BEFORE THE
RECLAMATION COMMISSION

RICHARD & JEANETTE NEWMAKER, Appellants, -vs- DIVISION OF MINERAL RESOURCES MANAGEMENT, Appellee, and VALLEY MINING CO., Intervenor.	:	Case No. RC-07-002 Review of Chief's Decision; Permit Application #10244 (Valley Mining) **ORDER OF THE COMMISSION GRANTING INTERVENOR'S MOTION FOR DIRECTED VERDICT**

Appearances: Richard & Jeanette Newmaker, Appellants *pro se*; Kate Mosca, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management; Christopher J. Gagin, Frank A. Fregiato, Counsel for Intervenor Valley Mining Company.

On January 29, 2007, Appellants Richard & Jeanette Newmaker filed with the Reclamation Commission a notice of appeal from the Division Chief's approval of mining and reclamation permit application #10244. The applicant for this permit is Valley Mining Company, and Valley has been granted intervenor status into this appeal.

On July 11, 2007, this matter came on for hearing before five members of the Reclamation Commission. Pursuant to O.A.C. §1513-3-16(B)(3), the ultimate burden of persuasion in this matter rests with Appellants Richard & Jeanette Newmaker. The Appellants placed evidence into the Record, consisting of their testimonies. The Newmakers then rested their case.

Thereafter, Intervenor Valley Mining made an oral Motion for Directed Verdict, arguing that the issues raised by the Newmakers address items outside the jurisdiction of the Commission. The Appellee Division of Mineral Resources Management joined in this Motion.

Rule 50 of the Ohio Rules of Civil Procedure sets forth the standard for rendering directed verdicts. The standard for granting such motions articulated within that rule, is instructive in this matter. Rule 50 provides at (A)(4):

> When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.

The Reclamation Commission is a creature of statute. As such, the Commission possesses only those powers and authorities expressly conferred, or necessarily implied, by statute. Applying the standard articulated in Civil Rule 50, and considering the evidence submitted on behalf of the Appellants, this Commission **FINDS** that the matters raised by the Appellants are outside the scope of the Commission's jurisdiction, and pose questions, which this Commission is not empowered to address.

ORDER

WHEREFORE, the Commission hereby **GRANTS** Intervenor's Motion for Directed Verdict, and renders judgment supporting the Division's decision to approve application number #10244.

7/12/07
DATE ISSUED

Wanda F. Stratton
WANDA F. STRATTON
Vice Chair, 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:

Richard & Jeanette Newmaker, Via Certified Mail #: 91 7108 2133 3932 9127 6128
Kate Mosca, Via Inter-Office Certified Mail #: 6376
Christopher J. Gagin, Frank A. Fregiato, Via Certified Mail #: 91 7108 2133 3932 9127 6135