented evidence that the residence on the property is already connected to a public gas service line.

115. Furthermore, any loss of gas service may, if appropriate, be remedied by a damage award. In that regard, Wendt has an adequate remedy available in the form of property damages in excess of those reasonably necessary for the well-plugging operations, whereas WVLR and MCCR have no similar remedy to prevent Wendt from denying access to conduct these necessary and proper operations.

116. Assuming Wendt owns the well and “the right to operate” the well, he has done nothing to comply with West Virginia law, including registering as the operator or advising the WV DEP the operator had changed, obtaining a bond on the well, reporting production, inspecting the well, objecting to the well transfer, or objecting to the plugging permit application. Further, assuming the well has been operated continuously over the years, such operations have been illegal since February 4, 2002.

117. Accordingly, Wendt will not suffer harm and the balancing of the equities of the parties favors allowing WVLR/MCCR the right of entry and operations set forth herein.

Granting Relief is in the Public Interest

118. As set forth above, West Virginia has declared that safe coal production is in the public interest and the plugging of abandoned wells is in the public interest. It also mandates that all oil and gas wells must have a registered operator, must be bonded, and must have reported production.

119. Wendt #2904 is an abandoned well, and WV DEP ordered production ceased over 20 years ago, transferred the well to WVLR’s bond, and issued WVLR a permit to plug the well.

120. It is therefore in the public interest for WVLR to be allowed entry to conduct its well-plugging operations as allowed pursuant to West Virginia law and its Plugging Permit.

121. The Court finds that a bond of \$50,000.00 will be sufficient to protect the interests of Wendt pursuant to Fed. R. Civ. P. 65(c).

113. It is hereby **ORDERED** that:

The Court finds that the Counterclaim Plaintiffs, West Virginia Land Resources, Inc. and Marshall County Coal Resources, Inc. have the right to immediately plug the abandoned oil and gas well known as Wendt #2904 and situated on the surface property of Counterclaim Defendant Charles W. Wendt. The Counterclaim Defendant, along with his representatives/agents, and attorneys, and assigns, are enjoined and restrained, until further Order of this Court, from denying WVLR and MCCR access to the surface property identified as Marshall County Tax Parcel Nos. 7-4-4, or by any other means interfering with WVLR's/MCCR's rights to conduct well-plugging operations with regard to Wendt #2904.

Pursuant to Fed. R. Civ. P. 65(c), the Court **FINDS** that the amount of **\$50,000.00** is proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained, and accordingly, WVLR and/or MCCR is **ORDERED** to post with the Court a security bond in the that amount. The relief provided by this Order shall not commence until the appropriate bond has been posted.

Therefore, Counterclaim Plaintiff's Motion for Preliminary Injunction [**Doc. 7**] is **GRANTED**. Plaintiff's Motion to Dismiss Defendants' Counterclaims, or in the Alternative, Partial Motion to Dismiss [**Doc. 22**] is **DENIED** for the reasons stated above.



It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

**DATED:** June 22, 2023.

A handwritten signature in black ink, appearing to read "John Preston Bailey", written over a horizontal line.

**JOHN PRESTON BAILEY**  
**UNITED STATES DISTRICT JUDGE**