

**BEFORE THE
RECLAMATION COMMISSION**

BRAD FISHER,

Appellant,

-vs-

DIVISION OF MINERAL RESOURCES
MANAGEMENT,

Appellee,

and

AMERICAN ENERGY CORPORATION,

Intervenor.

Case No. RC-09-012

Review of Groundwater Investigation;
Permit D-425 (Century Mine / American
Energy Corporation)

**FINDINGS, CONCLUSIONS &
ORDER OF THE COMMISSION**

Appearances: Nolan Moser, William T. Reisinger, Counsel for Appellant Brad Fisher; Mark G. Bonaventura, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; Mark Stemm, Counsel for Intervenor American Energy Corporation.

Date Issued: August 5, 2010

BACKGROUND

On December 28, 2009, Appellant Brad Fisher filed a notice of appeal with the Reclamation Commission from a Division decision addressing a water-loss complaint. Mr. Fisher alleged that mining, or subsidence associated with mining, at the underground Century Mine, diminished a water supply located upon his property and used by the Fisher family.

Mining at the Century Mine is conducted pursuant to coal mining permit D-425. This permit is held by American Energy Corporation ["AEC"]. On February 15, 2010, AEC filed a Motion to Intervene into this action. On February 17, 2010, the Commission granted AEC intervenor status.

On April 21, 2010, a site view was conducted by the Commission. All parties participated in the view. The Commission, and the parties, viewed the Fisher property, the well at issue and the interior plumbing associated with this well.

This matter came on for hearing before the Commission on April 22, May 5 and May 6, 2010. At hearing, the parties presented evidence and examined witnesses appearing for and against them. At the conclusion of the merit hearing, the parties filed written closing arguments, and replies thereto, with the last filing being made on May 19, 2010.

After a review of the Record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Coal mining and reclamation permit D-425 is issued to American Energy Corporation ["AEC"]. This permit allows underground mining by the longwall mining method. The mine at issue is known as the Century Mine, and is located in Belmont and Monroe Counties, Ohio. The longwall mining method is a full-coal extraction technology, which completely removes large blocks, or "panels," of coal. After removal of coal from a longwall panel, the rock that was situated above the coal collapses into the mine void. "Subsidence" is the result of the settling of the strata overlying an area where the coal has been fully removed. Subsidence is an inherent and planned aspect of the longwall mining process. Surface subsidence occurs above the mined-out panels and within an area extending beyond the edges of the panels, known as the "angle of influence." Access to the longwall panels, transportation of miners and equipment, and ventilation for the mine, is provided through a series of "development entries" located throughout the mine. These entries are mined by the room & pillar method. In room & pillar mining, pillars of coal are left standing to support the roof of the mine. Subsidence is not anticipated above room & pillar sections of a mine.

2. Brad and Brenda Fisher live on State Route 145, north of Beallsville, in Belmont County, Wayne Township, Ohio. The Fisher property is situated above sections of the underground Century Mine. AEC, or its affiliates, hold the coal rights for the Fisher property. The Fishers were notified in 2002, that AEC intended to undermine their property by longwall mining and/or room & pillar mining.

3. The home at 53441 Belmont Ridge Road was built by the Hughes family in 1971. At the time of construction, a drilled well was installed to provide a domestic water supply to the home. The original drilling report for this well shows an approximate depth of 80 feet, with a 9-foot column of water,² and a production rate of 40 gallons per hour (or 0.67 gallons per minute). By 1972, public water became available in this area, and the home was connected to the public water system. The drilled well was disconnected from the home's plumbing system, and the well was abandoned.

4. The Fishers moved into the home at 53441 Belmont Ridge Road in 1991, and have lived in this house since that time (approximately 20 years). During this period, Brad and Brenda Fisher and their three children occupied this home. The Fisher property consists of slightly less than three acres of land. Also located on the Fisher property is a pole barn, which is used by Mr. Fisher as a shop associated with his part-time welding business. Over the years, the Fishers have kept varying numbers of small livestock (calves and goats) on their property.

5. In August 2003, AEC's mining permit D-425 was revised and enlarged, to allow for mining directly beneath the Fisher and other properties. Certain areas of the Fisher property were to be undermined by room & pillar mining (as development entries for the longwall mine). Other portions of the Fisher property were to be undermined by longwall mining equipment.

² Static water level ["SWL"] measures the distance from the top of a well to the water held within the well. The SWL on the 1971 drill log for this well was reported as 9 feet. Testimony of a hydrologist, familiar with well-log interpretation, indicated that the SWL reported on the 1971 well log actually reflected the depth of the water column within the well (Testimony of D. Sugar.)

6. As part of the 2003 approved mining permit, AEC inventoried water supplies in the area to be undermined. The well installed by the Hughes in 1971 was included on AEC's inventory. No data was available on this water supply, as the well had been out of service for approximately 30 years. Indeed, the exact location of the old well was not known at that time.

7. Mr. Fisher testified that in late August 2003, a sinkhole developed in his front yard. Mr. Fisher reported the sinkhole to AEC. Representatives of AEC, and Division Inspector John Puterbaugh, came to the Fisher property to observe the sinkhole. At this time, the home's original water well (which had been abandoned since 1972) was discovered within the sinkhole. Although it was never conclusively determined that the sinkhole was related to AEC's mining activities, AEC offered to repair the sinkhole. Mr. Fisher declined AEC's offer to repair, and left the sinkhole open, thereby having access to the old water well [the "front yard well" or "FYWell"].

8. In February and March of 2004, Mr. Fisher attempted to clean-out/redevelop the old FYWell. Mr. Fisher purchased services and supplies to place the old FYWell back into service. D&L Water Well Drilling was hired to help Mr. Fisher clean-out/redevelop the old well. None of the legally-required permits for this activity were sought or obtained. Contrary to law, Mr. Fisher, who is not a licensed plumber, connected the old FYWell into his home's plumbing system. The Fisher home was already connected to a public water supply at this time. Mr. Fisher created a "cross connection," which presented the potential that the FYWell water and the public water might combine.³ Mr. Fisher testified that his intent was to use the FYWell water for household needs, and to use public water at his pole barn/welding shop, primarily for the power-washing of machinery and vehicles. Mr. and Mrs. Fisher testified that from March 2004 until November 2004, they used a combination of water from the FYWell and public water at their home and property. However, based upon evidence presented through the monthly public water bills, it is unclear how much water from the FYWell was actually used during this period.

³Ohio law, at O.A.C. §3701-28-08, forbids "cross connections" between private water wells and public water supplies. A cross connection occurs when two independent water supplies are plumbed together. This potentially allows one source's water to enter the other source's piping. Cross connections are prohibited by law, unless a backflow preventer is installed. The health risk created by a cross connection is that the untreated, and possibly contaminated, well water could flow into the public water system and contaminate other users' water. Mr. Fisher testified that he plumbed the FYWell water into his home in a manner which would allow the Fishers to choose between using the well water or public water in the home. However, this system also would allow these water supplies to combine. Mr. Fisher testified that, after the FYWell water was plumbed into the house, a valve was utilized to turn off the public water supply to the house.

9. On February 26, 2004, AEC or its agents, became aware that the Fishers had attempted to redevelop the FYWell. On that date, David Rucker of QES⁴ observed D&L Water Well Drilling's drill rig in the Fishers' front yard. On March 19, 2004, Mr. Rucker attempted to sample the FYWell, but was denied access to the well.

10. In November 2004, the Fisher property was undermined by AEC's longwall. The mining caused subsidence-related damage to the Fisher home and property. The Fishers contacted AEC to report their subsidence damage. The Fishers reported to AEC that the water supply from the FYWell had diminished after mining. Following discussions with Fred Blumling of AEC, Mr. Fisher disconnected the FYWell from his home's plumbing system, and returned to exclusive use of public water. AEC immediately assumed responsibility for paying the Fishers' public water bill. AEC paid the public water bill for this property from December 2004 through April 2009 (53 months).

11. Water wells undermined by the longwall mining method, may be dewatered after undermining. However, for wells less than 100 feet deep, monitoring data gathered and studied for wells in the area of Belmont County, Ohio (reported in the Probable Hydrologic Consequences of Mining portion of the permit D-425-3 application, which discusses a study conducted in association with nearby permit D-360) establish that 50% of impacted water wells recover within 2 - 6 months after undermining. (Testimony of David Sugar.)

12. On June 23, 2005, Dave Rucker of QES, on behalf of AEC, conducted a pump test on the Fishers' FYWell, which included two drawdown tests. On that date (approximately six months after the Fisher property was undermined), the FYWell showed a static water level of 70.2 feet, indicating that a ten-foot column of water existed in the well. The well's production rate (averaged from the two drawdown tests) was 0.68 gallons per minute.

⁴ QES is Quality Environmental Services. AEC contracted with QES to test and monitor water supplies in the area of potential undermining.

13. AEC and the Fishers attempted to negotiate a settlement of the subsidence-related damage claim associated with the Fisher home and property. As there were delays in achieving this settlement, in June 2006, the Fishers approached the Division for help in finalizing a settlement. As Mr. Fisher had filed a written complaint with the Division, citing delays in reaching a settlement for subsidence damage, the Division investigated Mr. Fisher's complaint, and attempted to facilitate settlement between AEC and the Fishers.

14. On January 28, 2007, Mr. and Mrs. Fisher accepted AEC's offer of settlement for subsidence damage to their home. In their acceptance of the offered settlement, the Fishers wrote:

We both [Brad and Brenda Fisher] have agreed to accept this offer, understanding that this is the offer for the house only.

The Fishers also wrote:

As for the water well, we understand that, by law, it has to be redrilled. We expect that when this is done, the well is to be brought back to supply our household of five people.

AEC witness Ernie Banks testified that this letter from Mr. Fisher was his first indication that the Fishers expected AEC to provide well water to the Fisher household. Inspector Puterbaugh testified that, because the Fisher household was connected to public water, he did not understand that the Fishers were seeking a replacement water well.

15. On June 12, 2007, AEC had an "agricultural" well drilled on the Fisher property, to be used to water any small livestock kept on the property. A drawdown test on this well, conducted in July 2007, showed its yield to be 0.14 gallons per minute. AEC purchased a livestock watering station to be installed in connection with this well. At the request of the Fishers, the watering station has never been installed. The Fishers wanted AEC to plumb this well into their home, as a replacement domestic water supply. AEC has refused to plumb this well into the Fisher home.

16. In May 2008, the Fishers verbally complained to Division Inspector Puterbaugh that AEC had failed to replace a water supply impacted by mining. On November 12, 2008, the Fishers submitted a written water-loss complaint to the Division. The Fishers' complaint asserts that, before undermining by AEC, there was an operational domestic well on their property that was used to serve their household. The Fishers further assert that, following undermining, this water supply was diminished and was no longer adequate to meet their domestic needs. The Fishers have suggested that AEC could remedy the water loss by connecting the newly-drilled "agricultural" well to the Fishers' home plumbing. Between January 2009 and May 2009, the Fishers submitted information to the Division, in an effort to establish that the FYWell had been redeveloped as a legitimate domestic water source and had been utilized by the Fisher household for the eight months prior to AEC's undermining.

17. On July 17, 2009, Inspector Puterbaugh, on behalf of the Division of Mineral Resources Management, issued a written response to the Fisher's November 12, 2008 water-loss complaint. Inspector Puterbaugh concluded that, as the Fisher property was connected to public water prior to mining, and continued to be connected to public water after mining, AEC had no obligation to replace the FYWell water supply, if that supply was impacted by mining. Inspector Puterbaugh's investigation of the Fisher water-loss complaint did not include any inspection, or testing, of the FYWell.

18. On September 13, 2009, the Fishers filed a written request for informal review of Inspector Puterbaugh's decision regarding their water-loss complaint. Division District Manager Mike Kosek and Division Hydrologist Kyle Baldwin gathered information as part of the informal review. Kosek and Baldwin observed the FYWell, and, on November 6, 2009, measured the well's static water level at approximately 68 feet (indicating that a 12-foot column of water existed in the well). Kosek and Baldwin also interviewed the Fishers.

19. On November 30, 2009, Division Deputy Chief Lanny Erdos issued a decision after informal review, addressing the Fishers' water-loss complaint. After reviewing the information gathered by Kosek and Baldwin, Deputy Chief Erdos concluded:

Mr. Puterbaugh's decision was based on a review of the pre-mining data, which showed your residence supplied by county water and no wells in use prior to mining. On November 6, 2009, Kyle Baldwin, Division Hydrologist, and Mike Kosek, District Manager, met with you at your home to further investigate [Puterbaugh's] decision. After reviewing the pre-mining attachment #14 in the approved mining permit D-425-3, field review and discussions with the landowner and the operator, the following facts are clear:

1. The approved application shows the residence supplied by county water prior to mining and the two wells on the property (W-194) and (W-593) were not in use prior to mining.⁵
2. Mr. Fisher has supplied receipts indicating that (W-593) was dug out in February of 2004.
3. Mr. Fisher does not have a residential well permit as required by Ohio [Administrative] Code 3701-28, nor does the County Health Department have any record of a residential well on the property.
4. When the well was cleaned out, there was no record of a drawdown test or any other well log or drilling report.

In conclusion, the Division concurs with Mr. Puterbaugh's original decision. The homeowner had county water before mining and after. With no record of a residential well in use, the Division cannot order [] American Energy to drill a new residential well.

This decision after informal review was appealed by Brad Fisher to the Reclamation Commission, and is the subject of the immediate appeal.

DISCUSSION

Ohio's mining and reclamation law requires a mine operator to replace a water supply, if it is established that a legitimately-used water supply was affected by "contamination, diminution, or interruption proximately resulting from [a] coal mining operation." O.R.C. §1513.162. If a water supply is temporarily impacted, the mine operator must provide an interim water supply. If a water supply is permanently impacted, the mine operator must replace the water supply. Mining and reclamation permits set forth the methods that the mine operator will employ to replace affected water supplies.

⁵ AEC's water inventory incorrectly showed sealed well W-194 as being located on the Fisher property.

The facts in this case reveal that a well [the "front yard well or FYWell"] was drilled on the Fisher property in 1971. The FYWell was utilized for only a brief period of time, as public water was installed into this residence in 1972. Thereafter, the FYWell was abandoned, and its exact location was forgotten. The best evidence of the productivity of the FYWell can be obtained from the original well log created in 1971. This log established that the FYWell was drilled to an approximate depth of 80 feet, that it contained approximately 9 feet of water, and that it produced at a rate of approximately 0.67 gallons per minute. This information is consistent with other evidence presented, relating to the productivity of water wells in the area of the FYWell.

The Fishers moved into their home on State Route 145 in 1991. By this time, public water had been utilized for nineteen years.

Mr. Fisher testified that, in August of 2003, the FYWell was accidentally exposed on his property. Upon discovery of the FYWell, Mr. Fisher decided to clean-out/redevelop this well. In February and March of 2004, Mr. Fisher and D&L Water Well Drilling undertook efforts to clean-out/redevelop the FYWell. Notably, none of the legally-required permits for this activity were obtained. Mr. Fisher, who is not a licensed plumber, then connected the FYWell into his home's plumbing system. Mr. and Mrs. Fisher testified that, between March 2004 and November 2004, the Fishers utilized the FYWell as a source of water to the Fisher residence. The residence's plumbing, which had been connected to public water for over thirty years, remained connected to the public water system without a backflow preventer, as is required by law.

AEC operates an underground longwall mine in the vicinity of the Fisher home. The Fishers were aware that their property would be undermined by either longwall, or room & pillar, mining during 2004. In November 2004, the Fisher residence was, indeed, undermined by AEC's longwall. Longwall mining produces subsidence, which can damage surface structures and water supplies located above a longwall panel. After AEC's longwall "passed" in November 2004, the Fishers experienced structural damage to their home and property.

The Fishers negotiated directly with AEC regarding structural damage issues. The Fishers testified that mining also caused an interruption of the FYWell water supply to their home. After undermining occurred, the Fishers disconnected the FYWell from the plumbing to their home, and the Fishers have never again attempted to reconnect to the FYWell for any purpose.

The Fishers contacted AEC directly regarding their alleged water loss. As the Fisher home was already connected to public water, representatives of AEC immediately offered to pay the Fishers' public water bill. The Fishers accepted this offer, and AEC paid the Fishers' public water bill for some 53 months. AEC also eventually agreed to install a new well (the "agricultural" well) on the Fisher property. Testimony from AEC land manager Ernie Banks indicates that AEC drilled the "agricultural" well to provide water for certain livestock. The Fishers contest this assertion.

For approximately 4½ years, AEC paid the public water bill for the Fisher family. However, the Fishers became frustrated that AEC would not connect the newly-drilled "agricultural" well into the Fishers' home plumbing system. With this, and other subsidence-related complaints, the Fishers approached the Division for help in resolving their disputes with AEC. Beginning in approximately June of 2006, the Division became involved in the controversy between the Fishers and AEC.

While subsidence from longwall mining can adversely impact water wells in the area of undermining, these impacts are not necessarily permanent. Water supplies are known to "recover" after the longwall has passed. Tests conducted on the FYWell, approximately six months after the longwall had passed beneath the Fisher property, revealed that the FYWell had returned to its pre-mining water level and productivity. Therefore, any impact that mining may have had on the FYWell was temporary in nature. As the impacts were temporary, the water replacement obligation imposed upon AEC was, likewise, temporary. AEC's payment of the Fisher public water bill from December 2004 (after the longwall undermined the Fisher property) until April 2009 (53 months after mining and 46 months after testing of the FYWell established that this water supply had recovered) adequately complied with the requirements of Ohio law to provide an interim water supply.

While the wisdom of developing a water supply, which could potentially be impacted by mining-related subsidence, may be questionable, the law does not appear to forbid the Fishers from developing the FYWell just eight month prior to potential undermining. From approximately March to November 2004, the Fishers claim to have supplied their home and property with a combination of public water and water from the FYWell. Water usage records from the public water supplier, and the plumbing installed by Mr. Fisher, draws into question exactly **how much** water from the FYWell was **actually** being used by the Fisher household during this period.

When applying for a mining permit, a mine operator must identify, and gather information relating to, water supplies, which could potentially be impacted by mining. AEC inventoried the water supplies to be undermined in the vicinity of the Fisher property in 2003. Notably, in 2003 (when AEC conducted its water supply inventory), the Fishers' FYWell had been out of service for approximately 30 years. In 2003, the location and the productivity of the FYWell was unknown to both AEC and the Fishers.

Tests conducted on the FYWell in June of 2005 (six months after undermining), establish that the FYWell successfully recovered from any impacts of undermining, when compared with the 1971 data regarding this well. It is reasonable to rely upon the 1971 well log as the best evidence of the well's pre-mining condition, and the 1971 and 2005 data is consistent with information regarding wells located in this area. Significantly, there was no evidence that any events occurred between 1971 and 2003, which would have improved the well's condition or productivity. Any fracturing impacts over this period, from mining in the general area of Belmont and Monroe Counties, would have been too remote to have directly affected the FYWell. In this matter, the 1971 well log provides the best evidence of the FYWell's pre-mining condition. Notably, when pre-mining data relating to a water supply is not included in a mining permit or otherwise available, the Division has developed policy guidelines to help determine if a water supply has been impacted by mining or has recovered. Based upon the provisions of the Division's Procedure Directive, by June 2005, the productivity of the FYWell was adequate for its intended purpose of supplying the Fisher household. As the FYWell water supply has recovered, AEC's responsibility to replace this water supply has terminated.

Procedure Directive Technical 06-1 discusses the procedures to be employed when a water supply may have been affected by mining, and specifically clarifies the roles and responsibilities of the Division, the permittee and the water supply owner, in the investigation of a water-loss complaint.⁶ This directive states:

Upon receipt of a water supply complaint, within two working days, the [Division] inspection staff will check the field location of the complainant's water supply relative to the nearest mining operation. If the water supply is within 500 feet of the mined area the inspection staff will immediately notify the Division's hydrology staff. The hydrologist will then conduct a site investigation of the complaint and develop an initial conclusion within five working days.

Pursuant to O.R.C. §1513.162, and explicit in the Procedural Directive, the Division is responsible to investigate, and determine whether, a water supply has been affected by a coal mining operation. After a water-loss complaint is made, the burden rests with the Division to investigate that complaint and determine if it has merit. The directive instructs Division personnel on the expectations for conducting such a water-loss investigation. The Division did not follow its own directive in this case and failed to undertake the type of investigation anticipated by the Policy Directive.

Significantly, on numerous occasions, the Fishers were resistant to cooperate in efforts to address their water-loss complaint. For example, the Fishers were slow to provide information in support of their position relative to the alleged loss of this water supply. Although there is no legal requirement that a citizen actively participate in the Division's investigation of such a complaint, the Fishers' lack of cooperation obfuscated the Division's effective investigation of this particular complaint.

⁶ Procedure directives are developed by the Division of Mineral Resources Management to provide guidance to Division staff, operators and citizens, as to how the Division will interpret and apply Ohio's mining law. These directives are guidance documents, and do not carry the weight of Ohio statutes and regulations. However, these documents provide useful information to operators and citizens, and ensure the consistent application and enforcement of Ohio law. The directive are not, however, independently enforceable.

The quality and effectiveness of the Division's investigation of the Fishers' water-loss complaint is of some concern. Failures in effective communication by all parties to this citizen complaint appear to have caused frustration for all involved. This is unfortunate. Significantly, all of the data establishing the historic and current productivity of the FYWell was produced at hearing by sources other than the Division, and was apparently unknown to the Division until the time of hearing.

The Division's reliance on the fact that the Fisher household was connected to public water prior to and after mining, as a rationale for finding that AEC did not have a responsibility to replace the FYWell water supply, is misplaced. Clearly, it is possible for a household to maintain more than one water supply.⁷ AEC's responsibility to the Fishers has terminated because the FYWell has recovered, not because the Fishers have access to public water.⁸

Proceedings before the Reclamation Commission are *de novo* in nature. Therefore, the Commission may independently evaluate the evidence presented at hearing, and may issue a decision consistent with the Division, but based upon other, or additional, factors.

The Commission **FINDS** that the Fishers' FYWell, if in fact diminished, was only temporarily impacted by mining. The Commission **FINDS** that AEC provided an interim water supply to the Fishers through the payment of the Fishers' public water bill during the period when the FYWell was, or may have been, impacted by mining. The Commission further **FINDS** that the Fishers' FYWell, if in fact diminished by mining, has recovered and has returned to productivity levels similar to its pre-mining condition.

⁷ However, restrictions apply to the combination of two or more water supplies, where one supply is public water. See footnote 3.

⁸ Although not germane to this case, it should be noted that public water can be utilized as a replacement source for water wells that do not recover after undermining.

CONCLUSIONS OF LAW

1. The ultimate burden of persuasion in this matter is placed upon the Appellant Brad Fisher to prove by a preponderance of the evidence that the Division's findings after informal conference, determining that AEC is not required to provide water replacement to the Fishers, was arbitrary, capricious or otherwise inconsistent with law. See O.R.C. §1513.13(B).

2. O.R.C. §1513.162 provides:

- (A) The operator of a coal mining operation shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply as been affected by contamination, diminution, or interruption proximately resulting from the coal mining operations and shall reimburse the owner for the reasonable cost of obtaining a water supply from the time of the contamination, diminution, or interruption by the operation until the water supply is replaced.

(See also: O.A.C. §1501:13-9-04(P)(1).)

3. Evidence presented at hearing, as to the original productivity of the Fishers' FYWell and the productivity of this same well after mining, establishes that this water supply has successfully recovered to its pre-mining condition.

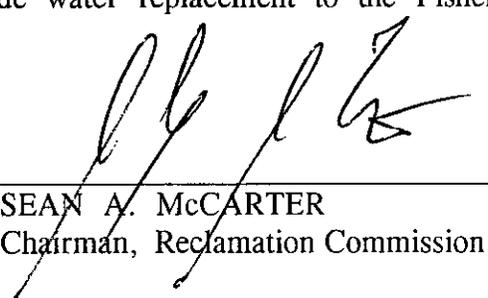
4. Appellant Brad Fisher provided no evidence to refute the Division's findings that AEC bears no further, or continuing, obligation to provide a water supply replacement to the Fisher household, as a result of mining conducted pursuant to permit D-425.

5. The Commission finds that the Division did not act arbitrarily, capriciously or in a manner inconsistent with law, in finding that AEC bears no further, or continuing, responsibility in regards to water replacement for the Fisher household.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's finding that American Energy Corporation bears no further, or continuing, obligation, to provide water replacement to the Fisher household.

8/5/10
DATE ISSUED


SEAN A. McCARTER
Chairman, Reclamation Commission

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Appeals, within thirty days of its issuance, in accordance with Ohio Revised Code §1513.14 and Ohio Administrative Code §1513-3-22. If requested, copies of these sections of the law will be provided to you from the Reclamation Commission at no cost.

DISTRIBUTION:

Nolan Moser, Via Fax (419-474-1554) & Certified Mail #: 91 7108 2133 3936 5364 8662

Copies for William T. Reisinger, Trent A. Dougherty, Megan De Lisi - delivered to Nolan Moser

Mark G. Bonaventura, Molly Corey, Via Fax (614-268-8871) & Inter-Office Certified Mail #: 6583

Mark Stemm, Via Fax (614-227-2100) & Certified Mail #: 91 7108 2133 3936 5364 8655

**BEFORE THE
RECLAMATION COMMISSION**

BRAD FISHER,	:	Case No. RC-09-012
	:	
Appellant,	:	
	:	
-vs-	:	Review of Groundwater Investigation;
	:	Permit D-425 (Century Mine / American
DIVISION OF MINERAL RESOURCES	:	Energy Corporation)
MANAGEMENT,	:	
	:	
Appellee,	:	
	:	
and	:	<u>INDEX OF EVIDENCE</u>
	:	<u>PRESENTED AT HEARING</u>
AMERICAN ENERGY CORPORATION,	:	
	:	
Intervenor.	:	

Before: Sean A. McCarter.

In Attendance: A. Thomas Althausser, Richard Babb, Richard Cappell, James McWilliams, Craig Porter, Ray Rummell and Hearing Officer Linda Wilhelm Osterman.

Appearances: Nolan Moser, William T. Reisinger, Counsel for Appellant Brad Fisher; Mark G. Bonaventura, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; Mark Stemm, Counsel for Intervenor American Energy Corporation.

WITNESS INDEX

Appellant's Witnesses:

Brenda Fisher
Brad Fisher

Direct Examination; Cross Examination
Direct Examination; Cross Examination

Appellee's Witnesses:

John Puterbaugh
Michael Kosek

Direct Examination; Cross Examination
Direct Examination; Cross Examination

Intervenor's Witnesses:

Ron Early
David Rucker
James Mellott
David Sugar
Ernie Banks

Direct Examination; Cross Examination
Direct Examination; Cross Examination
Direct Examination; Cross Examination
Direct Examination; Cross Examination
Direct Examination; Cross Examination

EXHIBIT INDEX

Joint Exhibits:

NO.	DESCRIPTION	also marked as
1	Letter, Erdos to Fishers, dated November 30, 2009	

Appellant's Exhibits:

NO.	DESCRIPTION	also marked as
A	Receipt, New Castle Pipe Supply, #590703, dated March 3, 2004	Copy also attached to Appellee's Exhibit 2
B	Receipt, Christman Supply Co., Inc., #36082, dated February 27, 2004	Copy also attached to Appellee's Exhibit 2
C	Receipt, Modern Hardware, Tkt # 354179, dated March 8, 2004	
D	Certified Copies of Records of Customer History Showing Water Billings and Consumption for Bradley Fisher, 53441 Belmont Ridge Road, Beallsville, Ohio, for years 2003, 2004, 2005 and 2006, certified by Mary A. Hagan, Switzerland of Ohio Water District, certification dated March 5, 2010 (12 pages)	Some records also included in Intervenor's Exhibits 10, 11, 12

E	Seven Receipts, work done by Brad Fisher, dated: February 15, 2004, April 25, 2004, June 10, 2004, October 5, 2004, November 20, 2004, December 28, 2004 and December 28, 2004	Originals are Appellant's Exhibit H
F	Receipt, Brad Fisher, #448777, dated February 28, 2004	Copy also attached to Appellee's Exhibit 2
G	Receipt, Century Mine, # 448760, dated October 11, 2005	
H	Seven Original Receipts, work done by Brad Fisher, dated: February 15, 2004, April 25, 2004, June 10, 2004, October 5, 2004, November 20, 2004, December 28, 2004 and December 28, 2004	Copies are Appellant's Exhibit E
I	Procedure Directive, Technical 06-1, Replacement of Water Supplies Affected by Coal Mining Operations, effective March 3, 2006	
J	Letter, Banks to Fishers, April 22, 2009	
K	Map, Ground-Water Resources of Belmont County, 1991	Portion of map is Intervenor's Exhibit 6
L	Six Water Well Log and Drilling Reports, well log numbers: 413063, 624680, 367295, 413094, 413074 and 808146	
M	Copies of Seventeen Original Well Log and Drilling Reports, well log numbers: 327018, 356303, 367295, 413063, 413074, 413094, 624680, 808146, 958559, 904755, 171284, 196545, 272563, 272576, 2008049, 2010322 and 686830	

Appellee's Exhibits:

NO.	DESCRIPTION	also marked as
1	Letter, Fishers to Banks, dated January 28, 2007	
2	Letter, Fishers to Husted, dated September 13, 2009, with attached receipts, Well Log # 2011420, Application/Permit for a Private Water System, Application/Permit for Private Water System Site Plan, summaries of Ohio Supreme Court Opinion cases 2004-0357 and 2004-0363	Attachments include Appellant's Exhibits A, B, F; and Intervenor's Exhibit 2
3	Letter, Puterbaugh to Fishers, dated July 17, 2009	
4	Attachment 14C (Well/Spring Inventory), American Energy Corporation permit D-0425-3	
5	Map, Incidental Boundary Revision, Permit D-0425-6, certified March 11, 2003	
6	Portion of Application & Hydrology Map, Permit D-0425-3, prepared April 3, 2002	
7	Letter, Fishers to Clark, dated June 19, 2006	
8	Letter, Clark to Fishers, dated July 3, 2006	
9	Letter, Clark to Banks, dated October 24, 2006	
10	Letter, Banks to Fishers, dated November 15, 2007	

11	Letter, Fishers to Clark, dated November 12, 2008	
12	Application/Permit for a Private Water System, Permit #17, approved May 24, 2007	Copy also attached to Appellee's Exhibit 2
13	Copy of Original Well Log and Drilling Report # 413085, dated May 24, 1971	
14	Photograph, well casing in front yard, taken April 21, 2010	
15	Photograph, open casing for front yard well with tape, taken April 21, 2010	
16	Photograph, well casing for "agricultural" well, taken April 21, 2010	
17	Photograph, hydrant in Fisher workshop, taken April 21, 2010	

Intervenor's Exhibits:

NO.	DESCRIPTION	also marked as
1	Letter, Fisher to Reclamation Commission, dated December 18, 2009, with attached Water Well Log and Drilling Report # 413085 and copy of envelope to Commission	
2	Receipt, D& L Water Well Drilling, #1246, dated February 28, 2004	Copy also attached to Appellee's Exhibit 2
3	Rucker Diary Entries, February 26, 2004, March 19, 2004 and June 23, 2005	
4	Photograph, plumbing in Fisher basement, taken April 21, 2010	
5	Resume, David J. Sugar	
6	Portion of Belmont County Ground-Water Resources Map, showing Wayne Township area	Full map is Appellant's Exhibit K
7	Portion of Monroe County Ground-Water Resources Map, showing Sunsby Township, with attached legend	
8	Certified Copy of Customer History Showing Water Billing Charges and Water Consumption Amounts for Bradley Fisher, 53441 Belmont Ridge Road, Beallsville, Ohio, for year 1972, certified by Hagan on March 31, 2010	Copy of Intervenor's Exhibit 9
9	Original Certification of Customer History Showing Water Billing Charges and Water Consumption Amounts for Bradley Fisher, 53441 Belmont Ridge Road, Beallsville, Ohio, for year 1972, certified by Hagan on March 31, 2010	Original certification of Intervenor's Exhibit 8
10	Certified Copies of Customer History Showing Water Billing Charges and Water Consumption Amounts for Bradley Fisher, 53441 Belmont Ridge Road, Beallsville, Ohio for years 2000, 2001, 2002, 2003, 2004, certified by Hagan on March 5, 2010 or March 31, 2010	Includes copy of Intervenor's Exhibit 11; some records also included in Appellant's Exhibit D

11	Original Certified Copies of Customer History Showing Water Billing Charges and Water Consumption Amounts for Bradley Fisher, 53441 Belmont Ridge Road, Beallsville, Ohio for years 2000, 2001, 2002, certified by Hagan on March 5, 2010 or March 31, 2010	Original certification of a portion of Intervenor's Exhibit 10; some records also included in Appellant's Exhibit D
12	Chart, Switzerland of Ohio Water District Meter Record of Consumption for Approximate Seven Month Period, March - October, 2000 - 2004, for Bradley Fisher, 53441 Belmont Ridge Road, Beallsville, Ohio	
13	Original Certified Copies of Customer History Showing Water Billing Charges and Water Consumption Amounts for Bradley Fisher, 53441 Belmont Ridge Road, Beallsville, Ohio for years 1991, 1992, 1993, 1994, 1995, certified by Hagan on March 31, 2010	
14	Original Certified Copies of Customer History Showing Water Billing Charges and Water Consumption Amounts for Bradley Fisher, 53441 Belmont Ridge Road, Beallsville, Ohio for years 2009 and 2010, certified by Hagan on March 31, 2010	
15	Facilities and Equipment for Commercial Meat Goat Production, by Susan Schoenian, www.sheepandgoat.com , printed July 23, 2007 (7 pages)	
16	Receipt, Stein-Way Equipment, Order # 535, dated July 16, 2007	
17	Water Well Draw Down Test, "agricultural" well, dated July 23, 2007	