

FORUM QUESTIONS  
LEAGUE OF WOMEN VOTERS OF ARKANSAS  
AND  
SIERRA CLUB

**1. What types of taxes are drilling operations required to pay to state, county and local governments (for permits, well-head, equipment, corporate income, depletion, payroll, etc.)?**

The state taxes that drilling operations are required to pay are severance tax, payroll taxes, and corporate income taxes. If they own the trucks used to haul their equipment, they must pay a state motor fuel tax. Arkansas-based companies also must pay corporate franchise taxes.

Drilling operators must pay county property taxes on their equipment and the land they own. They also must pay property taxes on the mineral rights if they own them.

Drilling operators pay sales tax on anything they purchase and a local franchise fee on the utilities they use. Arkansas offers a sales tax exemption on utilities used in manufacturing, but drilling operators pay full sales tax on the electricity and natural gas they use when pumping natural gas.

Drilling operators also may pay other state and local fees, such as permitting fees.

**2. Are current taxes being paid by all drilling operations adequate for maintenance and upkeep of current roads or new roads related to drilling; for damage to bridges and other infrastructure; for paying salaries & payroll taxes for new-hires to research court records, enforce new rules, regulations, environmental laws, etc.?**

No. In the short term at least, the damage is occurring much faster than tax revenue is being collected to repair it. To make up for this, some natural gas companies have paid cash for road repair to counties where they are drilling or have reimbursed them for some materials.

Since much of the damage occurs when heavy equipment is trucked in to build the wells, the infrastructure damage may be significantly reduced once gas wells have been drilled and installed.

To pay for damage to state highways, the Arkansas Highway and Transportation Department charges fees for overweight and oversized vehicles. The agency has also begun assessing energy companies an \$18,000 damage fee for every natural gas well that

requires the use of heavy vehicles on weight-restricted highways. Drilling operators pay these fees if they own the trucks hauling their equipment.

The \$18,000 fee will be in place until the end of the year. At that point a damage fee formula will be used to calculate what every heavy vehicle, including those used to haul drilling equipment, should pay for highway repair.

**3. You mentioned Mr. Nelson proposing 7% severance tax. Knowing that current tax is well below our neighboring state's taxes, how does 7% severance tax compare to the current severance taxes in other states? Will it not be well above?**

**Arkansas:** 3/10th of 1 cent per thousand cubic feet (MCF)

**Oklahoma:** 7 percent of gross value

**Texas:** 7.5 percent of market value

**Mississippi:** 6 percent market value

**Louisiana:** \$.269 per MCF (full rate)

\$.03 per MCF (natural gas produced from certain oil wells)

\$.013 per MCF (low volume gas wells)

**Tennessee:** 3 percent of sales price

**Missouri:** No severance tax, no natural gas production

Most states surrounding Arkansas provide reduced severance tax rates, tax exemptions or other incentives for natural gas produced from certain types of natural gas wells, such as low producing wells, newly discovered wells, wells that had been previously inactive and other wells with unique characteristics. Except for a few of the Louisiana reduced rates, the rates listed above do not show surrounding states' rate reductions, exemptions or other incentives.

**4. Eminent domain issues are a concern. Can this be used? Will there be laws against it? Is this the end of our fishing holes? Won't the water usage take all their water?**

Arkansas may only use eminent domain for a public purpose, and the economic development that may come with drilling in the Fayetteville Shale probably does not qualify as a public purpose. The Arkansas Supreme Court held in *City of Little Rock v. Raines*, 241 Ark. 1071 (1967) that economic development is not considered a public purpose under the Arkansas Constitution.

The June 2005, U.S. Supreme Court decision affirming the use of eminent domain for economic development purposes does not appear to affect Arkansas because the state has strong private property protections in its constitution. *Kelo v. New London*, on the other hand, stemmed from a dispute in Connecticut, which had weaker constitutional property protections.

As for the fishing holes, they should be unaffected by the drilling itself when it's done properly. Due to the depth of drilling, there is no hydraulic connection between the wells and the fishing holes.

However, drilling operators could use water from fishing holes to frac wells. (Hydraulic fracturing is a method of stimulating gas production in wells by using high pressure fluids to create fractures in the surrounding rock.) The companies would need to make individual arrangements with the landowners to do so.

Using this water to frac wells could potentially affect the fisheries. While one or a few wells may not impact a river or lake, the cumulative effect of the 600 existing natural gas wells, along with the more than 600 planned wells, could significantly affect the amount of instream flow needed for healthy fisheries, depending on the size of the body of water pumped and the season of the year. Other aspects of drilling have the potential to negatively affect fish migration, reproduction and growth, as well as water quality.

**5. Severance tax should be diverse and beneficial to the citizens of Arkansas. How can we be assured that the severance tax is not used to repair the infrastructure and environmental damage done by the drilling companies and their sub-contractors? This damage should be repaired by the companies themselves.**

To understand how the severance tax money may be used — if indirectly — to repair infrastructure and environmental damage, it is important to understand how the severance tax revenue is disbursed.

Arkansas code 26-58-124 requires 3% of the money collected from the severance tax to go into general revenue to fund state government generally.

The remaining 97% is distributed to state agencies depending on the natural resource that was taxed. The severance tax collected on timber goes to the State Forestry Commission and most of the severance tax on diamonds goes to the State Parks, Recreation and Travel Commission.

The remaining funds, including those collected from the tax on natural gas, goes into general revenue and the County Aid Fund. The County Aid Fund money is divided among the 75 counties to be used for general county purposes.

In general, roads and local infrastructure are maintained by county governments using county tax revenue, such as property taxes. However, counties could use the portion of the severance tax that goes to the County Aid Fund to repair their roads and infrastructure.

The severance tax revenue also supports environmental protection by funding the state agencies that regulate various aspects of drilling. Agency operations are funded using general revenue.

**6. If mineral rights were separated many years ago, can lawmakers in Arkansas take measures to revert mineral rights back to current landowners who stand to be more affected by drilling in regard to pollution and noise?**

Legislators could pass a law to revert severed mineral rights back to current landowners after a sufficient period of time, but such a law would have to meet constitutional muster. Both the U.S. Constitution and Arkansas Constitution prohibit the taking of private property without due process. Any law that could withstand constitutional scrutiny must be drafted to carefully ensure that the state was not simply taking private property from one person and giving it to another person.

Arkansas law already provides for the surface owner to buy back the mineral rights if they have been abandoned through non-payment of taxes. And lawmakers could pass legislation to permit land owners to obtain abandoned severed mineral rights through a private right of action in the court system.

Even with these avenues for obtaining mineral rights, gas companies do not always recognize a landowner's possession of them.

**7. I believe the National Wildlife organization's website predicts for Arkansas' "global warming" future that we will be warmer and direr. Thus it would seem not in our state's best interest to be profligate with our water:**

- a. withdrawing large amounts in the first place and**
- b. pumping it back when the groundwater could be contaminated.**

**Comments?**

Water conservation is in the best interests of all Arkansas citizens. However, there have been conflicts over water usage for many years. It is important to balance the potential economic development offered by the Fayetteville Shale with the responsible use of our state's natural resources.