

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

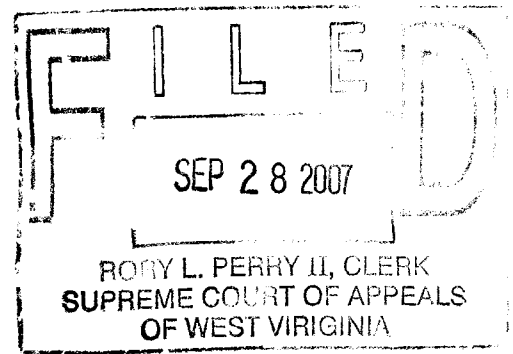
BLUE EAGLE LAND, LLC, a West Virginia limited liability company, **COALQUEST DEVELOPMENT, LLC**, a foreign limited liability company, **CONSOLIDATION COAL COMPANY**, a foreign corporation, **HORSE CREEK LAND AND MINING COMPANY**, a West Virginia corporation, **NATIONAL COUNCIL OF COAL LESSORS, INC.**, a West Virginia corporation, **PENN VIRGINIA OPERATING COMPANY, LLC**, a foreign limited liability company, **POCAHONTAS LAND CORPORATION**, a foreign corporation, **WEST VIRGINIA COAL ASSOCIATION**, a West Virginia non-profit corporation, **WPP LLC**, a foreign limited liability company, and **WOLF RUN MINING COMPANY**, a West Virginia corporation,

Petitioners,

v.

WEST VIRGINIA OIL & GAS CONSERVATION COMMISSION, a state agency, **CHESAPEAKE APPALACHIA, LLC**, a foreign limited liability company, **EASTERN AMERICAN ENERGY CORPORATION**, a West Virginia corporation, and **PETROEDGE RESOURCES (WV), LLC**, a foreign limited liability company,

Respondents.



Case No.: _____

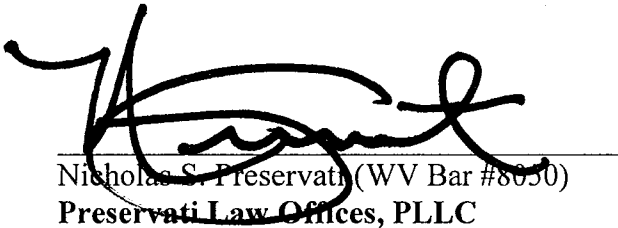
PETITION FOR WRIT OF PROHIBITION

COMES NOW the Petitioners, by and through their counsel, Nicholas S. Preservati of Preservati Law Offices, PLLC, and E. Forrest Jones of Jones and Associates, PLLC, and pursuant to W. Va. Const. Art. VIII, § 3 and W.Va. Code §53-1-1, respectfully requests this Honorable Court to grant their Petition for Writ of Prohibition and issue a Rule to Show Cause against the Respondents, and require the Respondents to file a response to this original jurisdiction Petition. In support thereof, the Petitioners

attach their Memorandum in Support of Petition for Writ of Prohibition and incorporate it herein by reference hereto.

Respectfully submitted,

PETITIONERS,
By Counsel.



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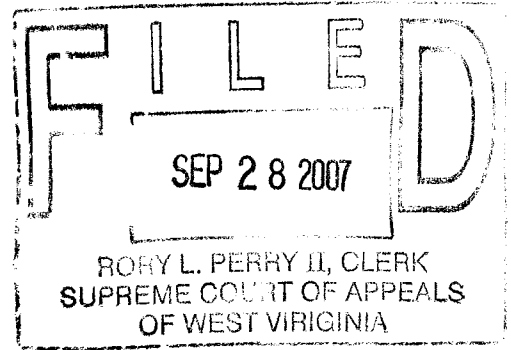
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Respondents.



Case No.: _____

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION

COMES NOW the Petitioners, by and through their counsel, Nicholas S. Preservati of Preservati Law Offices, PLLC and E. Forrest Jones of Jones and Associates, PLLC, and pursuant to W. Va. Const. Art. VIII, § 3 and W.Va. Code §53-1-1, respectfully requests this Honorable Court to grant their Petition for Writ of Prohibition, and in support thereof, states as follows:

I. INTRODUCTION

This petition for a writ of prohibition is necessitated by the unwarranted exercise of jurisdiction by the West Virginia Oil & Gas Conservation Commission (“Commission”) over certain wells completed in (but not below) the Marcellus Shale geologic formation. Specifically, the Marcellus Shale geologic formation is one of several formations that overly the “Onondaga Group”. Furthermore, the Onondaga geologic group is a pervasive geological feature that has been used as the boundary between “shallow wells” (those wells drilled and completed above the Onondaga) and “deep wells” (i.e. those drilled and completed below the Onondaga). As explained below, the Commission is improperly classifying those wells as deep wells as defined in the West Virginia Code. The Marcellus Shale wells in question are in fact “shallow wells” subject to the jurisdiction of the Department of Environmental Protection, Office of Oil and Gas (“OOG”) and the Shallow Gas Well Review Board.

The lone question for review is whether Marcellus Shale wells drilled more than 20 feet into the underlying Onondaga group formation but completed only in the Marcellus Shale formation are deep wells or shallow wells. If they are deep wells, the Commission has jurisdiction. If they are shallow wells, the Commission does not have jurisdiction. The resolution of this issue rests solely upon this Court’s interpretation of the statutory definition of “shallow well” and “deep well.” This is not a question of fact, and there are no relevant facts in dispute.

II. PARTIES

1. Blue Eagle Land, LLC (“Blue Eagle”), is a West Virginia limited liability company, with a principal office address of Post Office Box 1989, Charleston, West Virginia 25327.

2. Coalquest Development, LLC (“Coalquest”), is a foreign limited liability company with a principal office address of 300 Corporate Centre Drive, Scott Depot, West Virginia 25560.

3. Consolidation Coal Company (“Consol”), is a foreign corporation with a principal office address of 1800 Washington Road, Pittsburgh, Pennsylvania 15241.

4. Horse Creek Land and Mining Company (“Horse Creek”), is a West Virginia corporation with a principal office address of 300 Capitol Street, Suite 1503, Charleston, West Virginia 25301.

5. National Council of Coal Lessors, Inc. (“NCCL”), is a West Virginia corporation with a principal office address of Post Office Box 653, Scott Depot, West Virginia 25560.

6. Penn Virginia Operating Company, LLC (“Penn Virginia”), is a foreign limited liability company with a principal office address of 100 Matsonford Road, Three Radnor Corporate Center, Suite 300, Radnor, Pennsylvania 19087.

7. Pocahontas Land Corporation (“PLC”), is a Virginia corporation with a principal office address of 800 Princeton Avenue, Bluefield, West Virginia 24701.

8. West Virginia Coal Association (“WVCA”), is a West Virginia non-profit corporation with its principal office address being Post Office Box 3923, Charleston, West Virginia 25339.

9. WPP, LLC (“WPP”), is a foreign limited liability company with its principal office address being 1035 Third Avenue, Suite 300, Huntington, West Virginia 25701.

10. Wolf Run Mining Company (“Wolf Run”), is a West Virginia corporation with a principal office address of 300 Corporate Centre Drive, Scott Depot, West Virginia 25560.

11. The West Virginia Oil & Gas Conservation Commission (“Commission”) is a state agency with a principal address of 601 57th Street, Charleston, West Virginia 25304.

12. Chesapeake Appalachia, LLC (“Chesapeake”) is an Oklahoma limited liability company with its principal place of business as 6100 N. Western Avenue, Oklahoma City, Oklahoma 73118.

13. Eastern American Energy Corporation (“EAEC”) is a West Virginia corporation with its principal place of business as 501 56th Street, Charleston, West Virginia, 25304.

14. PetroEdge Resources (WV), LLC (“PetroEdge”) is a foreign limited liability company, with its principal place of business as 2925 Briarpark, Suite 150, Houston, Texas, 77042.

III. STATUTORY FRAMEWORK

15. Three agencies currently exercise jurisdiction over certain aspects of drilling natural gas wells. The Department of Environmental Protection, Office of Oil and Gas (“OOG”), has general jurisdiction over gas wells. See generally, W. Va. Code § 22-6-1, *et seq.* The OOG oversees the permitting, drilling, operation and abandonment of

all natural gas wells (both shallow and deep) and exercises enforcement powers over well operators.

16. Because there are significantly more shallow wells drilled in the State and because the drilling of such wells sometimes involves competing interests between oil and gas and coal operations, the Legislature established a separate Shallow Gas Well Board for the primary purpose of exercising jurisdiction over the drilling and spacing requirements for “shallow gas wells.” Significantly, the Shallow Gas Well Review Board Statute, W. Va. Code § 22C-8-1, *et seq.* (“Shallow Gas Well Review Board Statute”), provides that if a coal seam owner, lessee, or operator (collectively “coal owner”) objects to the drilling of a shallow gas well, there are minimum distance limitations between the proposed well and the nearest existing well. The statute sets forth a minimum distance of one thousand feet (1,000’) for shallow wells to be drilled to depths less than three thousand feet (3,000’) and a minimum distance of two thousand feet (2,000’) for shallow wells to be drilled to depths of three thousand feet (3,000’) or more, which may be reduced to a statutory minimum of one thousand five hundred feet (1,500’) upon a showing of need on a well-by-well basis.

17. Finally, the Legislature created the respondent Commission to have jurisdiction over “the exploration for or production of oil and gas from deep wells,” including the drilling and spacing of “deep wells,” under the Oil and Gas Conservation Statute, W. Va. Code § 22C-9-1, *et seq.* (“Deep Well Statute”). The Commission has established through regulation a distance limitation of three thousand feet (3,000’) with respect to how close deep wells may be drilled to one another, although that spacing limitation may be lowered significantly by the establishment of “special field rules” by

the Commission. Special field rules may only be established by the Commission for deep wells.

The Legislature also defined shallow wells and deep wells as follows:

“Shallow well” means any gas well drilled *and completed* in a formation *above* the top of the uppermost member of the “Onondaga Group.” Provided, that in drilling a shallow well the operator may penetrate into the ‘Onondaga Group’ to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the ‘Onondaga Group’ formation be otherwise produced, perforated or stimulated in any manner.

W. Va. Code §§ 22-6-1(r), 22C-8-2(22) and 22C-9-2(11) (emphasis added).

“Deep well” means any well other than a shallow well, drilled *and completed* in a formation at or *below* the top of the uppermost member of the “Onondaga Group.”

W. Va. Code §§ 22-6-1(g), 22C-8-2(8) and 22C-9-2(a)(12) (emphasis added).

18. As more fully explained below, this petition for a writ of prohibition is directed toward the Commission’s usurpation of power over certain Marcellus Shale wells that are drilled more than 20 feet into the Onondaga Group formation but completed only in the Marcellus Shale and shallower formations.¹ The Commission misinterpreted the foregoing definitions of “shallow well” and “deep well” and upset the balanced approach established by the Legislature for the governance of natural gas wells to the detriment of both the coal and natural gas industries.

IV. BACKGROUND

19. Under the statutory definitions, the Onondaga Group formation is an important dividing line for distinguishing between shallow wells and deep wells. The Marcellus Shale formation is the geologic formation immediately above the Onondaga

¹ For ease of drafting, those wells will be referred to hereinafter simply as “Marcellus Shale wells.”

Group formation. In recent years, oil and gas producers determined that they could drill commercially feasible wells into the Marcellus Shale formation. However, for practical operating reasons, producers now need to drill the borehole more than 20 feet into the Onondaga formation (a “deep” formation) even though the wells are only being completed into and produced from the Marcellus Shale formation (a “shallow” formation). For example, the logging tools used to gauge whether a well should be completed and produced is over 40 feet long, which is difficult to fit into a 20-foot hole. Further, producers have difficulty judging when they hit the top of the Onondaga Group formation and sometimes accidentally drill more than 20 feet into the Onondaga Group. The Commission determined that it should assert jurisdiction over these wells because the borehole extends more than 20 feet into the Onondaga formation even though the wells are not being completed and produced from the Onondaga Group.

20. When the Commission asserted jurisdiction over these Marcellus Shale wells, producers were forced to comply with more extensive and more expensive regulatory requirements in order to exceed the 20-foot limitation and avoid the possibility of extensive civil penalties for accidentally exceeding the 20-foot limitation. The nature of Marcellus Shale wells is such that drilling them on 3,000 feet spacing (as mandated by the deep well regulations) would leave considerable recoverable gas reserves in the ground – which would waste our natural resources and work to the detriment of the royalty owners, producers, and the consuming gas public in general, and the loss of severance tax revenues to the State. To avoid such wasteful practices and satisfy Commission regulations, producers are now required to seek either an “exception location” for every Marcellus Shale well or to seek “special field rules” for Marcellus

Shale wells to be drilled in a particular area. Either way, a hearing must be held before the Commission and expensive notices must be sent to other gas operators in the area through registered mail and published in local newspapers.

21. Because of the expense and delay involved with seeking exception locations and having hearings for individual wells, certain oil and gas producers filed applications with the Commission under the Deep Well Statute for special field rules wherein they requested a one thousand foot (1,000') spacing limitation for wells that they intend to drill and produce from the Marcellus Shale formation. The applications also sought authorization to drill seventy-five feet (75') into the Onondaga Group formation in order to accommodate current operating needs. The wells would not, however, be completed below the Marcellus Shale formation.

22. Importantly, under the Deep Well Statute there is no statutory requirement that coal owners affected by the special field rules be given written notice of the special field rule applications. Therefore, most coal owners were not provided written notice of the applications for special field rules or the Commission's hearings on those special field rule applications even though the applications in reality involved shallow wells, not deep wells.

23. The Commission has now granted all four (4) of the applications for special field rules that have been brought on for hearing. In each of those applications, the oil and gas operator was authorized to drill its shallow gas wells within one thousand feet (1,000') of each other, although in each of the last three the oil and gas operator has

indicated its willingness to abide by the Shallow Gas Well Review Board Statute.² There are five (5) additional applications for special field rules currently pending before the Commission. Those five applications also seek a waiver of the three thousand feet (3,000) spacing requirements for Marcellus Shale wells to be drilled 75 feet into (but not completed in) the Onondaga Group formation.

24. The Commission lacked jurisdiction to grant the four applications for special field rules that have already been approved. The Commission also lacks jurisdiction to entertain and rule upon the five additional applications for special field rules currently pending before it. Based upon the Commission's lack of jurisdiction and the significant detrimental impact these applications could have on the coal estate, the Petitioners are jointly filing this Petition for Writ of Prohibition to prohibit the Commission from exercising jurisdiction over Marcellus Shale wells.

V. STATEMENT OF FACTS

25. The Commission has jurisdiction only over the drilling and spacing of deep wells in West Virginia. W.Va. §22C-9-1, et seq. A "deep well" means any well other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group." W.Va. §22-6-1.

26. By law, a deep well may not be drilled within three thousand feet (3,000') of another deep well. CSR §39-1-4.2. However, a gas operator may apply for "special field rules" which allow the operator to ignore the spacing requirements for deep wells within the designated field. CSR §39-1-4.3.

² Even though coal and natural gas operators are trying to cooperate in this regard, even such cooperation raises issues about conferring jurisdiction on a regulatory agency if Marcellus Shale wells are in fact deep wells (although Petitioners herein firmly believe that the Marcellus Shale wells are shallow wells).

27. When a gas operator applies for special field rules, it must provide individual notice to other gas operators with interests within the field. CSR §39-1-6.1. The gas operator is not required to provide individual notice of its application for special field rules to coal operators or owners with real property interests within the field.

28. The Shallow Gas Well Review Board has jurisdiction over the drilling and spacing of “shallow wells” in West Virginia. W.Va. Code §22C-8-1, et seq. “A ‘shallow well’ means any gas well drilled and completed in a formation above the top of the uppermost member of the ‘Onondaga Group.’ Provided, that in drilling a shallow well the operator may penetrate into the ‘Onondaga Group’ to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the ‘Onondaga Group’ formation be otherwise produced, perforated or stimulated in any manner.” W.Va. Code §22-6-1(r).

29. If a coal owner objects, a shallow well cannot be drilled within two thousand feet (2,000’) of an existing shallow well unless the gas operator can show that operational, environmental, or other factors require the drilling of the well within the 2,000’ radius. W.Va. Code §22C-8-8. However, under no circumstances may a shallow well be drilled within one thousand five hundred feet (1,500’) of another shallow well if the coal owner or operator so objects. Id.

30. The coal operator or owner is provided with individual notice of every permit application where the gas operator desires to drill a shallow well under the spacing requirements. Gas operators may not apply for special field rules for shallow wells.

31. The Marcellus formation is a shallow formation. (Conservation Commission Order No.1, Docket No. 175; Cause No. 160, December 1, 2006). As such, it lies above the uppermost member of the Onondaga.

32. On December 1, 2006, the Commission granted EAEC'S application for special field rules. In its order, the Commission lowered the spacing for EAEC'S wells drilled into the Marcellus formation to one thousand feet (1,000'). The "special field" covered approximately 30,000 acres in Boone, Lincoln, and Logan Counties. (See Order granting EAEC'S Application for Special Field Rules Attached hereto as "Exhibit A").

33. EAEC did not provide individual notice of its application for special field rules to the coal owners and operators with coal interests within the special field that would be affected by the lowered spacing requirements.

34. PLC owns coal reserves within the field subject to EAEC'S special field rules. However, PLC did not receive notice of EAEC'S application. In fact, PLC did not become aware of EAEC'S application until several months after the application had already been approved by the Commission. EAEC subsequently agreed to abide by the shallow well spacing requirements on approximately three hundred (300) acres owned by PLC that are subject to EAEC'S special field rules.

35. Chesapeake Appalachia, LLC ("Chesapeake") filed three separate applications for special field rules with the Commission related to its drilling of the Marcellus "shallow" formation. It has asked the Commission for special field rules to allow it to drill over 1,800 wells within one thousand feet (1,000') of each other.

36. Chesapeake presented its first application for special field rules before the Commission on May 17, 2007. The application covers an astonishing 520,000 acres in

Boone, Kanawha, Lincoln, Logan and Mingo Counties. (See application for special field rules attached hereto as “Exhibit B”).

37. Several Petitioners own substantial coal interests within the 520,000 acres included in the special field. Despite this, none of the Petitioners received individual notice of Chesapeake’s application. The Petitioners learned of the application only two days before the hearing, and several of the Petitioners were able to object to the application.

38. At the hearing upon Chesapeake’s first application, counsel for Petitioners objected to the granting of the application on the grounds that the proposed wells were shallow wells, not deep wells. The Commission ruled that while the Marcellus formation is a shallow formation, it was categorizing Chesapeake’s wells as deep wells because they were “drilled *or* completed” in the Onondaga. (See Order granting application for special field rules attached hereto as “Exhibit C”).

39. Chesapeake submitted a second application for special field rules covering portions of McDowell, Mingo, and Wyoming Counties. (See application for special field rules attached hereto as “Exhibit D”). That application was granted by the Commission. (See Order granting application for special field rules attached hereto as “Exhibit E”).

40. Chesapeake filed a third application covering portions of Boone, Lincoln and Logan Counties. (See application for special field rules attached hereto as “Exhibit F”). The Commission granted Chesapeake’s application. (See Order granting application for special field rules attached hereto as “Exhibit G”).

41. Chesapeake and PetroEdge filed five (5) additional applications for special field rules in which they request that the spacing limitation be lowered to one thousand

feet (1,000'). The first application sought special field rules for an area located in Barbour, Harrison, and Taylor Counties, West Virginia. (See application for special field rules attached hereto as "Exhibit H"). The hearing on this application was set for August 9, 2007. (See Notice of Hearing attached hereto as "Exhibit I").

42. The second application sought special field rules for an area located in Marshall and Wetzel Counties, West Virginia. (See application for special field rules attached hereto as "Exhibit J"). The hearing on this application was set for August 9, 2007. (See Notice of Hearing attached hereto as "Exhibit K").

43. The third application sought special field rules for an area located in Marion, Monongalia, Preston and Taylor Counties, West Virginia. (See application for special field rules attached hereto as "Exhibit L"). The hearing on this application was set for August 9, 2007. (See Notice of Hearing attached hereto as "Exhibit M").

44. The fourth application sought special field rules for an area located in Braxton, Gilmer, Lewis, Randolph, Upshur, and Webster Counties, West Virginia. (See application for special field rules attached hereto as "Exhibit N"). The hearing on this application was set for August 9, 2007. (See Notice of Hearing attached hereto as "Exhibit O").

45. The fifth application sought special field rules for an area located in Braxton, Calhoun, Clay, Fayette, Gilmer, Jackson, Kanawha, Nicholas, and Roane Counties, West Virginia. (See application for special field rules attached hereto as "Exhibit P"). The hearing on this application was set for August 9, 2007. (See Notice of Hearing attached hereto as "Exhibit Q").

46. By granting the above mentioned applications for special field rules, the Commission has deprived the Petitioners of their statutory right to object to the spacing of these shallow wells pursuant to W.Va. Code §22C-8-8.

47. The lowering of the spacing requirements to one thousand feet (1,000') could be catastrophic for the Petitioners. Without need, the gas operators could not drill these Marcellus shallow wells within two thousand feet (2,000') of each other. By lowering the distance to one thousand feet (1,000'), the Commission will be allowing the gas operators to drill more than three (3) times the number of Marcellus shallow wells than they would otherwise be able to drill.

48. "Exhibit R" shows the minimum spacing between wells in an eight thousand foot by six thousand foot (8,000' x 6,000') field without special field rules. Only twenty (20) wells can be properly spaced and drilled within this field using the two thousand foot (2,000') spacing requirement. However, when using the one thousand foot (1,000') spacing requirement, as proposed by the gas operators, sixty-three (63) wells can be drilled within the same field. (See "Exhibit S" attached hereto). That is a two hundred and fifteen percent (215%) increase in the number of wells that may be drilled within the same field.

49. The Mine Safety and Health Administration ("MSHA") requires that underground coal operators leave at least one hundred and fifty feet (150') of protective barrier around each individual gas well (equivalent to an area with a diameter of 300') 30 CFR §75.1700 providing that, however, the operator first seek approval from the West Virginia Office of Mine Health and Safety Training ("WVOMHST") to mine closer than two hundred feet from the well W. Va. Code §22A-2-75 . That federal standard

notwithstanding, MSHA may require a greater barrier where the depth of the mine, other geologic conditions, or other factors warrants such a greater barrier. These mining regulations have two significant impacts. First, it causes substantial amounts of coal to be left in the ground, or “sterilized.” Secondly, it creates such narrow spaces between wells that coal operators will be unable to mine between the wells.

50. By applying the MSHA regulation that prohibits mining within a one hundred and fifty foot (150') radius of a gas well, the mineable area between the wells would decrease to seventeen hundred feet (1,700'). (See “Exhibit T” attached hereto). If the special field rules are granted, there will only be one thousand feet (1,000') between each well in the field. Despite cutting the distance between each well in half, the mine operator still has to abide by the one hundred and fifty foot (150') radius mandated by MSHA. Therefore, the mineable area between each well in the field would decrease from seventeen hundred feet (1,700'), to seven hundred feet (700'). (See “Exhibit U” attached hereto). Thus, the distance a coal operator may mine between wells is shortened by one thousand feet (1,000'), or fifty-nine percent (59%), resulting in a loss of a major portion of the coal reserve, if not all of the reserve due to the economic impact created by the field rule promulgated as a consequence of requests for permission to drill a shallow well more than twenty feet (20') into the Onondaga group for well-bore logging operations. These requests were based upon the shallow well operators need to log the entire section of the geological formations exposed within the well-bore to insure that their proposed shallow wells were indeed completed and rendered productive within formations above the Onondaga group.

51. The application of the Special Field Rules and the one thousand foot (1,000') spacing limitation will have a significant impact on the Petitioners' coal reserves and will result in the loss of tens, if not hundreds, of millions of dollars in sterilized coal. There will also be significant safety and environmental issues associated with the increased number of wells drilled pursuant to the Special Field Rules. (See August 14, 2007 Report of Hans Naumann, attached hereto as "Exhibit V").

52. The Petitioners attended the August 9, 2007 hearing on Chesapeake and PetroEdge's five (5) applications for special field rules. The Petitioners informed the Commission, Chesapeake, and PetroEdge that they would be filing the instant Writ of Prohibition challenging the Commission's assertion of jurisdiction. The Commission, Chesapeake and PetroEdge agreed to indefinitely continue the hearing on the applications for special field rules so that the Writ of Prohibition could be filed.

VI. JURISDICTION

The West Virginia Constitution grants this Court original jurisdiction of proceedings in habeas corpus, mandamus, prohibition and certiorari. W. Va. Const. Art. VIII, § 3. Also, "The Supreme Court of Appeals of West Virginia has original jurisdiction in prohibition proceedings pursuant to W. Va. Const. art. VIII, § 3." State ex rel. McCourt v. Alsop, 2007 W. Va. LEXIS 5 (February 22, 2007). Finally, a petition for a writ of prohibition falls "under the original jurisdiction of the Supreme Court." W.Va. R. App. P. 14.

The Petitioners are not required to follow the mandates of W.Va. Code §55-17-3, which requires that the chief officer of the government agency and the Attorney General be given written notice of any "action" filed against the agency. This Writ of Prohibition

is not an “action” as that word is defined in West Va. Code §55-17-2, as the Writ is being filed pursuant to statutory provisions that authorize a specific procedure for obtaining relief. W.Va. Code §53-1-1, *et seq.*

Furthermore, the requirements of W.Va. Code §55-17-3 “do not apply in actions seeking injunctive relief where the court finds that irreparable harm would have occurred if the institution of the action was delayed by the provisions of this subsection.” Since a writ of prohibition lies to restrain an administrative body from proceeding in causes over which it has no jurisdiction, it is a form of injunctive relief. Finally, the delay of this matter will cause irreparable harm to each of the Petitioners.

VII. STANDARD OF REVIEW

“The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.” W.Va. Code §53-1-1.

Furthermore, irrespective of the adequacy or inadequacy of other remedies, prohibition will issue *as a matter of right* when a court or administrative agency is attempting to proceed in a cause without jurisdiction. Norfolk & W. Ry. v. Pinnacle Coal Co., 44 W. Va. 574, 30 S.E. 196, 41 L.R.A. 414 (1898); Weil v. Black, 76 W. Va. 685, 86 S.E. 666 (1915); Jennings v. McDougale, 83 W. Va. 186, 98 S.E. 162 (1919) (emphasis added).

Finally, as a general rule in prohibition proceedings, any person whose rights may be affected by the issuance of a writ must be made a party and must be given notice of

the proceedings. State ex rel. Hanley v. Hey, 163 W. Va. 103, 255 S.E.2d 354 (1979); cert. denied, 444 U.S. 928, 100 S. Ct. 269, 62 L. Ed. 2d 185 (1979).

VIII. LEGAL ARGUMENT

Two requirements must be met before a writ of prohibition will issue against an administrative agency. First, the challenged conduct must have been engaged in while the administrative agency was acting in a “quasi-judicial” capacity. United States Steel Corp. v. Stokes, 138 W. Va. 506, 76 S.E.2d 474 (1953). Second, the administrative agency must have erroneously decided a question of law thereby causing an unlawful assumption of jurisdiction. State ex rel. Zirk v. Muntzing, 146 W. Va. 878, 122 S.E.2d 851 (1961).

A. The Commission Engaged in Quasi-Judicial Conduct When it Granted the Respondents’ Applications for Special Field Rules.

This Court has routinely held that a writ of prohibition lies against an administrative tribunal where, in the performance of its quasi-judicial functions, it is “attempting to exercise a power it does not possess.” Pugh v. Policemen's Civil Service Commission, 214 W. Va. 498; 590 S.E.2d 691 (2003). Also, writs of prohibition may be employed to restrain quasi-judicial administrative bodies from adjudicating matters outside of their jurisdiction. Health Management, Inc. v. Lindell, 207 W.Va. 68; 528 S.E.2d 762 (1999). Again, the writ of prohibition may be issued against an administrative agency or other inferior ministerial tribunal engaged in quasi-judicial conduct. State Ex Rel. City of Huntington v. Lombardo, 149 W.Va. 671; 143 S.E.2d 535 (1965). An administrative agency is engaging in “quasi-judicial” conduct when it conducts hearings and makes findings of fact. Appalachian Power Co. v. Public Service Commission, 170 W. Va. 757, 759, 296 S.E.2d 887, 889 (1982).

In Lombardo, a police officer, who was suspended for five days, requested a public hearing in order to challenge his suspension. He claimed that he was entitled to a public hearing pursuant to W.Va. Code §8-5A-13. In response to the request, the Police Civil Service Commission (“Commission”) notified all persons in interest that a public hearing would be held. Id. The City of Huntington filed a writ of prohibition against the Commission on the grounds that it lacked jurisdiction to hold such a public hearing.

In granting the writ of prohibition, the Lombardo Court expressly held that the writ of prohibition lies to “inferior ministerial tribunals” engaged in quasi-judicial conduct. Id. Specifically, this Court held:

A public hearing conducted by a municipal police civil service commission pursuant to the provisions of Article 5A, Chapter 8 of Code, 1931, as amended, is a proceeding of a *judicial character* within the meaning of legal principles *applicable to proceedings in prohibition*.

(emphasis added).

In this case, the Commission’s actions are clearly of a quasi-judicial nature. Once the Commission receives an application for special field rules, it is to schedule a public hearing on the application. W.Va. Code §22C-9-10. As part of the hearing, the Commission is to: 1) issue subpoenas and subpoenas duces tecum; 2) allow the moving party and opposing parties to present witnesses and exhibits; 3) allow for the cross-examination of witnesses; 4) rule on objections; and 5) permit closing arguments. Once the hearing is conducted, the Commission is to issue a written decision containing findings of fact and conclusions of law. Id.

It was through this very statutory process that the Commission granted EAEC and Chesapeake’s applications for special field rules. During the May 17, 2007 hearing on

Chesapeake's first application for special field rules, the Commission allowed Chesapeake to present four (4) separate witnesses. (See Copy of May 17, 2007 Hearing Transcript attached hereto as "Exhibit W"). Each of Chesapeake's four (4) witnesses was subject to cross-examination by opposing counsel. In addition, Chesapeake was allowed to offer ten (10) separate exhibits into evidence in support of its application. Shortly after the hearing had concluded, the Commission entered an Order granting Chesapeake's application for special field rules. The Order contained specific findings of fact and conclusions of law. (See Exhibit C).

Therefore, the Commission engaged in quasi-judicial conduct by conducting a public hearing and subsequently entering an Order in which it made findings of fact and conclusions of law to support its granting of Chesapeake's application for special field rules. Appalachian Power Co. v. Public Service Commission, 170 W. Va. 757, 759, 296 S.E.2d 887, 889 (1982). Since the Commission engaged in quasi-judicial conduct, the Petitioners have met the first requirement for obtaining a writ of prohibition.

B. The Commission Lacks Jurisdiction to Grant Special Field Rules for Wells Drilled and Completed Solely in the Marcellus Formation.

The second requirement for obtaining a writ of prohibition against an administrative agency is that the agency must have acted without proper jurisdiction. When an inferior tribunal is attempting to proceed in a cause without jurisdiction, prohibition shall issue as a matter of right. Norfolk & Western Railway v. Pinnacle Coal Co., 44 W. Va. 574, 30 S.E. 196 (1898); Weil v. Black, 76 W. Va. 685, 86 S.E. 666 (1915); Jennings v. McDougale, 83 W. Va. 186, 98 S.E. 162 (1919).

Furthermore, where it appears that the court in which a suit or action has been instituted has no jurisdiction to enter any decree or judgment therein, the writ of

prohibition against further proceedings therein shall issue. State ex rel. West Va. Truck Stops v. McHugh, 160 W. Va. 294, 233 S.E.2d 729 (1977). Finally, where an inferior court has rendered a judgment without jurisdiction, its action is coram non judice; and prohibition will lie to prevent the enforcement thereof as soon as the judgment has been rendered. Willis v. Warth, 108 W. Va. 517, 151 S.E. 707 (1930).

In Mangus v. McCarty, 188 W.Va. 563; 425 S.E.2d 239 (1992), the defendant was convicted of manufacturing a controlled substance and placed on three years probation. During his term of probation, the defendant received another drug charge that caused him to be in violation of his terms of probation. The prosecution waited until his term of probation had expired before it filed a motion to revoke the defendant's probation in circuit court.

The defendant challenged the motion to revoke his probation by filing a writ of prohibition against the circuit court. In his writ the defendant argued that the circuit court lacked jurisdiction to revoke his probation because the motion was filed after his term of probation had expired. This Court agreed with the defendant and ruled that a circuit court only has jurisdiction to revoke a defendant's probation when the motion to revoke is filed before the expiration of the term of probation. Since the prosecution's motion to revoke was not timely filed, this Court held that the circuit court did not have proper jurisdiction to rule upon the motion. As such, this Court declared:

Accordingly, we grant Mr. Mangus' request for a writ of prohibition based upon the lower court's lack of jurisdiction to entertain this revocation issue.

(emphasis added).

In this case, the Commission clearly lacks jurisdiction to address the

Respondents' applications for special field rules. The Commission's jurisdiction was conferred by the Legislature in W.Va. §22C-9-1, et seq. Pursuant to legislative enactment, the Commission has jurisdiction to regulate the spacing of deep wells. W.Va. Code §22C-9-4(f)(1). The Commission does not have jurisdiction to regulate the spacing of shallow wells. That is because the Legislature delegated that authority to the Shallow Gas Well Review Board. W.Va. Code §22C-8-1(b).

Therefore, the lone question for review is whether the proposed Marcellus wells described in the respective applications for special field rules are deep wells or shallow wells. If they are deep wells, the Commission has jurisdiction. If they are shallow wells, the Commission does not have jurisdiction. Importantly, the resolution of this issue relies solely upon this Court's interpretation of the statutory definition of "shallow well" and "deep well." This is not a question of fact, and there are no relevant facts in dispute between the parties.

Shallow Wells

The general provisions governing the West Virginia Office of Oil and Gas define a shallow gas well as:

Any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group." Provided, that in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perforated or stimulated in any manner.

W.Va. Code §22-6-1(r). (emphasis added). The statutory provisions governing the Conservation Commission contain the same definition of a shallow well. W.Va. Code

§22C-9-2(a)(11). The statutory provisions governing the Shallow Gas Well Review Board similarly define a shallow well. W.Va. Code §22C-8-2(21).

Thus, three (3) separate statutory provisions define “shallow well” in the same manner. It is a well drilled and completed above the uppermost member of the Onondaga. For a well to be “completed” in a specific formation means that the formation has been perforated and stimulated for purposes of production through that well. (Page 27, Exhibit W). In other words, a well completed in only the Marcellus formation will produce gas from no other formation other than the Marcellus formation. In addition, each of the three (3) statutory provisions permits a gas operator to drill up to twenty feet (20’) into the Onondaga group for logging and completion operations. This is based upon the gas operators’ need to log the entire section of the formation being completed. (Page 18-28, Exhibit W).

Deep Wells

The general statutory provisions governing the West Virginia Office of Oil and Gas define a deep gas well as, “any well other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the ‘Onondaga Group.’” W.Va. Code §22-6-1(g). (emphasis added). Similarly, the statutory provisions governing the Conservation Commission (W.Va. Code §22C-9-2(a)(12)), and the Shallow Gas Well Review Board (W.Va. Code §22C-8-2(8)) contain the same definition of a deep well.

Thus, there are three (3) requirements that must be met before a well may be defined as a deep well. First, it must not be a shallow well. Second, the well must be drilled in a formation at or below the top of the uppermost member of the Onondaga Group. Finally, the well must also be completed in a formation at or below the top of the

uppermost member of the Onondaga Group. If the well is a shallow well, or if it is not drilled into the Onondaga and producing from the Onondaga, it is not a deep well.

Respondents' Applications for Special Field Rules

The Defendant operators filed applications for special field rules in which they made two primary requests regarding wells to be drilled into the Marcellus formation. First, they requested that they be allowed to drill more than twenty feet (20') into the Onondaga, but no deeper than seventy-five feet (75'). Next, they requested that the horizontal spacing limitation be lowered from three thousand feet (3,000') to one thousand feet (1,000').

In their applications, the Defendant operators expressly stated that they were not going to complete any of the wells subject to the special field rules in the Onondaga Group. For example, in its application for special field rules for Boone, Lincoln and Logan Counties, Chesapeake specifically stated, "Chesapeake has no intention to produce, perforate or stimulate the Onondaga in any manner at the present time." (Exhibit F). In the same application, Chesapeake further acknowledged that, "Chesapeake would agree not to produce, perforate, frac, or otherwise stimulate the Onondaga Group, unless and until it obtained a further Order from the Commission." (Exhibit F).

Consequently, not one of the wells subject to the applications for special field rules either approved by, or pending before, the Commission will produce gas from a formation at or below the top of the uppermost member of the Onondaga Group.

The Commission's Erroneous Legal Interpretation

As stated above, there are three (3) requirements that must be met before a well may be defined as a deep well. First, it must not be a shallow well. Second, the well must be drilled in a formation at or below the top of the Onondaga Group. Finally, the well must also be completed in a formation at or below the top of the Onondaga Group.

The Commission considered only one of the three requirements when it determined that the Marcellus wells are deep wells. In making its determination, the Commission relied solely upon the fact that the Marcellus wells would be drilled up to seventy-five feet (75') into the Onondaga Group.

In its Order granting Chesapeake's application for special field rules in Boone, Lincoln and Logan Counties, the Commission specifically stated:

Chesapeake wishes to drill wells in the special field rule area in order to produce from the Marcellus Shale formation and other shallower formations. Although the Marcellus Shale is a "shallow" formation, Chesapeake proposes to drill up to 75 feet into the Onondaga Group to enable the logging and completion of the entire Marcellus Shale section. Chesapeake will not perforate or complete any formation below the base of the Marcellus Shale formation; however, by definition, since the proposed wells will be drilled in excess of twenty feet into the Onondaga Group, they will be considered deep wells.

(See copy of Order attached hereto as "Exhibit G") (emphasis added). Based upon this determination, the Commission issued the following conclusion of law, "That Marcellus Shale wells drilled more than twenty feet into the Onondaga Group are deep wells."

(Exhibit G). Consequently, the Commission held that:

Pursuant to Chapter §22C, Article 9, Code of West Virginia 1931, as amended, the Commission has jurisdiction over the subject matter embraced in said

notice, and persons interested therein, and jurisdiction to promulgate the hereinafter prescribed Order.

(emphasis added). It is clear that the Commission believed it had jurisdiction over the applications for special field rules because it had determined that the Marcellus wells were in fact deep wells.

However, the Commission ignored two of the three factors that must be considered before a well can be categorized as a deep well. First, in order to be a deep well, a well must not meet the definition of a shallow well. A shallow well is a well that is drilled and completed above the Onondaga. There is no question that the Marcellus wells will be drilled in formations above the Onondaga. There is also no question that the wells will be completed in the Marcellus formation, which is a shallow formation. Chesapeake specifically testified that the wells subject to its applications for special field rules will be completed in the Marcellus formation. (Exhibit W). Therefore, the wells subject to the special field rules qualify as shallow wells because they are both “drilled and completed” above the Onondaga.

More importantly, a well has to be drilled and completed in, or below, the Onondaga before it can be categorized as a deep well. W.Va. Code §22-6-1(g); (W.Va. Code §22C-9-2(a)(12)); (W.Va. Code §22C-8-2(8)). The Commission itself has expressly acknowledged that the Marcellus wells will not be completed in the Onondaga Group. In its July 10, 2007 Order granting Chesapeake’s application for special field rules, the Commission explicitly acknowledged that, “Chesapeake will not perforate or complete any formation below the base of the Marcellus Shale formation.” (Exhibit G).

The Commission has admitted as a matter of record that one of the requirements that must be met before the Marcellus wells can be deemed deep wells does not exist.

There is no dispute that a well must be drilled and completed in the Onondaga before it will be a deep well. There is also no dispute that the wells subject to the applications for special field rules will not be completed in the Onondaga Group. Therefore, the Marcellus Shale wells are not deep wells. Since they are not deep wells, the Commission lacked jurisdiction to grant the four (4) applications for special field rules already approved. The Commission also lacks jurisdiction to hear the five (5) applications for special field rules pending before it.

C. **The Office of Oil and Gas may Grant a Variance Allowing Gas Operators to Drill more than Twenty Feet into the Onondaga Formation without Converting the Shallow Well into a Deep Well.**

The Commission is operating under the assumption that a shallow well can never be drilled if it will be drilled more than twenty feet (20') into the Onondaga. This assumption is what is driving the Commission's decision to exert jurisdiction in this case. Based upon that assumption, the Commission believes there is only one way that a gas operator may obtain a permit for a shallow well to be drilled more than twenty feet (20') into the Onondaga; it must be permitted as a deep well. Therefore, the Commission believes that it must assert jurisdiction and classify these wells as "deep wells," otherwise, these wells will not be able to be drilled.

The Commission is partially right in that a shallow well cannot be drilled more than twenty feet (20') into the Onondaga. However, as with any rule, there are exceptions. The Chief of the Office of Oil and Gas is permitted, by legislatively approved rules, to grant variances to the requirements set forth in the West Virginia Code, including the requirement that no shallow well be drilled more than twenty feet

(20') into the Onondaga. Section 35-4-18 of the West Virginia Code of State Rules reads:

Upon request, or upon his own initiative, the chief may grant a variance from any other requirements of this series upon a showing by an operator that alternative practices will satisfy the requirements of the West Virginia Code and exhibit sound engineering practice. Prior to taking final action to grant or deny such a variance, the chief shall provide notice of his proposed action to the public and to the surface owners of record and any coal owner, operator or lessee and provide all such persons with an opportunity to comment on such a proposal.

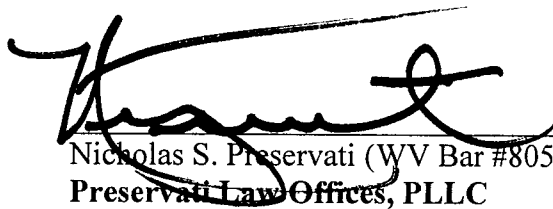
Therefore, if a gas operator needs to drill more than twenty feet (20') into the Onondaga to complete its logging of a formation above the Onondaga, that operator may seek a variance from the Chief of the Office of Oil and Gas to do so. As such, there is a legislatively approved mechanism already in place to address the situation of when a gas operator needs to drill a shallow well more than twenty feet (20') into the Onondaga. This procedure is set forth in the Code of State Rules and does not involve the Commission in any shape, form or manner. Thus, the Commission has no jurisdiction or authority to regulate shallow gas wells drilled more than twenty feet (20') into the Onondaga, unless those wells ultimately are completed and are producing gas from deep formations. Since these wells will not be completed in, or produce gas from, deep formations, the regulation of these wells rests solely with the Shallow Gas Well Review Board and the Office of Oil and Gas, not the Commission.

PRAYER FOR RELIEF

WHEREFORE, the Petitioners respectfully request that this Honorable Court issue a Rule to Show Cause against the Respondents, and require the Respondents to file a response to this original jurisdiction Petition. Pursuant to Rule 14 of the West Virginia Rules of Appellate Procedure, the Petitioners have attached a memorandum listing the names and addresses of those persons upon whom the rule to show cause is to be served, if granted, as "Exhibit X".

Respectfully submitted,

PETITIONERS
By Counsel.



Nicholas S. Preservati (WV Bar #8050)
Preservati Law Offices, PLLC
Post Office Box 1431
Charleston, West Virginia 25325
Phone: (304) 346-1431
Facsimile: (304) 346-1744
Counsel for Petitioners

E. Forrest Jones (WV Bar #1916)
Jones & Associates, PLLC
Post Office Box 1989
Charleston, WV 25327
Phone: (304) 343-9466
Facsimile: (304) 345-2456
Counsel for Petitioners

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND, LLC, *et al.*,

v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

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VERIFICATION

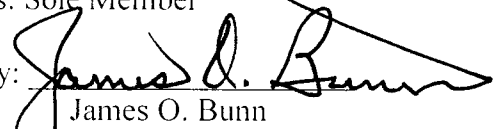
I, James O. Bunn, Manager of Southern Eagle, LLC, a Virginia limited liability company and sole Member of Blue Eagle Land, LLC, a West Virginia limited liability company, being first duly sworn on oath respectfully state to this Honorable Court that upon information and belief, the allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition are true and accurate.

Blue Eagle Land, LLC

By: Southern Eagle, LLC

Its: Sole Member

By:



James O. Bunn

Its: Manager

STATE OF Virginia

COUNTY OF Washington, to wit:

I, Pat Wimmer, a Notary Public in and for said county and state do hereby certify that James O. Bunn, Manager of Southern Eagle, LLC, a Virginia limited liability company and sole Member of Blue Eagle Land, LLC, a West Virginia limited liability company, who signed the above writing, bearing the date the 17th day of September, 2007, has this day acknowledged the same before me.

Given under my hand this 17th day of September, 2007.

My Commission expires 12-31-07.

Pat Wimmer #270787
Notary Public

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND, LLC, *et al.*,

v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

VERIFICATION

I, William D. Campbell, being first duly sworn on
oath respectfully state to this Honorable Court that upon information and belief, the
allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support
of Petition for Writ of Prohibition are true and accurate.

William D. Campbell
William D. Campbell, Treasurer
Coalquest Development, LLC

STATE OF West Virginia

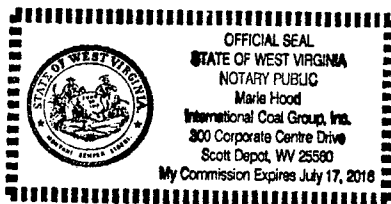
COUNTY OF Putnam, to wit:

I, Marie Hood, a Notary Public in and for said
county and state do hereby certify that William D. Campbell, who signed the above
writing, bearing the date the _____ day of September, 2007, has this day acknowledged
the same before me.

Given under my hand this 10th day of September, 2007.

My Commission expires July 17, 2016.

Marie Hood
Notary Public



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND, LLC, *et al.*,

v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

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VERIFICATION

I, William P. Fertall, being first duly sworn on oath respectfully state to this Honorable Court that upon information and belief, the allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition are true and accurate.

William P. Fertall
Consolidation Coal Company

STATE OF Virginia

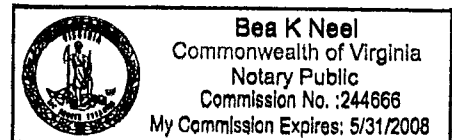
COUNTY OF Buchanan, to wit:

I, Bea K. Neel, a Notary Public in and for said county and state do hereby certify that William P. Fertall who signed the above writing, bearing the date the 24 day of September, 2007, has this day acknowledged the same before me.

Given under my hand this 24 day of September, 2007.

My Commission expires May 31, 2008.

Bea K. Neel
Notary Public



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND, LLC, *et al.*,

v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

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VERIFICATION

I, Andrew A. Payne, III, being first duly sworn on oath respectfully state to this Honorable Court that upon information and belief, the allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition are true and accurate.



Andrew A. Payne, III, President
Horse Creek Land and Mining Company

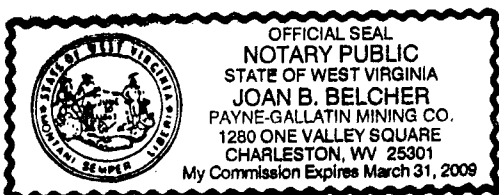
STATE OF WV

COUNTY OF Kanawha, to wit:

I, Joan B. Belcher, a Notary Public in and for said county and state do hereby certify that Andrew A. Payne, III, who signed the above writing, bearing the date the 17th day of September, 2007, has this day acknowledged the same before me.

Given under my hand this 17th day of September, 2007.

My Commission expires March 31, 2009.



Joan B. Belcher
Notary Public

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA


BLUE EAGLE LAND, LLC, *et al.*,

v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

VERIFICATION

I, Nick Carter, being first duly sworn on oath respectfully state to this Honorable Court that upon information and belief, the allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition are true and accurate.


Nick Carter *Chairman*
National Council of Coal Lessors, Inc.

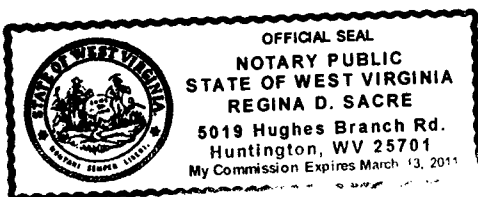
STATE OF West Virginia


COUNTY OF Calwell, to wit:

I, Regina D. Sacre, a Notary Public in and for said county and state do hereby certify that Nick Carter, who signed the above writing, bearing the date the 17th day of September, 2007, has this day acknowledged the same before me.

Given under my hand this 17th day of September, 2007.

My Commission expires March 13, 2011.




Notary Public

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND, LLC, *et al.*,

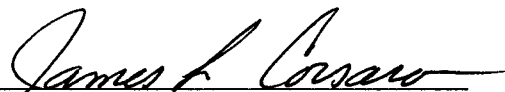
v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

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VERIFICATION

I, James L. Corsaro, being first duly sworn on oath respectfully state to this Honorable Court that upon information and belief, the allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition are true and accurate.


James L. Corsaro
Penn Virginia Operating Company, LLC

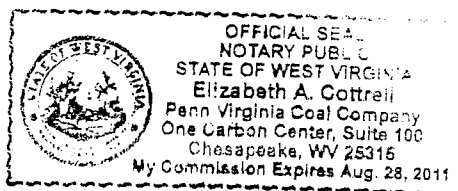
STATE OF West Virginia

COUNTY OF Kanawha, to wit:

I, Elizabeth A. Cottrell, a Notary Public in and for said county and state do hereby certify that James L. Corsaro, who signed the above writing, bearing the date the _____ day of September, 2007, has this day acknowledged the same before me.

Given under my hand this 17th day of September, 2007.

My Commission expires 8-28-2011.




Notary Public

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND, LLC, *et al.*,

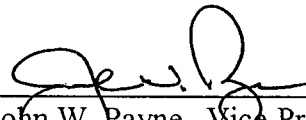
v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

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VERIFICATION

I, John W. Payne, being first duly sworn on oath respectfully state to this Honorable Court that upon information and belief, the allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition are true and accurate.



John W. Payne, Vice-President
Pocahontas Land Corporation

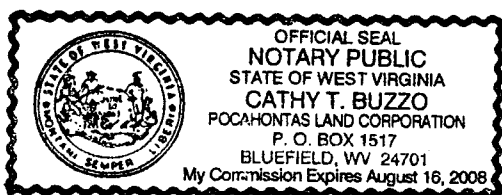
STATE OF West Virginia

COUNTY OF Mercer, to wit:

I, Cathy J. Buzzo, a Notary Public in and for said county and state do hereby certify that John W. Payne, who signed the above writing, bearing the date the 19th day of September, 2007, has this day acknowledged the same before me.

Given under my hand this 19th day of September, 2007.

My Commission expires August 16, 2008.



Cathy J. Buzzo

Notary Public

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

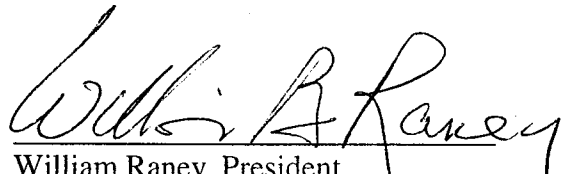
BLUE EAGLE LAND, LLC, *et al.*,

v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

VERIFICATION

I, William Raney, being first duly sworn on oath respectfully state to this Honorable Court that upon information and belief, the allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition are true and accurate.


William Raney, President
West Virginia Coal Association

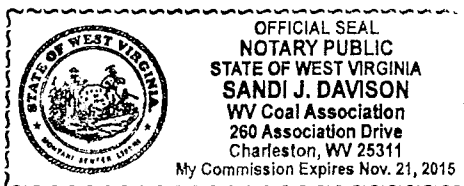
STATE OF West Virginia

COUNTY OF Kanawha, to wit:

I, Sandi J. Davison, a Notary Public in and for said county and state do hereby certify that William Raney, who signed the above writing, bearing the date the 19th day of September, 2007, has this day acknowledged the same before me.

Given under my hand this 19th day of September, 2007.

My Commission expires Nov. 21, 2015.




Notary Public

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA


BLUE EAGLE LAND, LLC, *et al.*,

v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

VERIFICATION

I, William D. Campbell, being first duly sworn on oath respectfully state to this Honorable Court that upon information and belief, the allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition are true and accurate.


William D. Campbell, Vice-President
Wolf Run Mining Company


STATE OF West Virginia

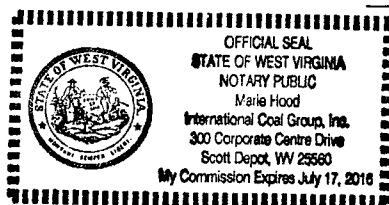
COUNTY OF Putnam, to wit:

I, Marie Hood, a Notary Public in and for said county and state do hereby certify that William D. Campbell, who signed the above writing, bearing the date the 10th day of September, 2007, has this day acknowledged the same before me.

Given under my hand this 10th day of September, 2007.

My Commission expires July 17, 2016.


Notary Public



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND, LLC, *et al.*,

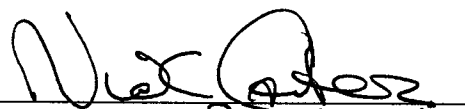
v.

WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,

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VERIFICATION

I, Nick Carter, being first duly sworn on oath respectfully state to this Honorable Court that upon information and belief, the allegations set forth in this Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition are true and accurate.


Nick Carter, President & COO
WPP LLC

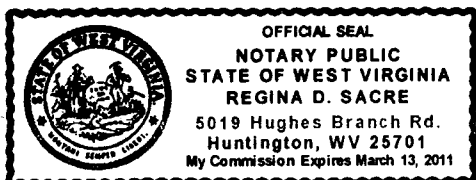
STATE OF West Virginia

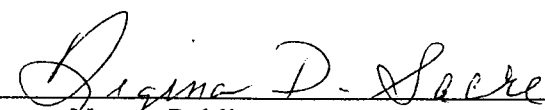
COUNTY OF Calwell, to wit:

I, Regina D. Sacre, a Notary Public in and for said county and state do hereby certify that Nick Carter, who signed the above writing, bearing the date the 17th day of September, 2007, has this day acknowledged the same before me.

Given under my hand this 17th day of September, 2007.

My Commission expires March 13, 2011.




Notary Public

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BLUE EAGLE LAND, LLC, et al.,

Petitioners,

V.

**WEST VIRGINIA OIL & GAS CONSERVATION
COMMISSION, *et al.*,**

Respondents.

Case No.: _____

CERTIFICATE OF SERVICE

I, Joseph L. Jenkins, do hereby certify that I have served a true and exact copy of the foregoing **Petition for Writ of Prohibition and Memorandum in Support of Petition for Writ of Prohibition**, with the accompanying **Appendix**, upon the following, by personally delivering said Petition to their office on the 28th day of September, 2007:

West Virginia Oil & Gas Conservation Commission

C/O Christie S. Utt, Esquire
WV Office of the Attorney General
Capitol Complex, Bldg. 1, Room E-26
Charleston, WV 25305

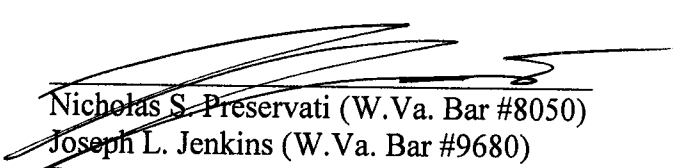
Chesapeake Appalachia, LLC

C/O Keith Moffatt, Esquire
900 Pennsylvania Avenue
Charleston, WV 25302

Eastern American Energy Corporation

C/O Robert M. Adkins, Esquire
501 56th Street
Charleston, WV 25304

PetroEdge Resources (WV), LLC
C/O Kenneth E. Tawney, Esquire
Jackson Kelly PLLC
1600 Laidley Tower
500 Lee Street
Charleston, WV 25322



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Counsel for Petitioners

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- Exhibit B.....Chesapeake Application for Lincoln, Logan, Boone, Mingo and Kanawha Counties
- Exhibit C..... Commission Order Granting Chesapeake Application for Lincoln, Logan, Boone, Mingo and Kanawha Counties
- Exhibit D..... Chesapeake Application for McDowell, Mingo and Wyoming Counties
- Exhibit E..... Commission Order Granting Chesapeake Application for McDowell, Mingo and Wyoming Counties
- Exhibit F.....Chesapeake Application for Boone, Lincoln and Logan Counties
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- Exhibit R..... Plat Showing 20 Wells on 2000 Foot Spacing
- Exhibit S..... Plat Showing 63 Wells on 1000 Foot Spacing
- Exhibit T..... Plat Showing Mineable Distance Between Wells on 2000 Foot Spacing
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- Exhibit W.....Chesapeake Commission Hearing Transcript – May 17, 2007
- Exhibit X..... Addresses for Show Cause Order

